



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

October 21, 1977

ATTORNEY GENERAL OPINION NO. 77- 348

The Honorable Norman Gaar  
State Senator  
2100 TenMain Center  
Kansas City, Missouri 64105

Re: Cities and Municipalities--General Improvement and  
Assessment Law--Acquisition of Public Improvements

Synopsis: The General Improvement and Assessment Law does not  
convey authority to allow a city to purchase outright  
a completed public work or improvement.

\* \* \*

Dear Senator Gaar:

You advise a portion of a certain street in Salina, Kansas, has  
been improved by private citizens who now wish the city's assis-  
tance to finance the cost therefore. Specifically they wish to  
form a benefit district pursuant to K.S.A. 12-6a01, et seq., and  
secure long term financing via the issuance of general obligation  
bonds. You request the opinion of this office whether K.S.A.  
12-6a02 permits the city to "acquire" a street already constructed.

K.S.A. 12-6a02 provides in pertinent part thus:

"As a complete alternative to all other methods  
provided by law, the governing body of any  
city is hereby authorized to *make, or cause  
to be made,* municipal works or improvements  
which confer a special benefit upon property

within a definable area of the city . . . .  
Such work or improvements may include the  
following without limitation because of enu-  
meration:

(a) Acquisition of property or interest  
in property when necessary for any of the  
purposes authorized by this act.

(b) To open, widen and extend streets  
and otherwise to improve paving and other  
surfacing, gutters, curbs, sidewalks, cross-  
walks, driveway entrances and structures,  
drainage works incidental thereto, and service  
connections from sewer, water, gas and other  
utility mains, conduits, or pipes necessarily  
lying within curb lines." [Emphasis added.]

It is clear from the above quoted provisions that a city may exer-  
cise broad discretion in providing types of municipal works or  
improvements. But the essential question is by what method may  
a city secure such projects for a benefit district and/or a city  
at large. The answer to this issue necessarily pivots upon the  
interpretation and application of the two general infinitive  
phrases above emphasized: "to make" or "cause to be made." Both  
phrases juxtaposed with the remaining enabling verbs employed  
in subparagraphs (a) through (k), i.e., "acquire," "open," "widen,"  
"extend," and "improve," only convey authority for the city itself  
to initiate and pursue to completion the selected improvement.  
This limitation appears categorically to place responsibility  
upon the city to secure the completion of a project and the req-  
uisite financing therefor pursuant to the usual, applicable pro-  
cedures, and restrictions, e.g., public contract requirements,  
cash basis law, etc. A close examination of the remaining sec-  
tions of the General Improvement and Assessment Law further sup-  
port this conclusion.

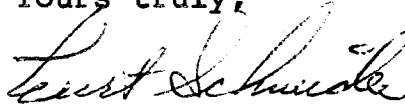
The tenor of this entire Act manifests an intent by the legisla-  
ture to authorize a city to provide an extensive array of projects  
through its municipal procedures. I do not find in the Act,  
however, sufficient authority to allow a city to purchase a com-  
pleted project which would fall within those permitted under  
K.S.A. 12-6a02. This clearly entails the acquisition of a public  
improvement which constitutes a separate, alternative vehicle  
for securing the municipal work. Such a method connotes specific  
authority neither expressly nor impliedly provided in K.S.A. 12-  
6a02. The term "acquisition" of course is found in subparagraph  
(a), but closely examined that provision conveys the necessary

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authority for the city to purchase the land or interest therein, as distinguished from the improvement upon or in which it will be placed. If the legislature had desired to permit such power it is reasonable to conclude that it could have so provided. It is also important to note that here private citizens have already made or caused to be made the street improvement. Since the street has already been dedicated to public use it would be my judgment that the city need take no further steps to acquire the project since it now essentially belongs to the city.

Accordingly, it is the opinion of this office that the General Improvement and Assessment Law does not permit the acquisition of completed municipal works or improvements. A city through its authorized municipal procedures must make or cause to be made the public improvement; to permit otherwise would circumvent the manifest design of this Act and the safeguards provided elsewhere in the requirements placed upon cities in making and financing public works.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JPS:kj