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.

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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 assistance 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 enumeration:

(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, crosswalks, 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 exercise 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 requisite financing therefor pursuant to the usual, applicable procedures, and restrictions, e.g., public contract requirements, cash basis law, etc. A close examination of the remaining sections of the General Improvement and Assessment Law further support this conclusion.

The tenor of this entire Act manifests an intent by the legislature 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 completed 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
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

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