

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 29, 1977

ATTORNEY GENERAL OPINION NO. 77- 368

Mr. Lawrence E. Christenson
Winfield City Attorney
Post Office Box 731
Winfield, Kansas 67156

Re: Cities--Home Rule--Bonds

Synopsis: A city may by charter ordinance exempt itself from the issue limitations of K.S.A. 12-621, and authorize the issuance of general obligation bonds in amounts greater than that authorized by said statute.

* * *

Dear Mr. Christenson:

You advise that the City of Winfield is contemplating the issuance of general obligation bonds in the amount of approximately \$900,000, to provide matching funds for Environmental Protection Agency grant for improvements to the city wastewater treatment plant.

K.S.A. 12-621 provides in pertinent part thus:

"The governing body of any such city may operate and maintain disposal works for the purification of the sewage of the city, or of any part thereof. The costs and expenses of building the same shall be borne by the city as a whole, and may be paid out of the general revenue fund; or if the governing body determines, general obligation bonds of the city may be issued therefore [sic] in any sum not exceeding three hundred thousand dollars (\$300,000) for such

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purpose, except that in any city located within a county having a population of more than one hundred eighty thousand (180,000) and less than two hundred thousand (200,000) bonds for such purpose may not be issued in any sum exceeding one hundred thousand dollars (\$100,000)."

It is proposed to adopt a charter ordinance exempting the city from the \$300,000 bond authority limitation under this provision, and to authorize the issuance of the referenced bonds without limitation. You inquire whether this is a permissible use of the city's constitutional home rule authority.

As first enacted in 1909, see ch. 90, § 5, L. 1909, this section referred only to cities of the second and third class. None of the amendments in the intervening years has broadened its application to all cities of whatever class. The phrase "any such city" refers to those cities mentioned in the title and initial section of the original enactment, cities of the second and third class, and thus, the section does not apply uniformly to all cities. Moreover, it includes a further classification, applicable only to those cities of the second or third class which are located in counties with a population of more than 180,000 and not exceeding 200,000. The section is manifestly not applicable to all cities or to all cities of a particular class.

K.S.A. 12-621 further provides thus:

"Such bonds may be issued in addition to the limit of bonded indebtedness of such cities as defined by statute"

Article 12, § 5 of the Kansas Constitution provides that cities may exercise their home rule powers subject "to enactments of the legislature prescribing limits of indebtedness," whether such enactment apply uniformly to all cities, or to only a single class of cities, or merely to one city. The question becomes whether a statute authorizing the issuance of bonds not to exceed a prescribed amount is itself an "enactment . . . prescribing limits of indebtedness" It may be argued, of course, that K.S.A. 12-621 is an enactment both authorizing such indebtedness and prescribing a limit thereon, by virtue of the limits on the indebtedness which it authorizes.

At the time Article 12, § 5 was adopted by the voters in 1960, and since that time, aggregate limits of bonded indebtedness were and

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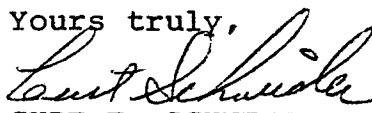
are prescribed by K.S.A. 10-301 et seq. In my judgment, the phrase "enactments . . . prescribing limits of indebtedness" applies to these and like limitations on total indebtedness, and not to individual statutory limitations on the amounts of issues authorized for particular purposes, such as K.S.A. 12-621. That statute, *e.g.*, imposes no limit whatever upon the indebtedness of the cities of the second and third class to which it applies. Rather, it merely imposes a limit on the amount of bonds which such cities may issue for the construction of sewage disposal works.

K.S.A. 10-303 prescribes limits of bonded indebtedness which are applicable to cities of the second and third class. In pertinent part, it provides thus:

"At no time shall all the bonded indebtedness of any city of the second or third class for all purposes exceed fifteen percent (15%) of the assessed valuation of all the taxable tangible property within such city as shown by the assessment books of the year last previous to the one in which a new issue of bonds is proposed to be made *Provided further*, That the total bonded indebtedness of any such city for all purposes shall at no time exceed twenty-five percent (25%) of the assessed valuation of all the taxable tangible property within such city *And provided further*, That any bonds issued by any such city under a statute which specifically exempts such bonds from the statutory limitations of bonded indebtedness shall not be included in computing the total bonded indebtedness of such city within the meaning of this section"

In and of itself, K.S.A. 12-621 imposes no limit on the indebtedness of the City of Winfield, for it imposes a limit only upon the amount of an issue which is approved for a particular purpose. The general bonded indebtedness limits of the city can be determined only by reference to K.S.A. 10-103, and not K.S.A. 12-621. In my judgment, the latter statute is subject to a charter ordinance adopted by the city exempting itself from one or more of its provisions, and substituting other or additional provisions in lieu thereof.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:jj