



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

December 2, 1977

ATTORNEY GENERAL OPINION NO. 77- 377

Mr. G. C. McLure, Jr.  
County Engineer - Director of Public Works  
Sedgwick County Department of Public Works  
Sedgwick County Courthouse  
1015 Stillwell  
Wichita, Kansas 67213

Attn: Mr. Joe D. Freeman

Re: Bonds and Warrants--Revenue Bonds--Definitions Applied  
to County Central Motor Pools

Synopsis: A county central motor pool established under K.S.A. 19-2679 to the extent that it may be considered a public instrumentality and that it is revenue producing falls within the purview of the term "utility" as defined in K.S.A. 10-1201.

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Dear Mr. McLure:

You request the opinion of this office concerning the possibility of issuing public utility revenue bonds pursuant to K.S.A. 10-1201, et seq. to finance the creation of a county central motor pool. Specifically you ask whether a central motor pool created pursuant to K.S.A. 19-2679 falls within the definition of "utility" as employed in K.S.A. 10-1201. You advise that the anticipated central motor pool will create a county-wide facility providing motor vehicles to county agencies who will be charged certain fees for such vehicle use.

As you correctly noted in your letter, "utility" is defined at K.S.A. 10-1201 thus:

"any publicly owned utility, instrumentality or facility of a revenue producing character including but not limited to plans [plants], facilities and instrumentalities for the purpose of supplying natural or manufactured gas, water or electric light and off-street parking facilities and sewage disposal plants, facilities and interceptor services."

The express language of this definition is manifestly extensive in operation. As our early opinion pointed out

"[t]his office has long taken the position that the term 'utility' as used in the above statute [K.S.A. 10-1201] was intended by the legislature to be quite broad in its application. Consequently wide access to this financing capability has facilitated the funding of a number of projects not specifically designated in this statute, e.g., public golf course and homes for the aged."<sup>1</sup>

The central motor pool concept must then of course satisfy two fundamental requirements to qualify as a utility: (1) it must be a publicly owned utility, instrumentality or facility, and (2) if so, it must be of a revenue producing character.

Of the three categories of utilities it would appear initially that "instrumentality" would most logically apply to motor pools. Instrumentality is not defined in the utility revenue bond act. Absent such definition it is the rule of statutory construction in this jurisdiction that "words in common use are to be given their natural and ordinary meaning . . . ." *Koda v. Williams*, 195 Kan. 507, 511, 407 P.2d 741 (1965); 2A *Sutherland, Statutory Construction*, § 47.28 (4th ed. 1973). Instrumentality is a derivative of the word "instrument" which *Webster's New Third International Dictionary* defines thus:

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1. See, 8 Kans. Atty. Gen. Op. 83 (1974).

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"a means whereby something is achieved, performed, or furthered . . . ."

It would appear reasonable to assume that a central motor pool if employed in the manner anticipated would achieve or further the availability of vehicular transport to county agencies; and to this end would therefore warrant the conclusion that it could be considered an instrumentality of county government.

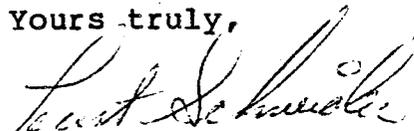
The question remains then whether the contemplated instrumentality will be revenue producing. The phrase "revenue producing" is impliedly defined in the Act as that user or service charge apparatus which when fixed by ordinance or resolution will produce sufficient revenue to pay the

"cost of operation, maintenance, alteration, reconstruction, repair, improvement, extension and enlargement of such utility, providing an adequate depreciation fund and paying the principal of, and interest upon, the revenue bonds and paying the principal of, and the interest upon, any and all prior existing revenue and general obligation bonds or other liens and general obligation bonds or other liens or indebtedness against any such utility."  
[K.S.A. 10-1204.]

Assuming the county could establish sufficient user charges to meet the criteria by which the utility may meet the above implied definition and responsibilities it would be my judgment that the central motor pool concept satisfies the revenue producing requirement.

Accordingly it is the opinion of this office that a county central motor pool created pursuant to K.S.A. 19-2679 to the extent that it falls within the definition of an instrumentality and that it is revenue producing meets the definition of "utility" as provided in K.S.A. 10-1201, *supra*.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

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