



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 20, 1978

ATTORNEY GENERAL OPINION NO 78- 26

Mr. David E. Retter
Concordia City Attorney
Post Office Box 327
Concordia, Kansas 66901

Re: Cities and Municipalities--Public Improvements--Financing
Main Interceptor Sewers

Synopsis: A city with a population of less than 80,000 may issue general obligation bonds of the city to be paid by the city at large for the costs of main interceptor sewers lying within the corporate city limits and otherwise satisfying the requirements of K.S.A. 12-619. Said bonds may be issued in excess of the \$100,000 limitation found at K.S.A. 12-621 and in addition to the city's bonded indebtedness limitation.

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Dear Mr. Retter:

You request the opinion of this office whether a city with a population of less than 80,000 may pay the cost of a main interceptor sewer within such city to be borne by the city as a whole through the issuance of the city's municipal bonds.

K.S.A. 12-619 provides in pertinent part:

"If the estimated cost of the main sewer or drain of said system now or hereafter constructed shall be relatively large as compared with the estimated cost of the lateral sewers or drains tributary thereto, or if the said main sewer or drain shall be so located that it will or may receive the sewage or drainage

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from two or more districts, the governing body shall have power to pass an ordinance providing that the cost of such main sewer or drain below a certain designated point shall be borne by the city and paid in the manner provided in K.S.A. 12-624 *for the payment of the cost of main sewers and drains now or hereafter constructed beyond the corporate limits of the city.*" [Emphasis added.]

And K.S.A. 1977 Supp. 12-624 provides thus:

"All costs and expenses occasioned by the acquisition of a right-of-way either by purchase or condemnation and by the construction of sewers and drains and disposal works beyond the corporate limits of said city shall be borne by the city as a whole and shall be paid out of the general revenue fund or by the issue of improvement bonds of the city as the governing body may determine, in the manner provided by law. Bonds to pay the costs of right-of-way and the construction of sewers and drains beyond the corporate limits of the city may be issued in addition to the one hundred thousand dollars (\$100,000) authorized by K.S.A. 12-621 for the construction of disposal works and that such additional bonds may be issued in addition to the limit of bonded indebtedness of such cities as defined by statutes."

The ostensible purpose of these two statutes insofar as concerns sewers is to permit the city to finance the main interceptor sewer by the city as a whole either through the issuance of general obligation bonds or disbursement straight from the general revenue fund. To qualify for such methods of financing the main interceptor sewer must satisfy one of two conditions precedent: (1) the estimated costs of the sewer must be relatively large compared to the estimated cost of its lateral sewers or (2) the sewer is to receive sewage from two or more districts (formed under K.S.A. 12-617, *et seq.*) You advise this particular sewer satisfies both of these requirements.

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You also point out that only a fraction of the sewer lies within the boundaries of the municipality. That it does not lie totally within or without the city is not significant. It is important only that the portion to be financed via the authority of K.S.A. 12-619 lies within the city limits.¹ Earlier it had been suggested that the above emphasized language of K.S.A. 12-619 limited this financing option to only portions of the sewer or drain which lay beyond the corporate limits. I cannot subscribe to this interpretation. K.S.A. 12-619 is categorically concerned with the main interceptor sewer or drain which serves the city at large or the several districts located therein. It does not qualify or define the sewer to be constructed or paid for by limiting the geographical location of the sewer or drain. And, the language of K.S.A. 12-619, emphasized, *supra*, "for the payment of the cost of main sewers and drains now or hereafter constructed beyond the corporate limits of the city," when juxtaposed with the remaining provisions of that sentence evidence that it is a phrasal preposition modifying only the manner of payment; referring to, K.S.A. 1977 Supp. 12-624. To hold otherwise would defeat the manifest purpose of these provisions of the statute, *i.e.*, to permit costly or jointly used main interceptor sewers located within the city to be paid for by either the city at large or the joint user-districts just as is permitted with sewers and drains lying beyond the city boundaries. It necessarily follows that the "manner" of payment for such projects by virtue of the provisions of K.S.A. 1977 Supp. 12-624 thus permits such bonds to be issued in excess of the \$100,000 limitation found at K.S.A. 12-621 and in addition to the city's bonded indebtedness limitation (K.S.A. Chapter 10, Article 3).

Accordingly it is the opinion of this office premised upon the facts submitted in your letters that the city may issue its general obligation bonds to be paid by the city as a whole to finance

1. Specific authorization for financing sewers beyond the corporate city limits is, of course, found at K.S.A. 1977 Supp. 12-624 (a section of the same act as K.S.A. 12-619: Chapter 90, Laws of 1909) which can be used in conjunction with K.S.A. 12-619 to provide full coverage of that portion of the sewer designated by the city governing body to be financed by the city at large.

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the costs incurred for the construction of a main interceptor sewer lying within the corporate city limits and authorized pursuant to K.S.A. 12-619.

Yours truly,


CURT T. SCHNEIDER
Attorney General

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