



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 24, 1978

ATTORNEY GENERAL OPINION NO. 78-35

Mr. Richard D. Loffswold, Jr.
City Attorney
116 East Forest
Post Office Box 163
Girard, Kansas 66743

Re: Cities--Industrial Fund--Use Of

Synopsis: The industrial fund created pursuant to K.S.A. 12-1617h may be used to purchase industrial sites to be used for sale or lease to private corporations.

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Dear Mr. Loffswold:

You advise that questions have arisen concerning the use of the industrial fund which was created by the City of Girard, Kansas, pursuant to K.S.A. 12-1617h and -1617i, formerly K.S.A. 13-1441.

You inquire, first, concerning the procedure which the city must follow in disbursing moneys from this fund. K.S.A. 12-1617i states thus:

"All moneys collected by virtue of the tax hereinbefore authorized shall be replaced [placed] in the fund known as an 'industrial fund,' and shall only be used by ordinance duly adopted by the governing body of such city for the purpose of inducing industries to locate within the said city or near its environs, and said ordinance may be passed only after submitting the proposition to the voter as provided for in K.S.A. 12-1617h."

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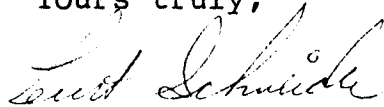
In an opinion letter to Mr. David Heilman dated May 8, 1968, Attorney General Robert C. Londerholm stated thus:

"You have asked us whether the term 'ordinance' as used in K.S.A. 13-1442 refers to the normal appropriation ordinance or whether a separate ordinance is necessary to withdraw money from the industrial fund. In the absence of a specific reference to an appropriation ordinance, we believe that the intent of the legislature was to require the adoption of a simple ordinance."

Secondly, you ask whether moneys from the industrial fund may be used to purchase land for an industrial site, which will then be leased to private businesses with an option to purchase for a nominal sum after a period of years has expired. I enclose an opinion of Attorney General Vern Miller dated March 10, 1972. The use of the industrial fund to purchase land for industrial sites is an entirely permissible use of the fund. However, land so purchased may not be given to a private corporation merely as a gift. It may be leased to a lessee, who may be granted an option to purchase, so long as the lease and option to purchase is supported by reasonable consideration fairly approximating the value of the property. Use of the industrial fund for the purchase of real property which was then conveyed to a private party for merely nominal consideration would represent the diversion of public funds to a private use. So long, however, as the conveyance, or lease, is supported by consideration representing the fair market value of the property, the proposed course of action is entirely within the authority of the city.

In addition, as you request, I enclose copies of several recent opinions concerning this statute.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosures