



STATE OF KANSAS

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Attorney General

January 24, 1978

ATTORNEY GENERAL OPINION NO. 78- 38

The Honorable Arnold Anderson
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Bonds and Warrants--Limitation of Bonded Indebtedness--
-1978 House Bill 2786

Synopsis: Legislation may be passed prior to the issuance of municipal bonds to give authority to statutory bonded indebtedness limitations which at the time certain bonds were approved by the voters did not exist.

* * *

Dear Representative Anderson:

You request my opinion concerning the effect 1978 House Bill No. 2786 will have upon certain bond election and issuance procedures employed by Trego County. You advise that the Trego County Board of Commissioners authorized the county election officer to submit the following to a vote of the qualified electors of such county:

"Shall Trego County, Kansas issue and sell General Obligation Bonds in an amount not exceeding \$475,000.00 for the purpose of providing funds to pay the cost of constructing, furnishing and equipping a law enforcement building and doing all things necessary and incidental thereto under the authority of K.S.A. 19-15, 115 seq. and Article 1 of Chapter 10, Kansas Statutes Annotated?"

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I understand the electors of Trego County approved said bond issue by more than a two to one margin. However, the \$475,000 amount so approved substantially exceeds the applicable bonded debt limitations prescribed in K.S.A. 10-301. 1978 House Bill No. 2786 seeks to amend K.S.A. 10-301 (insofar as concerns the issue here presented) to permit Trego County to now exceed the bonded debt limitation in effect at the time the special election was held (October 18, 1977),¹ to thereby permit it to issue the full amount of bonds authorized by the majority approval of the voters.

The Kansas Supreme Court some years ago examined an issue similar to the instant one presented, *i.e.*, that the voters authorized general obligation bonds to be issued in an amount in excess of the bonded debt limitations in effect on the date said approval was given. Justice Thiele succinctly stated the opinion of the Court in *Jaeger v. City of Hillsboro*, 164 Kan. 533, 190 P.2d 420 (1948):

"Without detailing the figures, it appears that possibly when the bonds were authorized, had they been immediately issued there would have been an excess, but the record discloses that at the present time the bonds have not been sold, sent out, delivered or put into circulation (*State, ex rel., v. Woodruff*, 164 Kan. 339, 189 P.2d 899 [opinion filed February 16, 1948] *ante*, p. 399) and that the proposed issue and other bonds now outstanding and properly to be considered, do not exceed the statutory limit (G.S. 1935, 10-303). The effective date for determination is date of issue and not date of authorization."

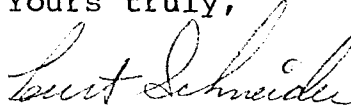
Thus it is the test in this jurisdiction that it is the date of *issuance* and not the date of authorization which determines whether a particular bond issue complies with K.S.A. 10-301.

1. The bonded indebtedness applicable to Trego County is "one percent (1%) of the assessed value of all tangible taxable property within such county, as K.S.A. 10-301.

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Should it be enacted in its present form 1978 House Bill No. 2786 will raise the applicable bonded debt limitations for Trego County from one percent (1%) to two and one-half percent (2 1/2%) of the assessed value of all tangible property within the county. Assuming that such an increase will satisfy the county's need insofar as concerns its anticipated bonded debt level and that it will issue the general obligation bonds here concerned after the passage of the bill, it is my opinion that the Trego County general obligation bonds would not then exceed the applicable bonded debt limitations on the date of issuance.² To this extent I would approve said bonds. This opinion, however, should not be construed to give approval to the remaining facets concerning said bond issue's legality, which of course I can not give absent examination of the appropriate transcript therefor.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj

2. For definition of "issuance" regarding municipal bonds, see, *State, ex rel., v. Woodruff*, 164 Kan. 339, 189 P.2d 899 (1948).