



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

February 21, 1978

ATTORNEY GENERAL OPINION NO. 78- 84 .

Daniel D. Metz  
City Attorney  
116 South Fourth Street  
Lincoln, Kansas 67455

RE: Mortgage Registration Tax - Municipal Housing Bonds - K.S.A. 17-2351, 79-201a (Sixth), and 79-3102.

SYNOPSIS: The Mortgage Registration Fee law is in reality a one-time property tax on an intangible. Bonds issued and made payable under a security agreement pledging the site purchased and revenues from specific real estate constitute a mortgage under such law. However, when a city and its Municipal Housing Authority issues First Mortgage Gross Revenue Bonds to finance the construction of an elderly housing project to be operated under Section 8 of the U.S. Housing Act administered by HUD, the mortgage instrument securing the payment of such bonds may be recorded by the Register of Deeds and is exempt from the mortgage registration tax under laws enacted by the Kansas legislature.

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Dear Mr. Metz:

You write that the City of Lincoln and the Lincoln Housing Authority has followed K.S.A. 17-2337 et seq. in the issuance of First Mortgage Gross Revenue Bonds (Elderly Housing Project) to finance housing for the elderly under Section 8 of the U.S.A. Housing Act administered by HUD. To secure the payment of the bonds, the City has entered into an Indenture of Trust and Mortgage giving a first mortgage lien on the project site and a security interest in the personal property and

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fixtures. When you offered the mortgage instrument and a financing statement on the personal property and fixtures for filing, a question was raised as to whether or not the regular mortgage registration fee provided in K.S.A. 79-3102 should be collected and paid. You ask our opinion.

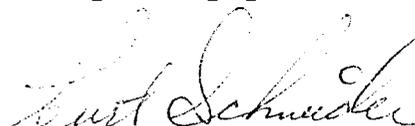
In our opinion the Kansas legislature has by K.S.A. 17-2351 made such bonds exempt from taxes. That section provides:

"Bonds issued pursuant to this act are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereof and income therefrom, shall be exempt from taxes. The tax exemption provisions of this act shall be considered part of the security for the re-payment of bonds and shall constitute, by virtue of this act and without the necessity of the same being restated in said bonds, a contract between the bondholders and each and every one thereof, including all transferees of said bonds from time to time on the one hand and the respective municipalities issuing said bonds and the state on the other."

This provision is further fortified by K.S.A. 79-201a (Sixth). But your attention is called to this limitation in such statute: "except that such exemption shall not apply to any portion of the project used by a non-dwelling facility for profit making enterprise."

Subject to this one limitation, we believe that your city of Lincoln First Mortgage Gross Revenue Bonds (Elderly Housing Project), the mortgage instrument securing payment of such bonds, the real and personal property purchased with the proceeds of such bonds, and the interest or income therefrom, are exempt from Kansas taxation.

Very truly yours,

  
CURT T. SCHNEIDER  
Attorney General

CTS:CJM:gw