

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 28, 1978

ATTORNEY GENERAL OPINION NO. 78- 95

Mr. Robert F. Duncan
City Attorney
515 Kansas Avenue
Atchison, Kansas 66002

Re: Cities--Industrial Revenue Bonds--Conflict of Interest

Synopsis: A city is not prohibited from authorizing the issuance of industrial revenue bonds for the construction of a facility to house a nonstock, mutual savings and loan association by reason of any deposit of funds of the city or an agency thereof in such association.

* * *

Dear Mr. Duncan:

You advise that the Home Savings and Loan Association, a nonstock mutual savings and loan association, has requested the governing body of the City of Atchison, Kansas, to authorize the issuance of industrial revenue bonds pursuant to K.S.A. 12-1740 et seq. for the construction of a new office for the association. As a mutual association, you advise that ownership is vested in its depositors and, in addition, you understand that each borrower also has one vote.

The City of Atchison operates its water distribution facilities by agreement with the Atchison City Water Works, Inc., a nonprofit corporation organized under ch. 14, K.S.A. The corporation holds no assets, whatever. Its assets are all titled in the city. However, the corporation has approximately \$61,000 of idle funds on deposit with Home Savings. Necessarily, you point out, that deposit of funds carries with it the incidents of ownership in Home Savings, i.e., receipt of dividends and voting privileges.

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As a result of this deposit and resulting ownership interest, the question has been raised whether a conflict of interest would result from approval by the governing body of the requested bond issue for Home Savings. It is pointed out that Home Savings would enjoy the usual advantages from such action, *i.e.*, the property to be constructed would be exempt from taxation for a period of ten years, and the issue would provide it with financing at a lower rate than the borrower would pay on a mortgage loan, all with resulting indirect benefit to its depositor-owners.

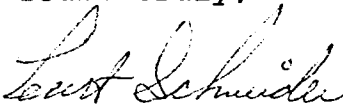
Thus, you inquire whether, in authorizing the issuance of industrial revenue bonds as described above, the city would act in violation of any applicable conflict of interest provision. K.S.A. 75-4301 *et seq.*, as you point out, deals with conflicts of interest of public officers and employees. I see no conflict of interest in the proposed action by the governing body to approve the industrial revenue bonds as described above. A conflict of interest exists, in the ordinary sense, when there are two interests to be served, and complete fidelity to one impairs equal allegiance to the other. Thus, *e.g.*, when a member of the governing body has some personal pecuniary interest in a matter pending before that body, it is usually incumbent upon that officer to disqualify him or herself from acting thereon in an official capacity, on the ground that his or her judgment respecting the best interests of the city in the matter might be compromised, either purposefully or inadvertently, by personal concern for his or her own pecuniary gain. Here, however, there is no conflict of interests. It may well be to the city's advantage, albeit somewhat indirect, as a depositor in Home Savings to authorize the issuance of industrial revenue bonds for construction of its facilities. Members of the governing body ordinarily, in acting on any matter before it, should act for the best interests of the city as a municipal corporation. The fact that some indirect benefits may flow to the city, as a corporate body, as a depositor in the institution, certainly does not conflict with any other interest of the city as a corporate body resulting from the issuance of industrial revenue bonds. I understand from your letter that only one member of the city governing body has been disqualified from acting in the matter because of any personal financial interest. All other members are, presumptively, fully qualified to act upon the request of Home Savings in any manner which in their judgment will best serve the interests of the city, and I perceive no conflicting interest arising from the deposit of the city itself in that institution which would categorically disqualify the other members of the governing body from acting upon Home Savings' industrial bond request. To the

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extent that the city, as a depositor, will derive some benefit from approval of the issue, that benefit is merely one argument to be raised in support of the request. It is surely an extraordinary use of a "conflict of interest" argument to assert that the governing body should not approve some proposed course of action which will inure directly to the corporate financial interests of the city itself.

In my opinion, approval of the industrial bond request by Home Savings does not entail any violation of any common law conflict of interest principle. The Governmental Ethics Commission is empowered to issue opinions concerning the application of K.S.A. 75-5301 *et seq.*, and I understand from your letter that a request has been addressed to the Commission on that point. Thus, nothing herein should be construed as construing the application of those statutory provisions to the question.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj