

STATE OF KANSAS

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Curt T. Schneider
Attorney General

March 2, 1978

ATTORNEY GENERAL OPINION NO. 78- 102

The Honorable Norman E. Gaar
State Senator
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Airports--Bonds--Industrial Facilities

Synopsis: K.S.A. 1977 Supp. 3-314 authorizes the issuance of revenue bonds thereunder for the construction of an office building to be located at the Johnson County Executive Airport.

* * *

Dear Senator Gaar:

You advise that the board of county commissioners of Johnson County, Kansas, is considering the issuance of revenue bonds pursuant to K.S.A. 1977 Supp. 3-314, which provides in pertinent part thus:

"Any county which has established a public airport, pursuant to . . . K.S.A. 3-302, may . . . issue revenue bonds for . . . any facility of such airport or any facility for warehousing, industry, or transportation located at such airport." [Emphasis supplied.]

The underscored language was added by amendment in 1976. See ch. 12, L. 1976. Prior thereto, the provision authorized the issuance of revenue bonds only for "any facility of such airport." In Opinion No. 74-321, issued to you under date of September 13, 1974, we concluded that this phrase included only those facilities "whose direct function is to serve the operation of the public

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airport," and hence engaged in or supportive of the aviation operations of the airport, and did not include other facilities, including those for warehousing, industry and transportation unrelated to aircraft operations of the airport, concerning which you specifically inquired.

You advise that it is now proposed that revenue bonds be issued for the construction of an office building to be constructed on 28 1/2 acres adjacent to the Johnson County Executive Airport. A restriction which is recorded with the real estate provides that airport users would have priority rights to all leased office space. The purpose of the facility would be to provide convenient and useful office facilities for aircraft owners and operators and those furnishing services to aircraft based at and also those utilizing the airport.

The question presented is whether the proposed facility is one for "warehousing, industry or transportation . . . ," within the terms of the 1976 amendment. It was obviously intended to broaden the purposes for which revenue bonds could be used, and to authorize the financing of facilities other than those directly related to aircraft operations. Specifically, three categories are enumerated: facilities for "warehousing," "industry," and "transportation." The last term is partially redundant, for aviation itself, of course, is a transportation use. Apparently, the term is designed to authorize the financing of ground transportation facilities, as well as facilities for aviation. The term "warehousing" is itself a term of common acceptance. The term "industry" is of broader and more general signification. The legislature must be deemed, however, to have used the term in some meaningfully descriptive fashion.

In *St. Louis Refrigerating & Cold Storage Co. v. U.S.*, 43 F.Supp. 476, 95 Ct.Cl. 694 (1942), construing a revenue provision imposing a tax on electricity for commercial consumption, the court stated thus:

"In the general understanding commerce and industry cover the entire business field and while it is sometimes difficult to know whether a border-line business falls mainly in the field of commerce or industry it is far less difficult than to attempt to establish shadowy lines. It is far less complicated to follow the generally accepted meaning of the terms" 43 F.Supp. at 484.

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In *People ex rel. Fullam v. Kelly*, 255 N.Y. 396, 175 N.E. 108 (Ct.App. 1931), construing a zoning statute, the court stated thus:

"'Trade,' as here used, has the meaning of mechanical employment or commercial or business enterprises, while 'industries' is that branch of trade employing capital and labor." 175 N.E. at 108.

In *J. L. Brandeis & Sons v. National Labor Relations Board*, 142 F.2d 977 (8th Cir. 1944), it was argued that the National Labor Relations Act applied only to industry, and that selling merchandise at retail was not an industry. The court responded thus:

"Conceding arguendo that the law applies only to labor relations in industry, it can not be successfully maintained that the retail business is outside the scope of the meaning of that term. One of the definitions of industry given in Webster's International Dictionary (1942 Ed.) is 'any department or branch of * * * business * * * which employs much labor and capital and is a distinct branch of trade.' The selling of merchandise at retail is such a business." 142 F.2d at 979.

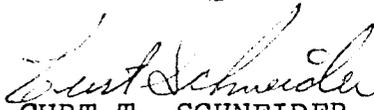
Obviously, the scope of the term "industry" has been explored in a variety of contexts, and it is construed with varying elasticity, such as in distinguishing among the terms "trade," "business," "profession," "commerce," and "industry."

The term is used here in the context of an amendment designed to enlarge the revenue bond authority for the construction of facilities located at the airport. In my judgment, the term was not used in a restrictive and specialized sense, in order to draw any refined distinction between industrial and commercial enterprises. On the contrary, it was used, in my estimation, in a broad and general sense, to authorize the issuance of revenue bonds for facilities for any entrepreneurial activity which the board deems appropriate for location on the airport. Obviously, the language used in the amendment could have been more artfully

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and specifically drafted, and had it been, a narrower construction of the term might well be warranted. However, given the very broad lexicographer's definition of the term "industry," and the absence of any context in the amendment which invites a specialized construction of the term, it authorizes, in my opinion, the issuance of bonds for the construction of the office facility described in your letter. Construing the term thus, I do not believe it necessary to place any use or occupancy restrictions on the facility to be constructed with such bonds provided the governing body exercises its authority in such manner as will keep within the definitions as above noted..

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj