



STATE OF KANSAS

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ATTORNEY GENERAL

January 3, 1979

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ATTORNEY GENERAL OPINION NO. 79- 7

Mr. Charles M. Bouilly  
Vice President  
First Securities Company  
Post Office Box 1321  
Wichita, Kansas 67201

Re: Cities and Municipalities--Buildings, Structures--Public  
Buildings Defined

Synopsis: Public building under K.S.A. 12-1736 is construed to  
mean any permanent edifice enclosed with walls and a  
roof to accommodate public officers and business.

\* \* \*

Dear Mr. Bouilly:

On behalf of the city of Haysville, Kansas, you request the opinion of this office concerning term "public building" as employed in K.S.A. 12-1736 *et seq.* (City Public Building Act). Specifically, you ask whether that term encompasses such projects as swimming pools and tennis courts.

K.S.A. 12-1736 provides in pertinent part thus:

"Any city in this state may erect or construct, acquire by gift, purchase, condemnation or lease a public building or buildings and procure any necessary site therefor by gift, purchase or condemnation and may alter, repair, reconstruct, remodel, replace or make additions to furnish and equip a public building or buildings." [Emphasis added.]

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The City Public Building Act does not define the phrase public buildings, and I find no decision of the appellate courts of this state or opinions of this office interpreting that term as it is used in the Act. Absent such definition it has long been the rule of statutory construction in this jurisdiction that

". . . [the] court must ascertain and give effect to the intent of the legislature. In so doing we must consider the language of the statute; its words are to be understood in their plain and ordinary sense. (*Hunter v. Haun*, 210 Kan. 11, 13, 499 P.2d 1087 (1972); *Roda v. Williams*, 195 Kan. 507, 511, 407 P.2d 471 (1965)."

*Lakeview Gardens v. State*, 221 Kan. 211, 214, 557 P.2d 1286 (1976). It clearly appears that the Act, insofar as it concerns the general categories of authorized capital improvements, is plain and unambiguous.

Some indication of the legislature's intent in using the general term "building" can be discerned from the predecessor of the present statute. Chapter 111, Laws of 1917, originally provided in part thus:

"Any city of the second or third class may erect a public building for the accommodation of its officers and the transaction of the general business of the city, or for a public library, or for a public auditorium, or for any two or more of these purposes combined, and may procure the necessary site therefor, and the purpose of paying for any such building and site the bonds of said city may be issued in an amount not exceeding two per cent of the assessed valuation of said city as shown by the last official assessment."

The use here of the term public building is qualified to provide accommodation for city officers and the transaction of the city's

general business. This strongly suggests that the legislature anticipated some type of permanent dwelling to accommodate the needs of city officers and its business, which reasonably and logically entails some sort of enclosed structure with at least walls and a roof to provide some means of protection from the elements. This distinction appears to fit well with another useful device for identifying a generally understood meaning for the word here questioned: *Webster's Third New International Dictionary* (1966) defines "building" thus:

"1: a thing built: a: a constructed edifice designed to stand more or less permanently, covering a space of land, usu[ally] covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals, or other useful structure . . . ."

See also, 13 *Am. Jur. 2d*, *Buildings*, § 1.

From the foregoing it is reasonable to conclude that the legislature by employing the term public building contemplated a permanent edifice enclosed with walls and a roof to accommodate public officers and business. Thus, to the extent that the swimming pool and tennis courts can not satisfy these basic requirements they therefore are not authorized projects within the purview of the city public building act.

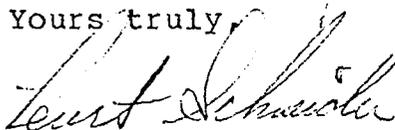
It is important to distinguish the liberal construction applied by this office to the term "public building" as used in the County Public Building Act, K.S.A. 19-15,114 *et seq.*, from that found in the cities' authority and construed above. Counties are given much greater latitude in the types of projects which they may undertake. K.S.A. 19-15,114(a) provides a definition for public building thus:

"(a) 'Public building' shall mean and include any building or structure determined by the board of county commissioners to be necessary to the county for any public county purpose." [Emphasis added.]

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Thus, the above emphasized language as I opined earlier clearly broadens county authority to include such projects which could not otherwise be undertaken by cities, e.g., improvement of airport runways. See, XI Opinions of the Attorney General 70, (Opinion No. 77-254, dated July 21, 1977, and addressed to Donald A. Bell).

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JPS:kj

cc: Mr. Donald A. Bell