



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

March 16, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79-30

Mr. Ray Schofield, Superintendent
Unified School District No. 245
P. O. Box 57
LeRoy, Kansas 66857

Re: Schools--School Unification Acts--Bids on
Projects Encompassed Within Authorized Bond
Issue

Synopsis: Successful bids on all projects comprising a
single bond issue proposition must be received
and accepted before work on any one, single
project can be commenced.

* * *

Dear Mr. Schofield:

From information submitted to this office, it appears that
the following facts give rise to your request for an opinion
from this office, to-wit:

(1) On April 4, 1978, the Board of Unified School District
#245 passed a resolution whereby it was resolved that:

"[T]he aforementioned school district
make improvements and issue bonds as
hereinafter set out in the election
proposition, and to request the election
officer of this county to hold a school
district bond election on the 1st day of
August, 1978, in the manner prescribed
in K.S.A. 1977 Supp. 10-120 and in accord-
ance with the provisions of general bond
laws."

Mr. Ray Schofield
Page Two
March 16, 1979

"BE IT FURTHER RESOLVED that the said election officer submit the following proposition to the electors of said school district:

"'Shall Unified School District No. 245, county of Coffey, State of Kansas, issue school district bonds not to exceed \$420,000.00, for the following purposes:

To build a gym at LeRoy, replace football lighting system at Gridley, build concession stand at Gridley, and replace the furnace system at the Gridley High School.'

"all being pursuant to the provisions of K.S.A. 72-6761."

(2) Pursuant to said resolution, a school bond election was duly called and held on the 1st day of August, 1978, at which election, the majority of voters approved the issuance of school district bonds in an aggregate amount not to exceed \$420,000 for the purposes enumerated in the above-quoted resolution.

(3) Said bonds have been sold, and the proceeds therefrom are now available to the Board.

(4) The Board has received from various general contractors bids for the completion of all projects contemplated, utilizing subcontractors, as necessary.

(5) Each bid was higher than the amount authorized by the voters of said district.

Based upon the foregoing facts, you request our opinion as to whether the Board can accept a separate bid on one project (and authorize work to commence thereon) prior to receiving a successful bid, or bids, on the other three (3) building projects.

Mr. Ray Schofield
Page Three
March 16, 1979

K.S.A. 72-6761, in relevant part, provides:

"The board shall have authority to select a school site or sites. When a board determines that it is necessary to purchase or improve a school site or sites, or to acquire, construct, equip, furnish, repair, remodel or make additions to any building or buildings used for school purposes, or to purchase school buses, such board may submit to the electors of the unified district the question of issuing general obligation bonds for one or more of the above purposes, and upon the affirmative vote of the majority of those voting thereon, the board shall be authorized to issue such bonds. The board shall adopt a resolution stating the purpose for which bonds are to be issued and the estimated amount thereof. The board shall give notice of said bond election in the manner prescribed in K.S.A. 10-120 and said elections shall be held in accordance with the provisions of the general bond law." (Emphasis added.)

K.S.A. 1978 Supp. 10-120, in relevant part, provides:

"[A]t such elections all qualified electors shall be entitled to vote. The vote at such election shall be by ballot If more than one proposition or question be submitted on said ballot the different propositions or questions shall be separately numbered and printed and be separated by a broad, solid line one eighth of an inch wide." (Emphasis added.)

Failure to adhere to this requirement, mandating separation of different propositions, has resulted in numerous elections being held void and of no effect. See Lewis v. County of Bourbon, 12 Kan. 186 (1873) and Leavenworth v. Wilson, 69 Kan. 74 (1904).

Mr. Ray Schofield
Page Four
March 16, 1979

In accordance with this statutory mandate and the rulings of the Supreme Court, you have submitted to the voters, as a single proposition, the question of making improvements and repairs to certain school facilities within Unified School District #245, and we do not question the validity of doing so. Our consideration is whether each of the itemized repairs and improvements can now be treated separately.

In answering this question, the case of Lewis v. County of Bourbon, supra, is again relevant.

In that case, the Board of County Commissioners of Bourbon County, Kansas, on March 8, 1867, ordered that an election be held for the purposes of obtaining voter approval for the board to subscribe \$150,000 to the capital stock of a railroad company. Because of an irregularity, the outcome of that election was not determined. Thereafter, on July 23, 1869, the board resolved again, to submit to the voters the question of approving a subscription of railroad company stock. However, the railroad involved in the 1869 election was not the same as the one involved in the 1867 election.

When ordering that the 1869 election be held, the board resolved that if the voters approved this subscription of stock, the board would be justified in assuming that the prior subscription question also was approved. The ballot submitted to the voters so provided.

When the board attempted to proceed with the subscription of stock from both railroads, this case was filed. In holding against the subscription, the Court said: "We do not hesitate to say, this proposition . . . is a fraud on the people." 12 Kan. at 215.

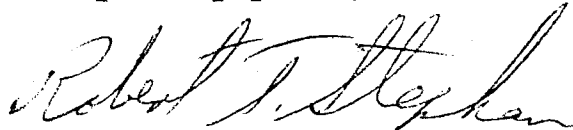
In our opinion, it is not any less objectionable for the board of education of Unified School District #245, after having obtained voter approval of the single proposition involved herein, to treat each building project as a separate and distinct proposition. The voters of Unified School District #245 approved only that which the board could lawfully ask them to approve--a single proposition. It is our opinion, therefore, that the board must treat these projects as one, single, indivisible proposition.

Mr. Ray Schofield
Page Five
March 16, 1979

In light of the above, it is our opinion that the Board of Education of Unified School District #245 must be in receipt of, and have accepted, successful bids on all projects before work on any one project can be commenced. Otherwise, the Board could not be sure that the proposition approved by the voters could be completed.

It is quite possible that, by accepting separate bids on each of the projects, rather than one bid on all projects, the Board may be able to complete all projects with the funds available pursuant to the sale of bonds. However, should the Board discover that the bond issue approved by the voters is insufficient to complete all the projects, the Board will have to utilize other lawful means to supplement the amount of funds realized from the bond issue.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:gk