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June 4, 1979

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ATTORNEY GENERAL OPINION NO. 79- 102

Mr. William L. Frost
City Attorney
City Hall
11th and Poyntz
Manhattan, Kansas 66502

Re: Cities and Municipalities--Public Improvements--
Exercise of Home Rule Power

Synopsis: A change in a city's classification from second class to first class does not, ipso facto, permit the city to issue bonds to the extent of higher limits of bonded indebtedness allowed for first class cities in K.S.A. 12-681. Absent voter approval of the issuance of bonds to the extent of said higher limits, as required by K.S.A. 12-682, the city is bound by the lower limits originally approved by the city's electors.

Even though K.S.A. 12-681 and 12-682 are not uniformly applicable to all cities, a city may not by charter ordinance exempt itself from K.S.A. 12-682, because it is part of an "enactment prescribing limits of indebtedness" and, therefore, is not subject to change under the Home Rule Amendment.

* * *

Dear Mr. Frost:

You advise that, under the provisions of K.S.A. 12-681 and 12-682, the City of Manhattan proceeded to make certain street repairs in 1949. A vote of the city electors, required by K.S.A. 12-682, authorized the issuance of general improvement bonds to pay for those repairs to the extent of the limitations prescribed by K.S.A. 12-681 for cities of the second class, since Manhattan was, at that time, a second class city.

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These statutes apply only to second class cities and first class cities with populations under 50,000, with K.S.A. 12-681 imposing different limitations on each such class of city. This statute provides in relevant part:

"The governing body of all cities of the first class having a population of less than fifty thousand inhabitants and cities of the second class are hereby authorized and empowered to recurb, regutter, resurface or repave, including necessary drainage facilities, any street or alley or any portion thereof when said street or alley has by reason of public travel thereon or by reason of the elements become in need of surface restoration or other construction and improvement

"The cost of said recurring, reguttering, resurfacing or repaving, shall be borne by the city at large, and the governing body of said city is hereby empowered to issue general improvements bonds for the purpose of raising funds for making such improvements in an amount not exceeding the total cost of said improvement: Provided, That the total amount of bonds issued for such improvements in any one year shall not exceed an amount equal to one-third of one percent of the assessed tangible valuation of such city, except that in such cities of the first class said amount shall not exceed one-half of one percent of said valuation: Provided further, That bonds for such improvements shall not be outstanding at any one time in an amount in excess of one percent of such assessed tangible valuation, except that in such cities of the first class said amount shall not exceed one and one-half percent of said valuation."

The City of Manhattan, as you have noted, has since become a city of the first class. On these facts, you have raised two questions. First, you inquire whether the city is bound by the limitations of bonded indebtedness prescribed for second class cities by the above-cited statute and approved by the city electors in 1949, since it is now a city of the first

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class. In considering this proposition, we find that under the provisions of the statutes in question, the city, whether a first or second class city, may not issue bonds to the extent of the statutorily-prescribed debt limits without the approval of a majority of the city electors. As K.S.A. 12-682 expressly provides:

"The provisions of this act shall not apply to any such city, unless and until the question of the adoption of the provisions of this act by such city shall have been submitted to the qualified electors of the city at any regular city election for their approval or rejection, and a majority of those voting on the proposition shall have voted in favor of the adoption of the provisions of this act."

As you have advised, however, the question before the Manhattan electors in 1949 was not a general proposition for "adoption of the provisions of [the] act." Rather, the electors approved bonded indebtedness for street improvements only to the extent of the limits prescribed under the act for cities of the second class. The proposition on the ballot in 1949 made no mention of the statutory indebtedness limits set for cities of the first class.

While K.S.A. 12-682 can be fairly read to expressly permit the question to be put to the voters in general terms by which the city may obtain authorization to incur indebtedness to the extent of the limits for either class of cities, in order to meet the contingency which occurred in this instance, the ballot before the voters of Manhattan in 1949 was not so worded. Thus, it is our opinion that the city is authorized to incur indebtedness only to the extent of the limits established by the specific language approved by the city's electors.

Home rule considerations aside, strict compliance with the provisions of K.S.A. 12-681 and 12-682 requires that the City of Manhattan may only increase its bonded indebtedness pursuant thereto with authorization by the city electors, and until it obtains such authorization, it is bound by the limits approved in 1949.

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Anticipating our answer to your first question, you next inquire whether the city may exercise its home rule power and, by charter ordinance, exempt itself from certain provisions of the subject statutes. You advise that the city has no intention to exempt itself from the provisions of K.S.A. 12-681 which establish the debt limits, but only seeks to avoid the election requirements in K.S.A. 12-682.

Article 12, Section 5 of the Kansas Constitution establishes the home rule power of cities. Subsection (c)(1) of the Home Rule Amendment provides:

"Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city."

From the foregoing it is apparent that, to determine whether a city may exercise its power to exempt itself from a particular enactment of the legislature, it must be determined whether the enactment is applicable uniformly to all cities, or does the enactment prescribe limits of indebtedness.

K.S.A. 12-681 and 12-682 pertain only to two classes of cities: cities of the first class with a population under 50,000, and cities of the second class. Thus, these sections have a very limited scope, and we have reached the obvious conclusion that they are not applicable uniformly to all cities. We find nothing in these statutes or elsewhere that indicates a contrary legislative intent. However, since it is apparent that these statutes establish limits on indebtedness, the remaining question is, does the "limits of indebtedness" exception to the charter ordinance power preclude the city from exempting itself from other provisions of these statutes which do not bear any relevance to the prescribed debt limits?

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As previously noted, a city's constitutional home rule power to exempt itself from legislative enactments does not extend to enactments uniformly applicable to all cities and enactments prescribing limits of indebtedness. Subsection (c)(1) of the Amendment expressly allows the city to exempt itself from "any part of any enactment" other than those enactments specifically excepted. Within this context, it is apparent that the meaning of the word "enactment" has obvious importance.

If the word "enactment" used in the phrase "enactments prescribing limits of indebtedness" is read to refer only to the particular statute or section which sets the debt limits (in this case K.S.A. 12-681), then the City of Manhattan could proceed to exempt itself from the non-uniform section requiring elections (K.S.A. 12-682), as it could elect to do under Article 12, Section 5(c)(1). However, if "enactment" is construed to refer to the whole of an act, or to all the statutes or sections in an act of the legislature, then the city could not exempt itself from any part of the enactment which, inter alia, prescribes limits of indebtedness. That is, if we read the two statutes which are the subject of your inquiry as an enactment, and which is by virtue of K.S.A. 12-681 an enactment prescribing limits of indebtedness, the city is foreclosed from making any exemptions therefrom, whether or not the provision which the city seeks to eliminate has any relationship to the debt limits.

The word "enactment" is not defined in the Home Rule Amendment itself. In Words and Phrases (Permanent Edition, Vol. 14A, p. 142), "Enactment" is said to be synonymous with the word "act." The authors of the League of Kansas Municipalities publication Home Rule for Kansas Cities, A Manual for City Officials (Revised Fourth Edition) conclude that "enactment" refers to the whole of all sections or statutes in a legislative act. The League manual states, in part:

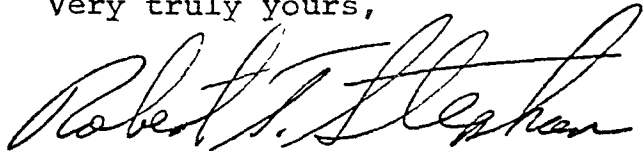
"It is probably in error to assume that the word 'enactment' is always synonymous with the word 'statute.' The home rule amendment never uses the term 'act' or 'statute' in referring to state legislation. It uses the term 'general law' or 'laws' only in §5(a); thereafter the term always used, and used often, is 'enactment.' 'Enactment' is not defined in the home rule amendment so it is necessary to look elsewhere for a definition.

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The Kansas Supreme Court case of Marks v. Frantz, 179 Kan. 638 . . . [1956] is authority for the definition of an 'enactment' as being not one particular statute but all the statutes (sections) that compose an enactment. This position is further supported by the cases of The State v. Carter, 74 Kan. 156, 86 P. 138 and State, ex rel. v. State Highway Commission, 136 Kan. 652, 653, 17 P.2d 839. It appears that use of the term 'enactment' means all the law contained in a bill of the legislature which followed an enacting clause" (p. 12.)

Persuaded by the judicial authority referenced and quoted above, we concur with the League's conclusion. Accordingly, it is our opinion that since the statutes which are the subject of your inquiry together comprise an enactment which prescribes limits of indebtedness in K.S.A. 12-681, the City of Manhattan may not by chartered ordinance exempt itself from the election requirement imposed by K.S.A. 12-682.

Very truly yours,



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Attorney General of Kansas



W. Robert Alderson
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RTS:WRA:gk