



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 16, 1979

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

ATTORNEY GENERAL OPINION NO. 79- 141

Mr. Philip E. Winter
Assistant County Attorney
Lyon County Courthouse
Emporia, Kansas 66801

Re: Counties and County Officers--Home Rule Powers--
Industrial Revenue Bonds

Synopsis: The issuance of industrial revenue bonds for the purpose of encouraging and stimulating the economic welfare and prosperity of a particular county is an appropriate matter of local legislation and a permissible exercise of the county's home rule power which may be accomplished by ordinary resolution, with one exception. A county's issuance of bonds for hospital purposes may be accomplished only by charter resolution to the extent that the resolution authorizing bonds for such purposes is "contrary to an act of the legislature which is applicable" to such county under provisions of K.S.A. 19-1801 et seq.

* * *

Dear Mr. Winter:

You have submitted for our review a copy of a proposed charter resolution by which the Lyon County Board of County Commissioners would authorize the issuance of industrial revenue bonds in the same manner as provided by K.S.A. 12-1740 et seq. for cities in Kansas. You have asked for our opinion whether the proposed resolution conflicts with state law and whether it would accomplish the desired purpose.

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The proposed resolution states the purpose of the legislation, in language nearly identical to the wording of K.S.A. 12-1740, in pertinent part:

"WHEREAS, the Board of County Commissioners of Lyon County, Kansas has found it to be in the better public interest to promote, stimulate and develop the general economic welfare and prosperity of the County of Lyon, State of Kansas through the promotion and advancement of physical and mental health, industrial, commercial, agricultural and natural resources and of recreational development in this county; to encourage and assist in the location of new business and industry within Lyon County and the expansion of existing business and health development and to promote the economic stability of Lyon County by providing greater employment opportunities, diversification of industry and improved physical and mental health, thus promoting the general welfare of the citizens of Lyon County, Kansas by authorizing Lyon County, Kansas to issue industrial revenue bonds, the proceeds of which shall be used to purchase or construct, maintain and equip buildings, to acquire sites therefor, to enlarge or remodel buildings, to equip the same for agricultural, commercial, hospital, industrial manufacturing facilities and to enter into lease or lease-purchase agreements with any person, firm or corporation for said facility."

The resolution next recites that "no statutory authority exists other than the authority set forth in K.S.A. 19-101(a) [sic] and such authority is not contrary to any acts of the legislature of the state of Kansas." Further, the resolution recites that "the Board of County Commissioners . . . does not currently have the authority to issue industrial revenue bonds."

We find no statutory authority specifically empowering counties to issue industrial revenue bonds, as you have correctly noted. However, we do find that the Kansas Legislature has provided at least two alternatives by which counties may seek to stimulate and promote economic growth and development. K.S.A. 19-4101 et seq. (as amended) empowers counties to "establish and conduct a program for its future economic growth and development" and to levy a tax therefor, the funds from which may be used "to conduct studies and prepare comprehensive plans . . . to promote, stimulate and encourage growth and development of agriculture, commerce and industry of a county as a whole . . . and to otherwise promote the general economic welfare and prosperity of the area."

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A second alternative, set forth at K.S.A. 12-3801 et seq., enables "local unit[s] of general government," defined as counties and cities [K.S.A. 12-3802(b)], to issue "industrial development bonds," upon making required findings,

"for the purpose of financing the acquisition of land, the acquisition or construction (including reconstruction, improvements, expansion, extension, and enlargement) of buildings and appurtenances, including but not by way of limitation industrial trackage and access roads, the purpose of such financing being primarily to sell or lease the property so financed to a private individual, partnership, or corporation for the conduct or manufacturing warehousing, distribution, and/or research and development operations."

However, neither of these statutory alternatives limit or restrict the authority of a county under K.S.A. 1978 Supp. 19-101a et seq., and we conclude that the issuance of industrial revenue bonds is a permissible exercise of the county's home rule powers. In reaching this conclusion, we affirm our agreement with Attorney General Opinion No. 77-382 rendered by Attorney General Schneider (with one exception noted below), a copy of which is enclosed for your consideration. General Schneider concluded that the issuance of industrial revenue bonds is an appropriate matter of local legislation within the scope of the county's home rule authority, and we concur in that judgment. Further, we agree with that opinion with respect to the tax questions addressed on pages 4 and 5 of the opinion, and we urge your close consideration of that discussion of the limitations of the home rule power. Additionally, inasmuch as the proposed resolution you have submitted for our review contemplates issuance of such bonds "in the same form and matter [sic] as set forth in K.S.A. 12-1740 through K.S.A. 12-1749, inclusive," we also should emphasize that revenue bonds authorized by county legislation are not subject to the requirements of K.S.A. 1978 Supp. 12-1744a regarding filing of information with the Kansas securities commissioner, since that statute applies only to bond issues by cities. As General Schneider concluded in a letter opinion concerning, inter alia, the question of application of that statute to counties, published August 3, 1978,

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"[t]he authority of the commissioner is fixed by statute, and may not be enlarged by county home rule powers, for those powers are limited solely to local matters, and do not extend to alteration of the jurisdiction of state officers. If the commissioner is willing to accept filings from the county on an informal and voluntary basis, that is entirely satisfactory. However, he has no statutory jurisdiction over industrial revenue bonds issued under this resolution, and any acceptance of filing by that officer respecting bonds issued under this resolution would be merely a matter of accommodation on a cooperative basis, rather than in the exercise of any statutory authority."

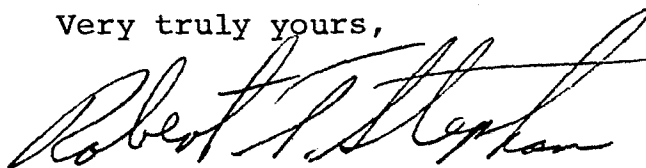
We take exception to Attorney General Opinion No. 77-382 and would modify it in only one respect. K.S.A. 19-1801 et seq. authorizes certain counties to establish county hospitals and to levy taxes and issue bonds therefor. Those statutes are not uniformly applicable to all counties, but are applicable to Lyon County. Accordingly, issuance of revenue bonds for the acquisition, construction and operation of buildings or facilities for hospital purposes may be accomplished only by charter resolution, by which the county may exempt itself from any applicable provision of K.S.A. 19-1801 et seq. to the extent that a resolution authorizing bonds for such purposes is "contrary to an act of the legislature which is applicable" to Lyon County under those statutes, as required by subsection (b) of K.S.A. 1978 Supp. 19-101a.

For all other purposes outlined in the above-quoted recital, we conclude that authority for such industrial revenue bonds is appropriately established not by a charter resolution, as you have proposed, but by an ordinary resolution adopted pursuant to subsection (b) of K.S.A. 1978 Supp. 19-101a (as amended by section 9 of 1979 Sub. for Senate Bill No. 454). Moreover, it is our opinion that the authority to issue such bonds for the particular purposes you have listed in the resolution need not be established by a general act encompassing all such purposes. An ordinary resolution authorizing a particular bond issue for one or more of the purposes outlined in the proposed resolution would suffice.

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To recapitulate, it is our judgment that the issuance of industrial revenue bonds for the purpose of encouraging and stimulating the economic welfare and prosperity of a particular county is an appropriate matter of local legislation and a permissible exercise of the county's home rule power which may be accomplished by ordinary resolution, with one exception. The issuance of bonds for hospital purposes may be accomplished only by charter resolution to the extent that a resolution authorizing bonds for such purposes is "contrary to an act of the legislature which is applicable" to Lyon County under provisions of K.S.A. 19-1801 et seq.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk