



STATE OF KANSAS

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October 12, 1979

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ATTORNEY GENERAL OPINION NO. 79- 228

Mr. Neil R. Shortlidge
Assistant City Attorney
City of Overland Park
City Hall, 8500 Antioch
Overland Park, Kansas 66212

Re: Taxation--Kansas Retailers' Sales Tax--Exempt Sales

Synopsis: Pursuant to subsection (d) of K.S.A. 1978 Supp. 79-3606, the Department of Revenue grants sales tax exemption certificates for industrial revenue bond projects. However, said statute provides no basis for distinguishing between projects which are totally or partially funded from the proceeds of industrial revenue bonds, and the City of Overland Park is entitled to a sales tax exemption certificate for a project partially financed by the proceeds of industrial revenue bonds issued by the city.

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Dear Mr. Shortlidge:

You request our opinion as to whether an industrial revenue bond project of the City of Overland Park would qualify for the exemption from sales tax set forth in subsection (d) of K.S.A. 1978 Supp. 79-3606, where the proceeds of the industrial revenue bond issue would finance \$1,000,000 of the total project cost in the amount of \$14,000,000. We are informed that the City of Overland Park will acquire title to the real estate and subsequently lease the same to private interests pursuant to K.S.A. 12-1740 et seq., and that the acquisition of the real estate will be "subject

to" construction contracts previously executed by the tenant. Although there apparently will be no formal assignment of the construction contracts, it is clear that the proposed provisions of the lease agreement between the city and the tenant create substantial and vested rights in favor of the city relative to such contracts.¹

Subsection (d) of K.S.A. 1978 Supp. 79-3606 provides, in part, that the following sales shall be exempt from sales tax:

"All sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for any political subdivision of the state, public or private nonprofit hospital, public or private elementary or secondary school or a public or private nonprofit educational institution, which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision, hospital, school or educational institution. When any political subdivision of the state, public or private nonprofit hospital, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project."

Although the Department of Revenue grants exemption certificates to industrial revenue bond projects under the foregoing statutory provision, the Department advises that it has never encountered the question of whether a building constructed only partially with industrial revenue bond proceeds qualifies

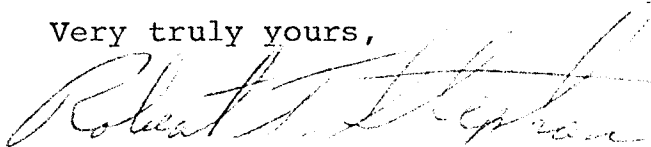
¹A copy of the proposed lease provisions relating to the construction contracts is attached hereto for your reference.

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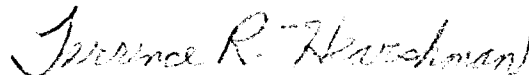
for the subject exemption. We are advised by the city that the reason that only \$1,000,000 of the project cost is being funded by industrial revenue bonds is that the \$10,000,000 small issue exemption is only available where capital expenditures will not exceed \$10,000,000, and tax exempt status of the bonds would, therefore, be lost under the \$10,000,000 election. See Int. Rev. Code of 1954, § 103(b) (6) (D); 26 C.F.R. 1.103-1.

Considering the above facts, we believe the Department of Revenue's policy of granting sales tax exemptions to industrial revenue bond projects should be adhered to in this case. The city will acquire title to the real estate and work-in-progress, and will acquire substantial and vested rights in the construction contracts, as occurs in all industrial revenue bond projects. In our opinion, the fact that this project is only partially funded from the proceeds of industrial revenue bonds is insufficient basis for deviating from the Department's policy of granting exemption certifies to these projects. We, therefore, conclude that the City of Overland Park is entitled to the sales tax exemption certificate issued by the Department of Revenue for the subject project.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS: BJS: TRH: jm