



STATE OF KANSAS

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December 4, 1979

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ATTORNEY GENERAL OPINION NO. 79- 271

Mr. David K. Martin  
City Attorney  
City of Mission  
6090 Woodson Road  
Shawnee Mission, Kansas 66202

Re: Cities and Municipalities--Building, Structures  
and Grounds--Repair of Municipal Pool

Synopsis: A municipal pool is a "public building" within the meaning of K.S.A. 12-1736 et seq. Thus, a city is authorized to expend money from its "building fund" established pursuant to K.S.A. 12-1736 et seq. to repair its municipal pool.

\* \* \*

Dear Mr. Martin:

You inquire whether the City of Mission may expend money from its "building fund" to repair the city's recreational complex comprised of the municipal pool, bathhouse and snack bar facilities. You advise that the governing body established the city's building fund in 1975 by levying a tax therefor pursuant to K.S.A. 12-1736 et seq., and that there is a sufficient amount of money in that fund available for this expenditure, if it is determined that such money may be lawfully spent for such purposes.

Mr. David K. Martin  
Page Two  
December 4, 1979

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

"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."

K.S.A. 1978 Supp. 12-1737 (as amended by L. 1979, ch. 52, §49) establishes alternative means of financing the construction, acquisition, alteration or repair of public buildings. The question you have raised is whether the municipal pool is a "public building" within the meaning of the above-referenced statutes.

The legislature provides no statutory definition of "public building" and we have found no judicial construction of the term by the Kansas courts. Thus, the rule of K.S.A. 77-201, Second, is applicable: "Words and phrases shall be construed according to the context and the approved usage of the language."

As you have correctly noted, a swimming pool is not a "building" by ordinary definition. Webster's Third New International Dictionary defines "building" as

"a thing built[;] . . . 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."

However, we find that the term "public building" may have a much broader meaning, depending upon the context in which it is used. In 12 C.J.S. Building, it is noted that

"[i]n a broader sense, [public building] is defined as . . . a building where the public congregates in considerable numbers either for amusement or for other purposes. Statutes have defined the phrase as any building or part thereof used as a public or private institution, schoolhouse, church, theater, special

Mr. David K. Martin  
Page Three  
December 4, 1979

hall, miscellaneous hall, place of  
assemblage or place of public resort;  
any structure used in whole or in part  
as a place of resort, assemblage, lodge,  
trade, traffic, occupancy, or use by  
the public . . . .

"As used in statutes, there is no hard  
and fast rule with respect to what may  
be included within the term 'public  
buildings,' . . . and, where the term  
is unaccompanied by words of explanation  
or limitation, whether it includes a  
particular building depends upon the  
general scheme or object of the statute."  
(Emphasis added.)

In Lowden v. Jefferson County Excise Board, 122 P.2d 991 (1942),  
the Oklahoma Supreme Court determined that

"[t]he term 'public building' as used  
in section 10, article 10 of the  
[Oklahoma] State Constitution is used  
in a broad sense and is sufficient to  
authorize the people of a school district  
to vote an extra tax levy for the purpose  
of raising a fund to erect 'bleachers on  
the football field' which the school  
district is authorized to maintain."  
Syllabus by the Court, 122 P.2d at 992.

The Court relied upon the above-referenced encyclopedic statement  
as the basis for its conclusion, including the following excerpt  
therefrom:

"'It has been said that 'building,' in  
its broad or in its primary sense, refers  
merely to that which is built; that it com-  
prises any edifice erected by the hand of  
man of natural materials, as wood or stone,  
brick or marble; and that it is susceptible  
without a violent interpretation of being  
construed as including many kinds of  
edifices and structures erected by man, which  
are not of the same general character as  
dwellings, stores, offices, or barns. The  
word has been defined or employed as meaning  
anything constructed; a thing built; or that  
which is built; and more specifically as an  
edifice for any use; an erection; a fabric

Mr. David K. Martin  
Page Four  
December 4, 1979

built or constructed; a structure;  
a structure or a fabric built or con-  
structed; any structure with walls  
and a roof; also a block of brick or  
stone work, covered in by a roof.'" Id.  
at 993 (citing 12 C.J.S. Building,  
p. 380).

Applying the foregoing definitions, the Oklahoma court stated its rationale for broad construction of the constitutional provision under consideration thus:

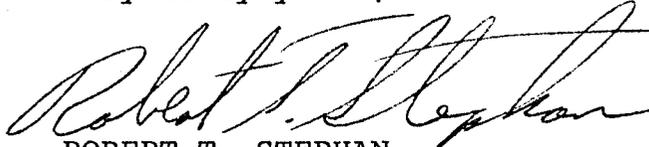
"The section contains no specific words indicating an intention to restrict the term 'building' to any particular type of building or edifice or structure. It can scarcely be denied that its object was to provide a method for acquiring permanent improvements by a fund to be raised in addition to the current expense fund, and we find therein no implication which would warrant a construction other than that the right is reserved to construct any edifice of a permanent nature consonant with the recognized and proper object and purpose of the public schools." 122 P.2d at 993.

In our judgment, the broad definition of "public building" and the Oklahoma Supreme Court's rationale are applicable to your inquiry. The legislature has granted broad authority to cities for construction or acquisition and maintenance of buildings for public purposes. The statute includes within its meaning "recreational buildings," by express reference [K.S.A. 1978 Supp. 12-1737, as amended by L. 1979, ch. 52, §49(h)]. Although the term "recreational buildings" is not statutorily defined, a municipal swimming pool is a structure to which the public resorts for recreational activity, and is, in our opinion, a "public building" within the meaning of K.S.A. 12-1736 et seq.

Mr. David K. Martin  
Page Five  
December 4, 1979

Accordingly, it is our opinion that the city may expend money from its "building fund" established pursuant to K.S.A. 12-1736 et seq. to repair the city's municipal swimming pool.

Very truly yours,



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Attorney General of Kansas



Steven Carr  
Assistant Attorney General

RTS:WRA:SC:gk