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ATTORNEY GENERAL OPINION NO. 80- 111

The Honorable Ray Nelson  
Chairman, Republic County Commission  
R. R. 1  
Courtland, Kansas 66939

Re: Cities and Municipalities--Port Authorities--Financial  
Obligation Of Creating Counties

Synopsis: Pursuant to K.S.A. 1979 Supp. 12-3402, as amended by section 4 of 1980 Senate Bill No. 824, the cities or counties which create a port authority are not obligated for the debts of the authority, unless such debts are assumed by a majority vote of the electors of the creating cities or counties. Cited herein: K.S.A. 1979 Supp. 23-3406, as amended, respectively, by sections 4 and 5 of 1980 Senate Bill No. 824.

Dear Commissioner Nelson:

In your letter of March 31, 1980, you inquire whether the counties jointly considering forming a port authority would be financially obligated to the authority once it is created. You explain in your letter the purpose of the port authority would be to purchase portions of the Rock Island rail bed and secure an agreement with another rail carrier for the operation of the line acquired.

Kansas cities and counties are empowered by K.S.A. 1979 Supp. 12-3402 (as amended by section 4 of 1980 Senate Bill No. 824) to establish public bodies

"corporate and politic" which shall be agencies of the state and which shall be called port authorities. Such a body may sue and be sued, may be supported by a tax levy, and may be dissolved by the local government which created it. K.S.A. 12-3406 (as amended by section 5 of 1980 Senate Bill No. 824) grants a port authority so created the power to purchase or otherwise obtain or dispose of transportation facilities, borrow money, exercise the power of eminent domain, acquire or dispose of land within its jurisdiction, and various other prescribed activities. There are also numerous provisions in the enactment involving the sale and issuance of bonds, again for the purpose of upgrading a city's or county's transportation facilities. Recent amendments to both the above-cited sections expand the type of facilities which may be acquired by a port authority to include "railroad facilities." See sections 3, 4, and 5 of 1980 Senate Bill No. 824.

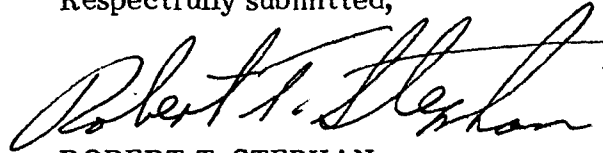
K.S.A. 12-3402, as amended, provides in relevant part:

"(c) Subject to making due provisions for payment and performance of its obligations, a port authority may be dissolved by the city or county, or combination thereof, creating it, and in such event the properties of the port authority shall be transferred to the subdivision creating it, or, if created by more than one city or county, to the city or county creating it in such manner as may be agreed upon by them. Obligations of the authority shall not be obligations of the state of Kansas, nor of any city or county which creates said authority, unless said obligations are specifically accepted by a majority vote of the electors of such city or county voting on the issue." (Emphasis added.)

The primary rule for the construction of a statute is to find the legislative intent from its language, and where the language used is plain and unambiguous and also appropriate to an obvious purpose, the intent of the legislature, as expressed by the words used, should prevail. Jackson County State Bank v. Williams, 1 Kan.App.2d 649 (1977), State v. V.F.W. Post No. 3722, 215 Kan. 693 (1974), Brinkmeyer v. City of Wichita, 223 Kan. 393 (1978), and City of Overland Park v. Nikias, 209 Kan. 643 (1972). In determining legislative intent, courts are not limited to a mere consideration of the language employed, but may properly look to the historical background of the enactment, the circumstances attending its passage, the purposes to be accomplished, and the effect the statute may have under the various constructions suggested. State ex rel., v. City of Overland Park, 215 Kan. 700 (1974); State v. Luginbill, 223 Kan. 15 (1977). Finally, it is presumed the legislature does not commit "useless and senseless" acts, i.e., it does not enact laws which have no meaning or purpose. Herd v. Chambers, 158 Kan. 614 (1944).

Considering your inquiry in the context of these rules of construction, it is our opinion the intent and effect of the language underscored above in K.S.A. 1979 Supp. 12-3402, as amended, is to preclude the liability of the counties creating a port authority for obligations of the authority. This interpretation is in accord with the overall purpose of the Port Authority Act to create a separate and independent "public body corporate and politic." (For additional discussion on this point, see our Opinion No. 80- 95 attached.)

Respectfully submitted,



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RTS:BEM:TLG:MC