



STATE OF KANSAS

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July 22, 1980

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ATTORNEY GENERAL OPINION NO. 80- 160

Dr. Merle R. Bolton
Commissioner of Education
Kansas State Department of Education
120 East 10th Street
Topeka, Kansas 66612

Re: Bonds and Warrants--General Bond Law--Investment of
Proceeds of Certain Bond Issues

Synopsis: A statement that interest earned from investments authorized by K.S.A. 1979 Supp. 10-131 (as amended by L. 1980, ch. 52, §1) is to be used to pay the cost of the project is not required in a notice of publication pursuant to K.S.A. 25-2018(f). Interest earned from invested bond proceeds pursuant to K.S.A. 1979 Supp. 10-131 (as amended by L. 1980, ch. 52, §1), when such projects are authorized by an election, may be used to pay project costs even though the bonds were issued prior to the effective date of the amendment of K.S.A. 1979 Supp. 10-131. Cited herein: K.S.A. 1979 Supp. 10-131 (as amended by L. 1980, ch. 52, §1), K.S.A. 25-2018(f).

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Dear Dr. Bolton:

You inquire whether 1980 House Bill No. 3121 (L. 1980, ch. 52), requires that a notice of publication required by K.S.A. 25-2018(f) contain a statement that interest earned by invested bond proceeds is to be used to fund the cost of a particular project. Section 1 of chapter 52 of the 1980 Session Laws amends K.S.A. 1979 Supp. 10-131, with the amended statute providing in pertinent part:

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"The governing body of any municipality . . . which has heretofore issued or may hereafter issue bonds for any purpose, is hereby authorized and empowered to invest any portion of the proceeds of said bonds . . . The interest received on any such investment shall upon receipt thereof be set aside and be used for the purpose of paying interest on the bonds issued or, when bonds have been approved at an election held under the general bond law, placed in a fund to be used for paying the cost of the project for which the bonds are issued." (Emphasis added.)

The amendment provides an alternative for the use of earned interest from invested bond proceeds when the bonds have been approved at an election held under the general bond law. Prior to the amendment earned interest could only be used for payment of interest on the bonds. Under the law as amended, it is in the discretion of the governing body of any political subdivision of the state of Kansas that has issued bonds authorized by an election to determine whether the interest earned will be used for payment of interest on the bonds or project costs. Consequently, it is our opinion that there is no requirement to include a statement in the notice as provided in K.S.A. 25-2018(f), since it is not mandatory that the interest be used for the cost of the project. The apparent legislative intent was to give flexibility to the financing of projects authorized by an election in order to deal with inflation and unanticipated project costs.

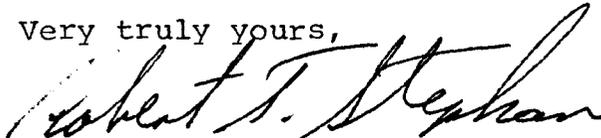
You also inquire as to whether the amendment is retroactive in nature, therefore allowing interest earned from bonds issued, and the proceeds thereof invested prior to the effective date of the act, to be used for paying the cost of the project. The general rule of statutory construction is that an act will not be given retroactive force and effect unless the intention of the legislature that it shall so operate is unequivocally expressed, and the presumption is against retroactive intention unless it is clearly expressed. Nitchals v. Williams, 225 Kan. 285 (1979).

In our judgment, the statute is clear that interest from bond proceeds invested prior to the effective date of the act (April 25, 1980) may be used to pay for the cost of the project. As can be discerned from the quoted portions of the statute above, 10-131 provides continuing investment authority for municipalities issuing bonds. There is no "cutoff" as to the applicability of its provisions, since it authorizes investment of proceeds of

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bonds "heretofore" or "hereafter" issued. Such language clearly evinces a legislative expression regarding the statute's retroactivity. Consequently, it is our opinion that the present legislation is retroactive in nature and interest earned from bonds issued and the proceeds thereof invested prior to the effective date of the legislation may be used to pay the costs of the project.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Donald E. Jensen
Assistant Attorney General

RTS:BJS:DEJ:jm