



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 16, 1980

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

ATTORNEY GENERAL OPINION NO. 80- 229

Mr. Thomas Glinstra
Municipal Counsel
City of Olathe
100 West Santa Fe
P.O. Box 768
Olathe, Kansas 66061

Re: Cities of the First Class--Public Improvements--
Exercise of Home Rule Power

Synopsis: A city may exempt itself by charter ordinance from the issue limitations of K.S.A. 13-1024a, and may authorize the issuance of bonds in amounts greater than that authorized by said statute. K.S.A. 13-1024a is not an "enactment . . . prescribing limits of indebtedness" within the meaning of that phrase in the home rule amendment, Article 12, Section 5 of the Kansas Constitution. Cited herein: K.S.A. 10-301, K.S.A. 1979 Supp. 10-306, K.S.A. 12-682, 13-1024a, Kan. Const., Art. 12, §5. (Affirming Attorney General Opinion No. 77-368, modifying Attorney General Opinion No. 79-102.)

* * *

Dear Mr. Glinstra:

Our review of a transcript for issuance of temporary notes for sidewalk, curb and gutter improvements in the City of Olathe (Series 1980-0-1) prompts this opinion on a question of the exercise of the city's home rule power. The City has adopted a charter ordinance exempting the city from the provisions of K.S.A. 13-1024a and providing additional and substitute provisions on the same subject. Since that section provides, in part, for limitations on the total amount of bonds which may be issued for improvement purposes pursuant to this statute,

Mr. Thomas Glinstra
Page Two
October 16, 1980

the question arises whether the city may adopt a charter ordinance exempting the city from K.S.A. 13-1024a, since that section is arguably an "enactment . . . prescribing limits of indebtedness" within the meaning of that phrase as it is used in the home rule amendment, Article 12, Section 5 of the Kansas Constitution.

Subsection (c)(1) of the home rule amendment provides:

"Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city." Kan. Const., Art. 12, §5.
(Emphasis added.)

In Attorney General Opinion No. 79-102, we concluded that although K.S.A. 12-682 is not a statute uniformly applicable to all cities, a city may not exempt itself by charter ordinance from that section because it is part of an "enactment . . . prescribing limits of indebtedness" and, therefore, is not subject to change under the home rule amendment. However, upon reflection, and in consideration of the Attorney General's interpretation of the phrase in question in Attorney General Opinion No. 77-368, we find that the phrase "enactments prescribing limits of indebtedness" is ambiguous. In the latter opinion, the Attorney General concluded that the phrase in question could be said to refer to statutes authorizing the issuance of bonds not to exceed a prescribed amount, such as K.S.A. 13-1024a, or to those statutes which impose aggregate limits of indebtedness, K.S.A. 10-301 et seq. (now K.S.A. 1979 Supp. 10-306 et seq.) The Attorney General resolved the ambiguity in favor of the latter interpretation, and concluded that the phrase "enactments prescribing limits of indebtedness" in the home rule amendment referred only to the above-noted limitations on total or aggregate indebtedness, and not to individual statutory limitations on the amounts of issues authorized for particular purposes. Attorney General Opinion No. 77-368, p. 3.

We concur in that interpretation. The obvious purpose of this particular restriction on cities' home rule powers is to permit the legislature to prescribe statutory limits on indebtedness which may not be exceeded by cities, in order to provide some measure of protection against the insolvency of the cities. That protection, of course, is afforded by the aggregate limits on indebtedness, rather than those statutes which limit the amount of a particular bond issue, since the assumption of indebtedness under the latter statutes is still subject to the statutory limits on total indebtedness.

Mr. Thomas Glinstra
Page Three
October 16, 1980

In addition, because of the ambiguity of this constitutional phrase, we think Opinion No. 77-368 expresses the better view, in light of the mandate of subsection (d) of the home rule amendment that the "[p]owers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government." Kan. Const., Art. 12, §5(d). To the extent that Attorney General Opinion No. 79-102 conflicts with the views herein expressed, that opinion is herewith modified. Accordingly, we express our approval of the charter ordinance adopted by the City of Olathe by which the city has exempted itself from the provisions of K.S.A. 13-1024a.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJs:SC:pf

Enclosures

cc: Nichols & Wolfe
First National Bank Tower
Suite 1170
Topeka, Kansas 66603