



STATE OF KANSAS

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October 5, 1981

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ATTORNEY GENERAL OPINION NO. 81- 220

Gaylord I. Maples
Attorney for the
City of Florence, Kansas
215 North Walnut
Peabody, Kansas 66866

Re: Cities and Municipalities--Miscellaneous Provisions--
Securing Industries In or Near Cities; Tax Levy,
Use of Proceeds

Synopsis: A city may not use moneys from its industrial fund to pay legal fees incurred by a group of citizens in challenging the decision of a school board to close a local school. Cited herein: K.S.A. 1980 Supp. 12-1617h; K.S.A. 12-1617i.

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Dear Mr. Maples:

You request our opinion concerning the legality of a proposed use of the proceeds of the levy authorized by K.S.A. 1980 Supp. 12-1617h.

You advise that a group of citizens has successfully challenged the decision of the local school board to close the grade school in the city of Florence, and that said group has requested the city of Florence to contribute moneys to pay part of the legal fees incurred in litigation. Your question is whether moneys from the city's "industrial fund" may be used to pay a portion of said legal fees.

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The procedure whereby a city may levy a tax and create an industrial fund is set forth in K.S.A. 1980 Supp. 12-1617h. K.S.A. 12-1617i provides that funds derived from the industrial levy shall

"only be used . . . for the purpose of inducing industries to locate within the said city or near its environs"

In Kansas Attorney General Opinion No. 77-178, former Attorney General Curt Schneider considered the above-quoted restriction in relation to a proposed use of industrial fund moneys to support the operation of a housing project for the elderly by a nonprofit corporation. General Schneider opined as follows:

"The city is given broad discretion in the use of the industrial fund, but [it] is not unlimited discretion. Obviously, a great variety of municipal improvements, from better street lighting to better police protection to improved drainage, may render any given community a more attractive place to live, and indirectly, a more attractive site for potential industry. However, clearly the industrial fund is not designed as a general capital improvement fund for the city, nor as a general operating contingency fund.

. . . .

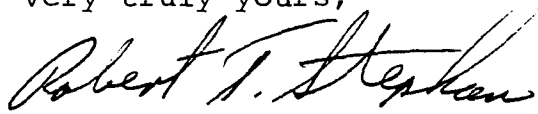
"In my judgment, an expenditure of moneys from the industrial fund should bear some demonstrable and direct relation to the statutory purpose of 'inducing industries to locate' in or near the city, and the operation of a housing project for the elderly, in and of itself a commendable undertaking, bears no such relationship whatever." (Emphasis added.)

We agree with General Schneider's analysis of the statutory restriction on use of industrial fund moneys, and believe that it is applicable here. Although the presence of a grade school within a city may render it a more attractive site for potential industry, the presence or absence of such a school does not bear a demonstrable and direct relation to the statutory purpose of

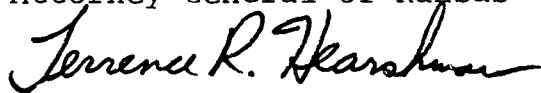
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"inducing industries to locate" in or near the city. Therefore, in our opinion, the city of Florence may not use moneys from its industrial fund to pay a portion of the legal fees incurred in challenging the school board's decision to close the local grade school.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm