

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

October 5, 1981

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ATTORNEY GENERAL OPINION NO. 81- 228

Mr. Gordon R. Olson
City Attorney of Sabetha
P.O. Box 163
Sabetha, Kansas 66534

Re: Cities and Municipalities--Miscellaneous Provisions--
Use of Moneys in City's Industrial Fund

Synopsis: A city may use moneys from its industrial fund to pay for improvements to a runway at the municipal airport, where the runway improvement bears a direct relation to the statutory purpose of inducing industries to locate in or near the city. Cited herein: K.S.A. 1980 Supp. 12-1617h, K.S.A. 12-1617i.

* * *

Dear Mr. Olson:

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 the city of Sabetha has approximately \$40,000 in its industrial fund, and that the city commissioners desire to use said moneys for improving the paving on the Sabetha City Airport runway. You state that the runway is located adjacent to the Sabetha Industrial Park, that several businesses located in the Industrial Park regularly use the airport, and that the city owns vacant land in the Park which it is attempting to sell to basic industries. Further, you advise that the runway improvement would be used to "enduce [sic] industries to purchase remaining land and operate in Sabetha."

Mr. Gordon R. Olson

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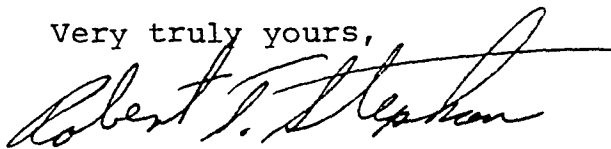
The procedure whereby a city may levy a tax and create an industrial fund is set forth in K.S.A. 1980 Supp. 12-1617h. K.S.A. 12-1617i provides that funds derived from the industrial levy shall

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

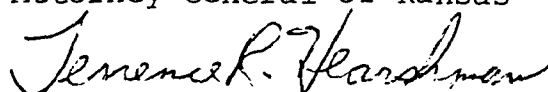
The above-quoted restriction on the use of industrial fund moneys has never been construed in a reported case by any Kansas court. However, this office has, in several previous opinions, opined that the industrial fund is not a general contingency fund which may be used to finance a broad range of municipal capital improvements which are sought to be justified on the ground that such improvements may incidentally constitute a community asset which may be a "talking point" in efforts to persuade industries to locate in a community. See Vol. VII, Opinions of the Attorney General, p. 178 (fine arts theater at junior college); Kansas Attorney General Opinion No. 73-421 (electrical transformer); Kansas Attorney General Opinion No. 75-274 (recreational facilities); Kansas Attorney General Opinion No. 77-178 (housing for the elderly). However, this office has never taken the position that industrial fund moneys may not, in any circumstances, be used to pay for a municipal capital improvement. We perceive no such legislative intent in the pertinent statutes, and, in our judgment, industrial fund moneys may be used to finance a capital improvement where said improvement bears a demonstrable and direct relation to the statutory purpose of "inducing industries to locate" in or near the city.

You state that the city of Sabetha owns vacant land in an industrial park adjacent to the city airport, and that the proposed runway improvement at the airport would be used to induce industries to purchase such land and operate in Sabetha. Under these circumstances, it is our opinion that the runway improvement bears a direct relation to the statutory purpose of "inducing industries to locate" in or near the city, and that industrial fund moneys may be used to pay for said improvement.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm