



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL OPINION NO. 82- 46

Mr. Charles N. Henson  
Eidson, Lewis, Porter & Haynes  
1300 Merchants National Bank Building  
Eighth and Jackson Streets  
Topeka, Kansas 66612

Re: Bonds and Warrants--Cash Basis Law--Lease-  
Purchase and Installment-Purchase Agreements

Synopsis: K.S.A. 1981 Supp. 10-1116b permits the governing body of a municipality to enter into certain agreements which provide for periodic payments or monthly installments. However, any such agreement must state specifically that the municipality is obligated only to pay periodic payments or monthly installments as have been provided for in the budget of the municipality for the current budget year, or which can be paid from funds derived from a lawfully operated revenue producing source. Accordingly, an agreement which obligates a municipality to make payments, in any year subsequent to its current budget year, or which may result in the municipality being obligated for an amount in excess of the funds provided in the budget of the municipality for the current budget year, does not comply with this statute. Cited herein: K.S.A. 10-1101, K.S.A. 1981 Supp. 10-1116b.

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Dear Mr. Henson:

As counsel for Unified School District No. 501 (Topeka), you seek assistance from this office in determining whether the

Mr. Charles N. Henson  
Page Two

printed provisions of a form contract, to be executed by the district to acquire certain office equipment, are in compliance with the requirements of the Cash Basis Law, K.S.A. 10-1101 et seq. The form is entitled "Municipal Lease-Purchase." It provides spaces in which the name and address of the "Lessee" are to be provided, the equipment described and the terms of payment specified. Following these spaces, the phrase "Terms and Conditions" is printed conspicuously on the form. The form then sets forth 14 numbered paragraphs, in which the terms and conditions of the contract are prescribed.

Due to the provisions of several of these numbered paragraphs, it appears this form embodies an installment-purchase agreement, not a lease agreement with an option to purchase. However, resolution of your inquiry does not depend on whether this instrument is a lease agreement with an option to buy, or an installment-purchase agreement. In either event, K.S.A. 1981 Supp. 10-1116b applies.

This statute provides:

"Nothing in the provisions of K.S.A. 10-1101 et seq. shall prohibit a municipality from entering into (1) an agreement to pay for electric interconnection or transmission facilities or services, (2) a lease agreement, with or without an option to buy, or (3) an installment-purchase agreement, if any of such agreements specifically state that the municipality is obligated only to pay periodic payments or monthly installments under the agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during such municipality's current budget year or (b) funds made available from any lawfully operated revenue producing source."  
(Emphasis added.)

While this statute perhaps is not a model of clarity, we believe it is sufficiently clear to indicate the intent of the legislature. In our judgment, the legislative intent was to permit governing bodies of municipalities to enter into certain agreements which provide for periodic payments or monthly installments over a period in excess of one year, provided that any such agreement, in specific terms, obligates the municipality only to pay periodic payments or monthly installments, the yearly aggregate of which has been provided for in the current budget of the municipality,

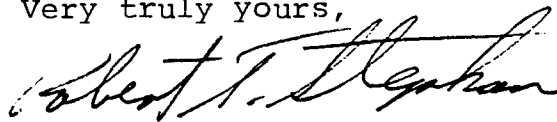
Mr. Charles N. Henson  
Page Three

or which can be paid from funds derived from a lawfully operated revenue producing source. Moreover, we believe it is clear that this statute requires any such agreement to "specifically state" that this is the sole obligation of the municipality.

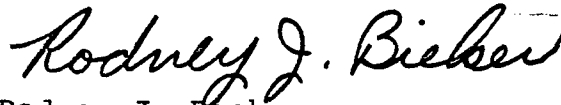
Under the contract you have submitted, the Board of Education could find itself obligated to pay amounts of money not provided for in its current budget, due to unforeseeable circumstances beyond the control of the Board. The contract provides, for example, that, in the event of an unforeseeable occurrence (such as destruction of the equipment by fire), the full unpaid balance shall be "immediately due and payable," regardless of whether there are school funds on hand to pay said balance. This provision clearly specifies that the Board would be obligated to make payments other than the periodic payments or monthly installments. In addition, although the contract provides that the Board could terminate the contract, it also provides that such action would obligate the Board to "pay a cancellation charge equal to three monthly payments."

Thus, the contract is not limited to the payment in a particular fiscal year of only that amount budgeted for purposes of the contract in such fiscal year. We, therefore, are of the opinion that this contract does not comply with the requirements of K.S.A. 1981 Supp. 10-1116b.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Rodney J. Bieker  
Assistant Attorney General

RTS:BJS:RJB:jm