



STATE OF KANSAS

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April 21, 1982

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ATTORNEY GENERAL OPINION NO. 82-90

Dr. Merle R. Bolton
Commissioner of Education
120 East Tenth Street
Topeka, Kansas 66612

Re: Schools--Capital Outlay Levy, Fund and Bonds--
General Obligation Bonds--Interlocal Cooperation--
Use of School District Moneys to Construct a
Building for School District and City Purposes

Synopsis: A school district may enter into an interlocal agreement with a city for the purpose of constructing a building which is necessary for both school and municipal purposes. A school district may use any moneys in the capital outlay fund of the school district or moneys received from the issuance of bonds, or both, for the purpose of contributing to the costs of constructing such a building. Such bonds may be issued under K.S.A. 1981 Supp. 72-8805 without an election, or the school district could issue bonds for this project under K.S.A. 1981 Supp. 72-6761, if an election were held and the voters approved the issuance of the bonds. In addition, such a building could be constructed on land owned by the city, with the city contributing the land as a portion of its share of financing the joint undertaking, pursuant to the interlocal agreement. Finally, after the building is completed, the school district may expend school district moneys, other than capital outlay fund moneys, for maintenance of the building. Cited herein: K.S.A. 12-2901, K.S.A. 1981 Supp. 12-2904, 72-6761, K.S.A. 72-8212, K.S.A. 1981 Supp. 72-8801, 72-8804, 72-8805.

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Dr. Merle R. Bolton
Page Two

Dear Dr. Bolton:

The attorney for Unified School District No. 495 (USD 495) has asked you to seek an opinion of this office concerning the following questions:

- "(a) Can the School District use some of the capital outlay funds to share with the City in costs of construction of an auditorium?
- "(b) Could the school call a bond election to raise funds for participation with the City to build an auditorium?
- "(c) Could an auditorium jointly financed under either proposals [sic] (a) or (b) be build [sic] on City property, or would it have to be build [sic] on property owned by the School District?
- "(d) If the School District participates in sharing the costs of an auditorium under either (a) or (b) above, could the School District still pay proportional rental to the City for use of the facility?"

You explain that USD 495 has been authorized, under the provisions of K.S.A. 72-8801 et seq., to make a capital outlay fund tax levy for a period of five years in an amount not exceeding four mills. You also explain that the city of Larned and USD 495 desire to enter into an interlocal agreement concerning the construction of an auditorium and all matters incidental thereto.

In response to your inquiries, we note, first, that under the provisions of K.S.A. 1981 Supp. 72-8804, "[a]ny moneys in the capital outlay fund of any school district . . . may be used for the purpose of the acquisition or construction . . . furnishing and equipping of buildings necessary for school district purposes . . . [and] architectural expenses incidental thereto" (Emphasis added.) Given this language, and assuming it has been determined that this auditorium is necessary for school district purposes, we believe the law clearly authorizes the use of capital outlay fund moneys to construct the building.

In regard to the inquiry concerning the calling of a bond election, we note that K.S.A. 1981 Supp. 72-8805 grants the authority to issue and sell general obligation bonds, without the necessity of a bond election. Therefore, if bonds were issued under that statute, no

Dr. Merle R. Bolton
Page Three

election would be necessary. If, however, bonds are to be issued under K.S.A. 1981 Supp. 72-6761, it will be necessary to submit the question of issuing such bonds to the voters of the district. In addition, the notice of election and the ballot would have to indicate clearly that the bond issue proceeds were to be used in conjunction with city revenues for the purpose of constructing a building, pursuant to an interlocal agreement. See Unified School District v. Hedrick, 203 Kan. 478 (1969) and the cases cited therein at 483.

The next question posed is whether this facility can be constructed on property now owned by the city. In Attorney General Opinion No. 79-82, which we issued on May 14, 1979, we voiced the opinion that school district moneys could not be used to construct diagonal parking facilities on property not owned by the school district, and in which the school district had no legal interest. The facts involved here are distinguishable from the facts involved in that opinion. Specifically, here it is proposed that this project proceed under the provisions of an interlocal agreement, entered into under the authority of K.S.A. 12-2901 et seq.

Under K.S.A. 1981 Supp. 12-2904(c), an interlocal agreement must specify "[t]he manner of financing the joint or cooperative undertaking," the method or methods to be employed "for disposing of property upon . . . [the] partial or complete termination [of the agreement]," and "any other necessary and proper matters." Given these statutory requirements, and the authority of the city and USD 495 to enter into an interlocal agreement, we see no legal obstacle to the city and school district agreeing that part of the city's contribution to the joint undertaking shall be the provision of the site upon which the building is to be constructed.

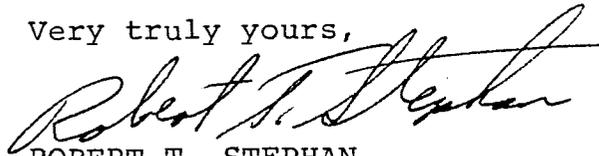
The final inquiry you present concerns the authority of the school district to pay "proportional rent to the City for use of the facility." Since the school district, in essence, will be a co-owner of the facility when completed, we assume the question posed is whether the school district can expend school district moneys, other than capital outlay fund moneys, for the maintenance of the facility, including utility service fees, janitorial fees and the like, when the facility is completed. We are of the opinion the school district can make such expenditures, since it will have an interest in the building. Under K.S.A. 72-8212, the board of education is specifically charged with the "care and keeping of all school buildings."

In summary, therefore, it is our opinion that a school district may enter into an interlocal agreement with a city for the

Dr. Merle R. Bolton
Page Four

purpose of constructing a building which is necessary for both school and municipal purposes. A school district may use any moneys in the capital outlay fund of the school district or moneys received from the issuance of bonds, or both, for the purpose of contributing to the costs of constructing such a building. Such bonds may be issued under K.S.A. 1981 Supp. 72-8805 without an election, or the school district could issue bonds for this project under K.S.A. 1981 Supp. 72-6761, if an election were held and the voters approved the issuance of the bonds. In addition, such a building can be constructed on land owned by the city, with the city contributing the land as a portion of its share of financing the joint undertaking, pursuant to the interlocal agreement between the city and school district. Finally, after the building is completed, the school district may expend school district moneys, other than capital outlay fund moneys, for maintenance of the building.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

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