



STATE OF KANSAS

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July 12, 1982

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ATTORNEY GENERAL OPINION NO. 82-158

Stanley H. Stauffer, Chairperson
Board of Directors
Metropolitan Topeka Airport Authority
P. O. Box 19053
Topeka, Kansas 66619

Re: Federal Jurisdiction--Surplus Property of Federal
Agencies--Public Airport Authority; Power to
Borrow Money

Bonds and Warrants--Cash-Basis Law--Application of
Law; Exceptions

Synopsis: The Metropolitan Topeka Airport Authority (MTAA) is a "municipality" within the definition of that term prescribed in K.S.A. 10-1101(a) and is subject to the provisions of the Cash-Basis Law. However, the Cash-Basis Law specifically allows the board of directors of a public airport authority, such as the MTAA, to incur indebtedness in excess of the limit prescribed in said law, if provision has been made for a revolving fund for the operation of the airport, and said airport is financed and sustained partially or wholly by fees, rentals, proceeds from the sale of merchandise or charges for rendering services, received from the users of the airport.

Thus, if the MTAA receives income from any of the sources specified above, the Board of Directors of the Metropolitan Topeka Airport Authority may exercise its authority to borrow money, as prescribed

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in K.S.A. 27-331(g), without violating the Cash-Basis Law, if said Board has made provision for a revolving fund as contemplated in K.S.A. 10-1116(a)(4). Cited herein: K.S.A. 10-1101, 10-1102, 10-1116, 27-327, 27-330, 27-331, 27-333.

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Dear Mr. Stauffer:

As Chairperson of the Board of Directors of the Metropolitan Topeka Airport Authority (MTAA), and upon the recommendation of the Authority's attorney, you seek the Attorney General's opinion on the questions of (1) whether the MTAA is subject to the Cash-Basis Law, K.S.A. 10-1101 et seq., and (2) whether the MTAA may borrow money, pledging revenues from the Authority's revolving fund as security for repayment of said borrowed money, without violating the Cash-Basis Law.

You explain that the MTAA was created in accordance with the provisions of K.S.A. 27-327 et seq., and operates under the authority conferred by those statutes. You also explain that, under K.S.A. 27-331(g), the MTAA has the power "to borrow money and pledge . . . revenues as security therefor," and, under K.S.A. 27-333, "may annually levy a tax not to exceed one and eighty-five hundredths (1.85) mills upon each dollar of assessed taxable tangible valuation of the property located within the county for the furtherance of the purposes of the authority."

The status of the MTAA is stated in subsection (a) of K.S.A. 27-330, which, in part, provides: "An authority created pursuant to the authority of this act shall be a political and taxing subdivision separate and distinct from any other municipality"

The Cash-Basis Law is applicable to any "municipality," as that term is defined in K.S.A. 10-1101(a). This statutory provision prescribes: "'Municipality' shall . . . mean county, township, city, municipal university, school district, community junior college, drainage district, and any other similar political subdivision or taxing district of the state."

Given the statutorily-prescribed status of the MTAA and its power of taxation, we have no hesitancy in concluding that it is a "municipality," within the definition of that term prescribed in K.S.A. 10-1101(a), and, therefore, subject to the provisions of the Cash-Basis Law, K.S.A. 10-1101 et seq.

However, the express power of the MTAA to borrow money appears to be diametrically opposed to the purpose of the Cash-Basis Law, which is to require that the financial affairs of all municipalities be conducted upon a cash basis. See K.S.A. 10-1102. This apparent conflict is resolved, however, when reference is made to K.S.A. 10-1116(a), which, in relevant part, provides:

"The limits of indebtedness prescribed under the provisions of article 11 of chapter 10 of the Kansas Statutes Annotated may be exceeded when . . . (4) provision has been made for a revolving fund for the operation of any municipal airport financed and sustained partially or wholly by fees, rentals, proceeds from the sale of merchandise or charges for rendering services, received from the users of such airport."

It must be presumed that when the legislature enacted the provisions of K.S.A. 27-327 et seq., in 1978, including the provision allowing an authority established pursuant to that act "to borrow money," the legislature was fully aware of all laws existing at that time, including the Cash-Basis Law and the provisions of K.S.A. 10-1116(a)(4), quoted above. See, e.g., Peter v. Peters, 177 Kan. 100, 107 (1954). In addition, we believe the provisions of K.S.A. 27-331(g), empowering the Authority to borrow money, must be read and construed in conjunction with the provisions of K.S.A. 10-1116(a)(4), so that both statutes can be given effect and their provisions harmonized. See, e.g., Harrah v. Harrah, 196 Kan. 142, Syl. ¶3 (1966) and the cases cited therein at 145.

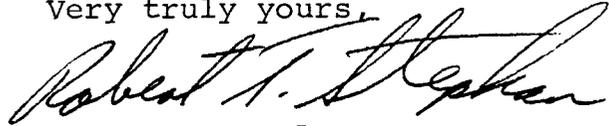
Thus, while we are of the opinion the Metropolitan Topeka Airport Authority is subject to the Cash-Basis Law, we also are of the opinion that said law specifically allows the board of directors of a public airport authority, such as the MTAA, to incur indebtedness in excess of the limit prescribed in said law, if provision has been made for a revolving fund for the operation of the airport, and said airport is financed and sustained partially or wholly by fees, rentals, proceeds from the sale of merchandise or charges for rendering services, received from users of the airport.

Consequently, if the MTAA received income from those sources specified in K.S.A. 10-1116(a)(4), we believe the Board of Directors of the Metropolitan Topeka Airport Authority may exercise its authority to borrow money, as prescribed in K.S.A. 27-331(g),

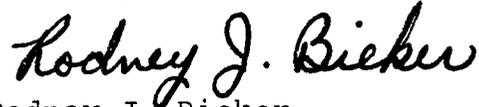
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without violating the Cash-Basis Law, if said Board has made provision for a revolving fund as contemplated in K.S.A. 10-1116(a)(4)

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm