



STATE OF KANSAS

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April 27, 1983

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ATTORNEY GENERAL OPINION NO. 83- 62

Barbara Wood  
Bourbon County Clerk  
Bourbon County Courthouse  
Fort Scott, Kansas 66701

Re: Bonds and Warrants -- General Bond Law -- Use of  
Surplus Proceeds; Other Uses

Roads and Bridges -- Bridges; General Provisions --  
Use of Surplus Bond Proceeds; Other Uses

Synopsis: A county may, pursuant to K.S.A. 68-1101 et seq., issue bonds for the purpose of repairing or replacing bridges within such county. If a proposition is approved by the voters which states with specificity the bridges that are to be improved with the bond proceeds, the county may not thereafter use the funds for different purposes. However, should part or all of the proposed projects prove to be impractical, the county may use surplus proceeds to retire the bond issue ahead of schedule or to reduce the tax levy made to retire the bonds. Cited herein: K.S.A. 10-117, 10-120, 10-132, 68-1106.

\* \* \*

Dear Ms. Wood:

As County Clerk for Bourbon County, Kansas, you request our opinion on a matter involving the use of proceeds from a bond issue. Specifically, you inquire whether money raised from the issuance of bridge bonds must be used for the purposes set forth at the time of the special election approving them, or whether changed circumstances can allow a different use.

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The bonds in question were issued following the approval of Proposition No. 2 at the August 3, 1976, primary election by the voters of Bourbon County. As set forth in the official notice, the proposition stated:

"Shall Bourbon County, Kansas, issue general obligation bonds of said County in a sum not to exceed \$350,000.00 to be used with a grant from the federal government in the amount of approximately \$500,000.00, for the purpose of replacing the following bridges on certain roads entitled to federal assistance located within said County: County Bridges Nos. 8, 18, 31, 33, 34, 35 36, and 84, under the authority of K.S.A. 10-201, et seq., Chapter 25 and Article 1 of Chapter 10, the total costs of said improvements being approximately \$850,000.00; provided, that no bonds shall be issued to this proposition unless all or a portion of said federal grant is received by the County?"

Five of the eight projects listed herein were subsequently built. One was determined to be unneeded, while the remaining two required condemnation of private land which would have increased their cost beyond the funds which were available. The effective abandonment of the three projects leaves a balance in the fund which is the subject of your inquiry. As a final matter, you inform us that the county continues to pay on the bonds, which mature in 1987.

In our opinion, it would be improper for the county to divert the funds raised by the bond issue into other uses, even the construction of bridges apart from those specified in the 1976 proposition. The authority of Bourbon County to issue bridge bonds is based in K.S.A. 68-1101 et seq., and is strictly limited to the terms of the act. Salt Creek Township v. Bridge Co., 51 Kan. 520 (1893), Rossville Township v. Alma National Bank, 78 Kan. 773 (1908). K.S.A. 68-1106 requires an election to be held prior to the issuance of any bridge bonds, and further provides that the provisions of the general bond law, K.S.A. 10-101 et seq., apply. K.S.A. 10-120 contains general requirements for bond elections, and states:

"Notice of such election shall be published in a newspaper of general circulation in the municipality once each week for two consecutive weeks, the first publication to be not less than 21 days prior to such election.

Such notice shall set forth the time and place of holding the election and the purpose for which the bonds are to be issued and shall be signed by the county election officer." (Emphasis added.)

As emphasized, the notice must state the purpose for which the bonds are to be issued. In this case the notice made reference to specific bridges which would be replaced with the bond proceeds and additional federal funds. This requirement of a specific statement is mandatory, not directory, as numerous Kansas cases have held. West v. Unified School Dist. No. 346, 204 Kan. 29 (1969), Heller v. Rounkles, 171 Kan. 323 (1951), Kimsey v. Board of Education, Unified School Dist. No. 273, 211 Kan. 618 (1973). The reason for this was noted by the court in West, supra, at 33-34:

"The obvious intent of the legislature, in requiring the notice to state the purpose for which bonds are to be issued, was to make certain the question to be voted upon was clearly stated so that the electors would not be misled thereby. Equally important is that the ballot state the purpose with clarity. Since bonds may be issued only for such purposes as authorized by statute, with the approval of the electors, each voter must have a fair opportunity to register an intelligent expression of his will. The fundamental principle running through all the cases is that the election laws contemplate that when a special proposition is submitted to a popular vote, the ballot (as well as the notice) shall clearly state the substance of the question to be voted upon by the electors." (Emphasis original.)

Once the proposition is specifically set out, it must be adhered to, and while a governing body has some discretion in applying the funds once final plans are made and the amount of the bond proceeds known, it may not go against the will of the voters. Baker v. Unified School Dist. No. 346, 206 Kan. 581 (1971). To do so would frustrate the popular will, and additionally would violate the criminal sanctions of K.S.A. 10-117.

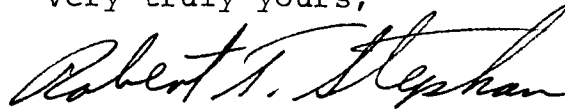
Of course, this is not to say that the county, having obtained the proceeds from this bond issue, is obligated to build each and every one of the bridges set out in the proposition. Where intervening factors occur, as here, which make the construction impossible or unnecessary, the county may exercise

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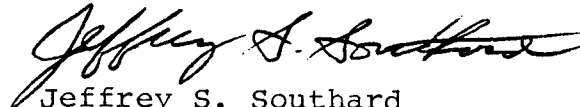
its discretion and determine not to expend the bond proceeds in a useless fashion. Baker, supra, 206 Kan. at 583. Given such a situation, the surplus funds may be used to retire part or all of the bonds ahead of schedule (K.S.A. 10-132), or can be transferred to the bond and interest account so as to reduce the bond and interest levy. They may not, however, be used for other projects. Attorney General Opinion No. 76-106.

In conclusion, a county may, pursuant to K.S.A. 68-1101 et seq., issue bonds for the purpose of repairing or replacing bridges within such county. If a proposition is approved by the voters which states with specificity the bridges that are to be improved with the bond proceeds, the county may not thereafter use the funds for different purposes. However, should part or all of the proposed projects prove to be impractical, the county may use surplus proceeds to retire the bond issue ahead of schedule or to reduce the tax levy made to retire the bonds.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJS:JSS:hle