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March 11, 1985

ATTORNEY GENERAL OPINION NO. 85-28

The Honorable Ivan Sand
State Representative, Sixty-Sixth District
Chairman, House Local Government Committee
Room 183-W
State Capitol
Topeka, Kansas

Re: Cities and Municipalities--Buildings, Structures
and Grounds--Issuance of Revenue Bonds by Counties

Synopsis: The amendment of K.S.A. 12-1741b (by 1985 House Bill No. 2383) to create an exception relating to cities in Wyandotte County would result in that statute becoming part of an enactment which is nonuniform in application to cities, and therefore subject to charter ordinance adopted pursuant to Article 12, §5 of the Kansas Constitution. However, other statutes within K.S.A. 12-1740 to 12-1749a (excluding K.S.A. 12-1741b) are parts of enactments which are uniformly applicable to all cities, and the uniformity of those acts would not be effected by the enactment of 1985 House Bill No. 2383. Cited herein: K.S.A. 12-1740, 12-1741b, 12-1749a; 1985 House Bill No. 2383; Kan. Const., Art. 12, §5.

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Dear Representative Sand:

On behalf of the House Local Government Committee, you request our opinion as to whether a proposed amendment to 1985 House

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Bill No. 2383 would make the entire economic development bond law, K.S.A. 12-1740 to 12-1749a, nonuniform in its application to cities and therefore subject to exemption by charter ordinance adopted pursuant to Article 12, Section 5 of the Kansas Constitution.

In its present form, House Bill No. 2383 would delete certain language within subsection (b) of K.S.A. 12-1741b, to wit:

"(b) No county shall issue revenue bonds authorized herein to finance facilities located ~~within the corporate limits of a city or within three miles of the corporate limits of a city~~ or within another county without the issuing county having first received approval of the governing body of the ~~city or~~ county in which the facility is to be located."

Instead of deleting the language referenced above, you advise that one of the sponsors of the bill has suggested that the bill be amended (and "localized") by making the restriction relating to issuance of county revenue bonds to finance facilities within a city (or within 3 miles thereof) inapplicable to Wyandotte County and cities located therein. You ask whether such an amendment would make the proposed enactment, and the provisions of K.S.A. 12-1740 to 12-1749a, subject to home rule powers prescribed by Article 12, Section 5 of the Kansas Constitution.

Article 12, Section 5 of the Kansas Constitution grants "home rule powers" to cities to determine their "local affairs and government," and those powers must, pursuant to subsection (d) thereof, be "liberally construed for the purpose of giving to cities the largest measure of self-government." Under subsection (c)(1) of the home rule amendment, a city may exempt itself from all or part of any enactment of the legislature applying to the city, except, in part, from "enactments applicable uniformly to all cities."

In considering whether the proposed enactment would "apply" to cities, we first note that subsection (b) of K.S.A. 12-1741b imposes restrictions upon counties relating to the issuance of revenue bonds. However, since the restriction allows any city to "veto" (by refusing to approve) the issuance of county bonds to finance facilities located within a city (or within 3 miles thereof), it is our opinion that it also "applies" to cities. Accordingly, it is necessary to consider whether an amendment which would retain the "veto power" for all cities except those in Wyandotte County would be uniformly applicable to all cities.

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In order for an act to be uniformly applicable to all cities, there must be no exceptions. Clafin v. Walsh, 212 Kan. 1, 9 (1971). Obviously, the proposed amendment to House Bill No. 2383 would make "exceptions" of cities in Wyandotte County, in that those cities, unlike all other cities in the state, could not prevent the issuance of county bonds to finance facilities located within city limits. Accordingly, it is our opinion that the proposed amendment to House Bill No. 2383 would make the enactment non-uniform in its application to all cities and subject to charter ordinance.

You also ask whether other statutes providing for the issuance of city and county economic development bonds, i.e. K.S.A. 12-1740 to 12-1749a, would be rendered non-uniform by enacting the above-referenced "exception" relating to cities in Wyandotte County. In this regard, it has been held that the term "enactment," as used in Article 12, Section 5 of the Kansas Constitution, refers to a single bill enacted into law, i.e. a single legislative act. City of Junction City v. Griffin, 227 Kan. 332 (1980). The statutes within K.S.A. 12-1740 to 12-1749a (excluding K.S.A. 12-1741b) are part of several different enactments, and are not amended by or otherwise included within House Bill No. 2383. Our examination of the several enactments of which the aforesaid statutes are a part reveal that they are uniformly applicable to all cities. Accordingly, it is our opinion that the enactment of the above-referenced exception relating to cities in Wyandotte County would not render K.S.A. 12-1740 to 12-1749a (excluding K.S.A. 12-1741b) nonuniform and subject to charter ordinance, since those statutes are part of enactments which are uniformly applicable to all cities.

Very truly yours,

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RTS:JSS:TRH:jm