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ATTORNEY GENERAL OPINION NO. 85- 52

Nancy B. Hiebert, Chairman
Douglas County Board of Commissioners
Courthouse, 11th and Massachusetts
Lawrence, Kansas 66044

Re: Counties and County Officers -- General Provisions --
Home Rule; Acquisition of Real Property for Industrial
Site

Synopsis: The acquisition and development of real property as an industrial site or park is a legitimate exercise of a county's power of local legislation or home rule as provided in K.S.A. 19-101 and K.S.A. 1984 Supp. 19-101a, as amended by 1985 Senate Bill No. 326. County funds acquired pursuant to K.S.A. 19-4101 et seq., may only be utilized for programs related to economic development. The acquisition and development of an industrial site or park would appear to be such a program. However, any expenditure of public funds must have a demonstrable relationship to a program of economic development and must satisfy the public purpose doctrine. Cited herein: K.S.A. 12-1741b, as amended by 1985 House Bill No. 2383; 12-3801; 12-3802; 19-101; K.S.A. 1984 Supp. 19-101a, as amended by 1985 Senate Bill No. 326 ; K.S.A. 19-3801; 19-4101; 19-4102; 19-4103.

* * *

Dear Ms. Hiebert:

As Chairman of the Douglas County Commissioners, you have requested our opinion on two issues related to economic development activities in Kansas counties. You first inquire

whether the acquisition or development of real property for industrial site purposes is within the scope of a county's home rule authority under K.S.A. 19-101.

K.S.A. 19-101 provides in pertinent part that:

"That each organized county within this state . . . shall be empowered for the following purposes: . . . second, to purchase and hold real and personal estate for the use of the county, and lands sold for taxes as provided by law; third, to sell and convey any real or personal estate owned by the county, and make such order respecting the same as may be deemed conducive to the interests of the inhabitants; fourth, to make all contracts and do all other acts in relation of the property and concerns of the county, necessary to the exercise of its corporate or administrative powers"

This section clearly grants the county authority to acquire property and to make any order concerning such property which may be deemed conducive to the interests of the county's inhabitants. Such authority, in our opinion, includes the ability to acquire land to be developed as an industrial site in order to encourage the economic growth and development of the county.

In addition to home rule authority, the Kansas Legislature has provided a county with several alternative methods of seeking to stimulate and promote industrial, and thus economic, growth and development. For example, K.S.A. 12-3801 et seq., enables "local unit[s] of general government," defined as counties and cities [K.S.A. 12-3802(b)], to issue "industrial development bonds," upon making required findings,

"for the purpose of financing the acquisition of land, the acquisition or construction (including reconstruction, improvements, expansion, extension, and enlargement) of buildings and appurtenances, including but not by way of limitation industrial trackage and access roads, the purpose of such financing being primarily to sell or lease the property so financed to a private individual, partnership, or corporation for the conduct of manufacturing, warehousing, distribution, and/or research and development operations, except municipal stadiums and theaters."

K.S.A. 12-1741b, as amended by 1985 House Bill No. 2383, authorizes a county to issue revenue bonds, subject to the constraints of K.S.A. 12-1774a and 12-1774b, the proceeds of which shall be used:

"for the purpose of paying all or part of the cost of purchasing, acquiring, construction, reconstructing, improving, equipping, furnishing, repairing, enlarging or remodeling of facilities for agricultural, commercial, hospital, industrial, natural resources, recreational development, and manufacturing purposes." (Emphasis added.)

In addition, a board of county commissioners has the power, pursuant to K.S.A. 19-3801 et seq., to incorporate, organize and enlarge industrial districts within a county. This authority, however, is dependent upon the presentation of a proper petition for such organization signed by the owners of 100 or more contiguous acres of land (located outside the limits of any incorporated city) which is by its character and location suitable for industrial development. K.S.A. 19-3802. Once incorporated, such industrial districts have independent authority to levy a tax and issue general obligation bonds, in addition to exercising the other powers specified in K.S.A. 1984 Supp. 19-3803.

In our opinion, however, none of these alternatives limit or restrict the authority of the county under K.S.A. 19-101 and K.S.A. 1984 Supp. 19-101a, as amended by 1985 Senate Bill No. 326, and we conclude that the acquisition of real property for the purposes of developing an industrial site is a permissible exercise of county home rule powers.

You inquire whether the proceeds of the levy established pursuant to K.S.A. 19-4101 et seq., may be used to acquire or improve real property for an industrial site. K.S.A. 19-4101 et seq., permits a county to levy a tax for the purpose of establishing an economic development program, with K.S.A. 19-4103 providing that any county which establishes an economic development program under its terms:

". . . may utilize the funds . . . to conduct studies and prepare comprehensive plans for its future economic growth and development; to inventory the services, facilities and resources of the entire county; to promote, stimulate, and encourage the growth and development of the agriculture,

commerce and industry of the county as a whole, in order to achieve maximum utilization of its human, economic and natural resources and tourist attractions; and to otherwise promote the general economic welfare and prosperity of the area." (Emphasis added.)

These rather broad confines are the only limits on the utilization of the funds authorized by K.S.A. 19-4102. As Attorney General Opinion No. 82-229 concluded:

"K.S.A. 19-4103 authorizes expenditure of county moneys for programs related to economic development. The only constraints in this regard are that such expenditures have a demonstrable relation to programs of economic development and that they satisfy the public purpose doctrine."

Thus, Douglas County may acquire and develop property for industrial purposes as long as such activity has a demonstrable relationship to a program of economic development.

The public purpose doctrine, discussed at length in Opinion No. 82-229 (enclosed), requires a unit of local government, in exercising the powers conferred upon it, to spend funds only for a public purpose. Thus, the funds raised pursuant to K.S.A. 19-4102 may not be expended by a governmental entity to make a gift or loan to benefit a solely private entity or cause. By the enactment of K.S.A. 19-4101 et seq., however, the Kansas legislature has made a policy determination that government-financed programs to encourage economic development serve a valid public purpose. This should not be construed as a blanket authorization of every expenditure which may be made under the guise of "economic development, and the question of whether a specific expenditure serves a public purpose must be determined in light of the specific circumstances. However, in view of the general authority the legislature has granted to counties regarding the promotion of economic and industrial development, it is our opinion that most expenditures for the development of a county industrial park would serve the purposes required by K.S.A. 19-4103 and the public purpose doctrine. We must again caution that this opinion is offered regarding the general concept of industrial development and does not refer to any specific expenditure.

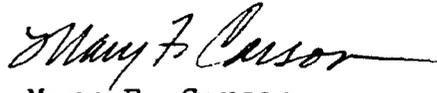
We conclude that the acquisition and development of real property as an industrial site or park is a legitimate exercise of a county's power of local legislation or home rule authority as

provided in K.S.A. 19-101 and K.S.A. 1984 Supp. 19-101a. County funds acquired pursuant to K.S.A. 19-4101 only may be utilized for programs related to economic development. The acquisition and development of an industrial park would appear to be a program related to economic development. Such expenditures must have a demonstrable relationship to programs of economic development and must satisfy the public purpose doctrine.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General

RTS:JSS:MFC:crw
Enclosure