



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 22

Mr. Rodney L. Turner  
County Counselor  
Gateway Centre II  
Suite 207, 4th & State  
Kansas City, Kansas 66101

Re: Cities and Municipalities--Port Authorities--  
Dissolution

Synopsis: A port authority created pursuant to K.S.A. 12-3401 et seq. may be dissolved provided due provisions have been made for payment and performance of its obligations. K.S.A. 12-3402(c). An audit report which shows that revenues accruing to a special fund (established to satisfy claims against a port authority) will be sufficient to retire the authority's obligations constitutes prima facie evidence that due provisions have been made in compliance with K.S.A. 12-3402(c). Additionally, no election is required to dissolve a port authority where the dissolving ordinance provides that the city does not assume any of the authority's obligations. Cited herein: K.S.A. 12-3401, 12-3402; L. 1984, ch. 386.

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Dear Mr. Turner:

You request our opinion as to whether the City of Kansas City has violated K.S.A. 12-3402 in providing for the dissolution of the Kansas City-Wyandotte County, Kansas, Joint Port Authority.

Also, you ask whether the Joint Port Authority may "continue to exist under the remaining partner, Wyandotte County."

The Kansas City-Wyandotte County, Kansas, Joint Port Authority was created by City Ordinance No. 64560, County Resolution 1952 and 1984 House Concurrent Resolution No. 5060 (L. 1984, ch. 386). Section 8 of the joint city ordinance and county resolution provides for dissolution of the joint port authority as follows:

"The Kansas City-Wyandotte County, Kansas, Joint Port Authority may be dissolved by the adoption of an ordinance by the City of Kansas City, Kansas, or a resolution by the County of Wyandotte County, Kansas, or the joint adoption of a resolution and ordinance by the County and the City. Upon dissolution of the Kansas City-Wyandotte County, Kansas, Joint Port Authority, all property, real, personal and mixed, the procurement of which is directly and only attributable to either the City of Kansas City, Kansas, or the County of Wyandotte County, Kansas, shall be transferred to the creating unit of government from whence the procurement funds were derived. All property for which no sole procurement source can be ascertained shall be transferred to the creating unit of government within which the property is physically located. Any other property or property to which reasonable disagreement exists as to the physical location shall be transferred to the City of Kansas City, Kansas."

Subsection (c) of K.S.A. 12-3402 prescribes the following requirements for dissolution of a port authority:

"Subject to making due provisions for payment and performance of its obligations, a port authority may be dissolved by the city or county, or combination thereof, creating it, and in such event the properties of the port authority shall be transferred to the subdivision creating it, or, if created by more than one city or county, to the city or county creating it in such manner as may be agreed upon by them. Obligations of the authority shall not be obligations of the state of Kansas, nor of any city or county

which creates the authority, unless the obligations are specifically accepted by a majority vote of the electors of such city or county voting on the issue. Notice of such election shall be published in a newspaper of general circulation in the county or counties 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 issue which the vote is to determine." (Emphasis added.)

Ordinance No. 64952 of the City of Kansas City provides for dissolution of the Joint Port Authority, with Section 3 thereof providing as follows:

"There is hereby created a public levee fund to which all income from the assets transferred to the City pursuant to Section 2 above shall be credited. Such revenue shall be applied in the following order of priority: (1) satisfaction of claims against the Authority; (2) the administrative costs involved in winding up Authority affairs or in completing transactions begun but not finished on the date of dissolution; and (3) such purposes as determined by the City Council; provided however that this fund will not receive any monies from the City and provided further that no obligations of the Authority are hereby assumed by the City." (Emphasis added.)

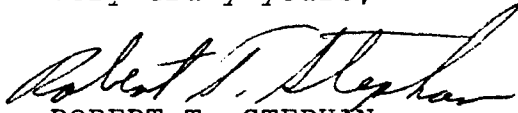
With regard to whether the city has complied with the provisions of subsection (c) of K.S.A. 12-3402 in dissolving the port authority, Deputy City Attorney John S. Anderson advises that an independent audit will show that revenues accruing to the special fund established by Section 3 of Ordinance No. 64952 (supra) will be sufficient to retire obligations of the Joint Port Authority. In our judgment, such an audit report would constitute prima facie evidence that due provisions have been made for payment and performance of Joint Port Authority obligations, in compliance with K.S.A. 12-3402(c).

Additionally, under the aforesaid statute an election is required (prior to dissolution) only where obligations of the port authority are to be assumed by the city or county creating the port authority. As Section 3 of Ordinance No. 64952 (supra)

clearly provides that no obligations of the Joint Port Authority are assumed by the City of Kansas City, it is our opinion that an election is not required to dissolve the port authority.

In regard to the legality of continuing the Port Authority "under the Wyandotte County Commissioners," it is clear that Ordinance No. 64952 provides for the dissolution of the Joint Port Authority, not withdrawal by the city from the Authority. In our judgment, the Kansas City-Wyandotte County, Kansas, Joint Port Authority ceases to exist when Ordinance No. 64952 is adopted, and, therefore, cannot be "continued" by Wyandotte County. If the county wishes to establish its own port authority, it is our opinion that it will have to obtain legislative approval under the provisions of subsection (a) of K.S.A. 12-3402.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JSS:TRH:jm