



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 57

The Honorable Frank D. Gaines
State Senator, Sixteenth District
State Capitol, Room 140-N
Topeka, Kansas 66612

Re: Constitution of the State of Kansas--
Corporations--Cities' Powers of Home Rule; Bonds
for Motor Sports Raceway Park

Synopsis: A charter ordinance of the City of Topeka, enacted pursuant to the home rule amendment of the Kansas Constitution, Art. 12, §5, properly authorizes the city to issue its general obligation bonds (subject, in this case, to voter approval) to acquire land for and develop recreation facilities within or without the city. A proposed motor sports raceway park would appear to be such a "recreational facility." The authority to acquire property for municipal purposes generally implies the authority to lease property for such purposes. Cited herein: Kan. Const., Art. 12, Sec. 5; K.S.A. 12-1301; 12-1302; 13-1024a.

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Dear Senator Gaines:

As State Senator for the Sixteenth District you seek our opinion on two questions related to a proposed general obligation bond issue of the City of Topeka to finance the design and construction of a motor sports raceway park at Forbes Field. Your first question asks whether the City of Topeka has legal authority, "by statute or valid ordinance, to

issue general obligation bonds to construct the . . . racetrack?"

The City proposes to issue the bonds and develop the racetrack pursuant to Topeka Charter Ordinance No. 68 which provides in part that:

"For the purpose of paying for . . . land for public parks and recreation facilities and developing the same, within or without the City, . . . the City may borrow money and issue bonds for the same. . . ."

The ordinance provides for an election on the issuance of such bonds if a sufficient petition opposing the bond issue is filed within 30 days after publication of the ordinance authorizing the bonds. Such a petition was filed in this case and on April 7, 1987 Topeka voters will cast ballots on the following question:

"Shall the City of Topeka be authorized to issue general obligation bonds in the amount of \$7,578,000, the proceeds of which would be used for the design and construction of a motor sports raceway park at Forbes Field?"

Topeka Charter Ordinance No. 68 amends Section A12-1 of the City Code which originally was enacted as Charter Ordinance No. 60. The amending charter ordinance (No. 68) added provisions for a protest petition and election but is otherwise identical to Charter Ordinance No. 60 in terms of the improvements which the city may authorize. Charter Ordinance No. 60 was enacted pursuant to the City's constitutional powers of home rule (Kan. Const., Art. 12, §5). It exempts the city from K.S.A. 13-1024a and enacts substitute and additional provisions on the same subject. K.S.A. 13-1024a applies to cities of the first class and authorizes cities to pay for various general improvements, including lands for public parks within or without the city, by the issuance of general obligation bonds. The statute, while applicable to Topeka, is not uniformly applicable to all Kansas cities and therefore, the subject matter which it addresses is subject to cities' power of home rule. This section is typically the subject of a charter ordinance in the cities to which it applies.

The Kansas Constitution at Article 12, Section 5(c) (1) provides:

"Any city may by charter ordinance elect . . . that the whole or any part of an enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities', other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness; shall not apply to such city."

The charter ordinance may provide substitute and additional provisions on the same subject matter. In Attorney General Opinion No. 80-229 Attorney General Stephan specifically stated that a city may exempt itself by charter ordinance from K.S.A. 13-1024a. Thus, we have no difficulty with the City of Topeka's utilization of home rule in this case. Charter Ordinances 60 and 68 address the same subject matter as K.S.A. 13-1024a, that is, various general improvements for a number of City purposes including parks, and provide substitute and additional provisions on the same subject. Thus, the Topeka ordinances authorizing the improvements here in question and the issuance of bonds to finance such improvements are, in our opinion, a proper exercise of the City's constitutional powers of home rule.

Charter Ordinance No. 68 authorizes the city to issue general obligation bonds to finance the acquisition of property and the development of recreational facilities either within or without the city. We do not have a description of the proposed facility nor do we know the specific manner in which the city proposes to operate the facility. Nevertheless, it would appear that a "motor sports raceway park" falls within the general purview of a "recreational facility" which may be utilized by city residents for recreational purposes. It is clear that a municipality, when properly authorized, may issue bonds for the purpose of acquiring and maintaining public parks and recreational facilities, including golf courses and stadiums. See McQuillin, Municipal Corporations, §§43.31 and 39.21 (3d Ed. 1985). As noted above, Charter Ordinance No. 68 provides sufficient authority for the issuance of the proposed bonds if approved by Topeka voters on April 7, 1987.

Your second question asks, if sufficient authority exists, "can the City build the track on land it never owns or

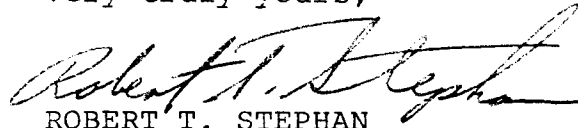
acquires?" This question relates to your understanding that if the bonds are issued, the proposed facility will be built on land leased but not owned by the City. You also indicate that the property in question is not within the territorial limits of the City of Topeka. To alleviate any concern raised by the latter point, we note that Charter Ordinance No. 68 authorizes the city to pay for and develop land for park and recreational purposes either "within or without the city." The acquisition and development of property outside the territorial limits of a city to be used in connection with a municipal improvement is not uncommon, especially with regard to park development. In addition to constitutional home rule powers, the Kansas legislature has provided Kansas cities at least two statutory authorizations for such acquisitions. Both K.S.A. 13-1024a and 12-1302 authorize the acquisition of property outside of a city to be developed and utilized for park purposes. The fact that bonds will be issued in connection with municipal improvements outside the territorial limits of the municipality is immaterial if the indebtedness so incurred is for the common benefit and enjoyment of the citizens of the municipality. See, McQuillin, Municipal Corporations, §§28.05, 37.11 and 39.21 (3d ed. 1971, 1981 and 1985).

Concerning the city's authority to lease the property for the racetrack we note that the home rule amendment empowers cities to determine their local affairs and government. In the absence of some limitation of home rule powers, such authority includes the ability to acquire property for city purposes and to determine the most effective method of making such acquisitions. The power to acquire property, for the promotion of public purposes, implies the authority to lease such property. Cf. McQuillin, Municipal Corporations, §§28.10 and 28.50 to 28.54 (3d ed. 1981 Revision).

In addition to the home rule powers which the City of Topeka is utilizing here, the legislature has authorized Kansas cities to lease or purchase land for park purposes in K.S.A. 12-1301. Numerous other statutes permit the acquisition of land for municipal purposes. Unless specifically limited, it is our opinion that the power to acquire such property implies the power to lease. As previously noted, the city of Topeka is utilizing home rule authority in the instance in question

and we are aware of no limitation on the exercise of such power which would prevent the city from leasing property for municipal purposes in this case.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Mary F. Carson
Assistant Attorney General

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