



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 7, 1988

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 88- 92

Mr. Stephen J. Smith
Burlington City Attorney
519 Commercial
P.O. Box 921
Emporia, Kansas 66801-0921

Re: Counties and County Officers--General Provisions--
Home Rule Powers

Constitution of the State of Kansas--Corporations--
Cities' Powers of Home Rule

Synopsis: Pursuant to Article 12, §5 of the Kansas
Constitution and K.S.A. 1987 Supp. 19-101a, Kansas
cities and counties may use home rule power to
issue general obligation bonds. The proceeds from
sale of those bonds may be used to finance what the
legislative body rationally believes would promote
a valid public purpose. In specific instances,
such purposes may include encouraging, assisting
and promoting private economic development. Cited
herein: Kansas Constitution, Article 12, §5;
K.S.A. 1987 Supp. 10-101 et seq.; K.S.A.
10-201; K.S.A. 1987 Supp. 10-427; 12-1257; K.S.A.
12-1302; 12-1740; 12-3801; K.S.A. 1987 Supp.
19-101a; K.S.A. 19-101c; 19-103; 19-2801; 19-1596;
19-4101.

*

*

*

Dear Mr. Smith:

As Burlington city attorney you request our opinion
concerning the authority of Kansas cities and counties to
authorize, issue and sell general obligation bonds pursuant to
home rule powers. You inform us that proceeds from such a

bond issuance would be used to construct or acquire facilities located in the city to be used by privately owned businesses. You indicate that the economic development thus encouraged would benefit the city and the county and would therefore, in your opinion, be a use of home rule power for a public purpose.

Kansas statutory law grants cities and counties specific bond issuance authority. See e.g., K.S.A. 1987 Supp. 10-101 et seq., K.S.A. 10-201 et seq., K.S.A. 1987 Supp. 10-427 et seq., 12-1257; K.S.A. 12-1302, 12-1740 et seq., 12-3801 et seq., 19-2801 et seq., 19-1596 et seq., 19-4101 et seq. These and other statutory enactments represent a mere sampling of legislative authority to issue bonds. The proposed bond issuance would not occur pursuant to statutory authorization, but rather, home rule powers would be used. The issue thus becomes the extent and degree of city and county home rule and whether that power allows the issuance of general obligation bonds for the proposed purposes.

Article 12, §5 of the Kansas Constitution provides that cities may exercise their home rule powers subject to

"[E]nactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge other exaction and to enactments of the legislature prescribing limits of indebtedness."

These constitutional requirements generally restrict the use of city home rule power in two ways; (1) such home rule ordinances are subject to acts uniformly applicable to all cities. See City of Beloit v. Lamborn, 182 Kan. 288 (1958) and (2) such ordinances must not violate the Constitution. See Delight Wholesale Co. v. Overland Park, 203 Kan. 99 (1969).

The first requirement is met if the home rule ordinance does not attempt to authorize what a general state law prohibits. We find no existing state law absolutely prohibiting the city home rule issuance of general obligation bonds. Certain statutory authority allows and prescribes the procedures for issuance of bonds in order to promote economic development, see e.g. K.S.A. 12-1740 et seq. and 12-3801 et seq., but these statutory schemes do not preclude or

prohibit bond issuance pursuant to other authority. Neither have we located constitutional authority prohibiting the issuance of general obligation bonds pursuant to city home rule power.

Previous Attorney General opinions discuss the extent of city home rule authority to issue bonds. See Attorney General Opinions No. 77-75, 77-368 and 78-383. These opinions recognize that Kansas cities need not necessarily seek express statutory authority in order to issue bonds. Moreover, if existing statutory authority is non-uniform, a city may by charter ordinance exempt itself in order to issue bonds in amounts greater than those authorized by the statute.

As set forth in (d) of Article 12, §5, "[p]owers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self government." See also Crummett, "City Home Rule in Kansas" 9 W.L.J. 1 (1969). It is therefore our opinion that Kansas cities may issue general obligation bonds pursuant to the home rule power granted by Article 12, §5 of the Kansas Constitution

Unlike constitutionally authorized city home rule power, counties have been granted home rule pursuant to legislative enactment. K.S.A. 1987 Supp. 19-101a. The authority to exercise this power, and to manage the general business of the county, is vested in the board of county commissioners. K.S.A. 19-103 and 19-212. County home rule power "shall be liberally construed for the purpose of giving to counties the largest measure of self government." K.S.A. 19-101c.

However, self determination by counties is not without limitation. In addition to constitutional limitations, home rule ordinances cannot be used to do something that state law uniformly prohibits. K.S.A. 1987 Supp. 19-101a(a)(1). We find no uniformly applicable state law prohibiting the issuance of general obligation bonds pursuant to county home rule power. Nor does there appear to be a constitutional limitation prohibiting such issuance.

Attorney General Opinions No. 77-382, 77-44 and 77-44a discuss bond issuance pursuant to county home rule authority. These opinions recognize the general county home rule power and approve the particular bond issuances in question.

Thus, the remaining issue concerning both county and city use of home rule powers becomes whether a specific legislative action serves a public purpose. See Attorney General Opinions No. 85-82 and 82-229. Such a factual determination necessarily requires a case by case analysis. See Attorney

General Opinion No. 87-164. However, statutory authority and recent case law evidence a general recognition that local governments may properly promote private economic development in order to assist the public economy. See K.S.A. 12-1740 et seq., K.S.A. 12-3801 et seq. and K.S.A. 19-4101 et seq., Ulrich v. Board of Thomas County Commissioners, 234 Kan. 782 (1984); Duckworth v. City of Kansas City, Kansas, No. 61,421, Kansas Supreme Court, April 29, 1988. As articulated in Duckworth, courts presume that a legislative body acts constitutionally, and any challenger must therefore defeat that presumption by establishing that a particular legislative action is not rationally related to a legitimate purpose. The Duckworth case recognized that "the need for redevelopment" is an important public concern. Thus, the court approved municipal development loans to private individuals made in order to promote public welfare.

We do not have before us the specifics of the particular proposed uses. However, given the presumption that a legislative body acts constitutionally and considering case law and statutory authority permitting governmental financing of private businesses in order to promote public economic welfare, it is our opinion that proceeds from a home rule issuance of general obligation bonds may be used for the purpose of encouraging private economic development.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Theresa Marcel Nuckolls
Assistant Attorney General