



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 13, 1989

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

ATTORNEY GENERAL OPINION NO. 89-16

Mr. Frank E. White, Jr.
Chautauqua County Attorney
121 N. Chautauqua
P.O. Box 6
Sedan, Kansas 67361

Re: Bonds and Warrants -- Cash-Basis Law -- Lease or
Installment-Purchase Agreements; Contracts for
Services

Synopsis: Based upon commonly accepted and statutory
definitions of the terms installment-contract and
purchase, and mindful of the intent of the
legislature to provide additional authority to
acquire equipment, it is our opinion that K.S.A.
10-1116b does not authorize installment-purchase
contracts for services. Cited herein: K.S.A.
10-1101; 10-1116b; 84-1-201(32); 84-2-612(1).

* * *

Dear Mr. White:

As Chautauqua County Attorney you request our opinion
concerning K.S.A. 10-1116b. Specifically, you ask whether the
authority contained therein pertains only to the installment
purchase of tangible property or if it also allows installment
purchase of services, with the contract extending over several
years. K.S.A. 10-1116b provides:

"Nothing in the provisions of K.S.A. 10-1101 et seq. shall prohibit a municipality from entering into (1) an agreement to pay for electric interconnection or transmission facilities or services, (2) a lease agreement, with or without an option to buy, or (3) an installment-purchase agreement, if any of such agreements specifically state that the municipality is obligated only to pay periodic payments or monthly installments under the agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during such municipality's current budget year or (b) funds made available from any lawfully operated revenue producing source."
(Emphasis added).

Thus, provided the agreement specifically states the required language concerning the extent of obligation undertaken by a municipality, K.S.A. 10-1116b allows a municipality to enter into an installment-purchase agreement. The issue therefore becomes what types of agreements can be defined as installment-purchase agreements.

K.S.A. 10-1101 et seq. does not define installment-purchase agreement. Installment is generally defined as "partial payment of a debt or collection of a receivable. Different portions of this same debt payable at different successive periods as agreed. Partial payments on account of a debt due." Blacks Law Dictionary 717 (5th ed. 1979). Purchase is defined as the "transmission of property from one person to another by voluntary act and agreement, founded on valuable consideration . . . the term 'purchase' includes any contract to purchase or otherwise acquire." Id. at 1110. (Emphasis added). A purchase agreement is "an agreement between a buyer and seller of property, setting forth, in general, the price and terms of the sale. A sales agreement or contract." Id. at 1110. (Emphasis added).

Enterprise v. Smith, 62 Kan. 815 (1900), discussed whether the word "purchase" or "purchasing" could include property acquired pursuant to condemnation proceedings. In holding that it did not, the court discussed the meaning of the term purchase:

"The word 'purchase' has two significations - a popular but restricted one, and a legal but enlarged one. The definition of the word in its legal and general sense is given as follows: 'A term including every mode of acquisition of estate known to the law, except that by which an heir on the death of his ancestor becomes substituted in his place as owner by operation of law.' (Bouvier.) Blackstone defines the word in its legal and enlarged sense in the same way, but; after doing so, says: 'Purchase, indeed, in its vulgar and confined acceptation, is applied only to such acquisitions of land as are obtained by way of bargain and sale for money, or some other valuable consideration.' (2 Bla. Com. 241). 'A purchase, in the ordinary and popular acceptation of the term, is the transmission of property from one person to another, by their voluntary act and agreement, founded on a valuable consideration. But, in judgment of law, it is the acquisition of land by any lawful act of the party, in contradistinction to acquisition by operation of law; and it includes title by deed, title by matter or record, and title by devise.' (4 Kent, Com., 14th ed., 441.). 'The word 'purchase,' in common sense, means no more than when a man gives money for anything, but in a legal sense every man is a purchaser of an estate who does not take it by descent.' (Martin v. Strachan et al., 1 Wils. 72.) Id. at 818-819. (Emphasis added).

K.S.A. 84-1-201(32) contains a statutory definition of purchase: "taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any voluntary transaction creating an interest in property." (Emphasis added). K.S.A. 84-2-612(1) defines an installment contract as "one which requires or authorizes the delivery of goods in separate lots to be separately accepted." While Enterprise v. Smith contemplates purchase meaning "no more than when a

man gives money for anything," other definitions and statutory law appear to define installment contract and purchase as the transfer of property rights in some legal interest. While statutory definitions contained in the Kansas Commercial Code are not necessarily applicable to K.S.A. 10-1110 et seq., unless a contrary interpretation appears, statutory words are presumed to be used in their ordinary and usual sense and with the meaning commonly attributed to them. Atchison, Topeka and Santa Fe Ry. Co. v. U.S., 628 F. Supp. 1431 (Kan. 1986); Appeal of Armed Forces Co-op Insuring Ass'n, 5 Kan. App. 2d 787 (1981).

K.S.A. 10-1116b contains no clear statutory intent concerning contracts for services, nor does it define installment-purchase contract. When the plain language of a statute does not clearly express legislative intent, other sources may be utilized in determining such intent. Maxl Sales Co. v. Critiques, Inc., 796 F. 2d 1293 (10th Cir. 1986); State v. Phifer, 241 Kan. 233 (1987). February 11, 1980 minutes of the house committee on local government indicate that the sponsor of House Bill No. 2955 explained that the bill "adds an exception to the cash-basis law for any county which enters into an optional lease-purchase agreement for the acquisition of equipment." It appears that this bill was introduced in response to letters and opinions by the office of the Attorney General concerning lease or purchase agreements in violation of the cash-basis law. (See enclosed; Attorney General Opinion No. 77-279, and letters dated November 14, 1979 and August 24, 1971.) Subsequent amendment to the language of the bill added the provision concerning installment-purchase agreements, however, minutes from future committee meetings do not reflect further discussion concerning what type of "property" the legislature intended to permit counties to acquire by these means. Thus, the only discussion of these agreements by the legislative committee indicates an intent to permit the acquisition of tangible property. Thus, legislative history does not indicate a prohibition forbidding the purchase of services by installment. However, there appears to be no clear intent to permit installment-purchase agreements (extending beyond a year) for services.

Commonly accepted and statutory definitions of the terms installment-contract and purchase indicate that the acquisition of tangible property is contemplated. The intent expressed by the legislature in enacting K.S.A. 10-1116b

evidences the desire to provide an exception to the cash-basis law in order to permit acquisition of equipment. It is therefore our opinion that K.S.A. 10-1116b does not authorize installment-purchase contracts for services that would otherwise violate the cash-basis law.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas