



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 28

Greg A. Bengston
Salina City Attorney
129 South 8th
P.O. Box 380
Salina, Kansas 67402-0380

Re: Bonds and Warrants--Cash-Basis Law--Creating
Indebtedness in Excess of Funds Unlawful; Exceptions

Synopsis: The cash-basis law, K.S.A. 10-1101 et seq., forbids a municipality to incur a contractual indebtedness in excess of funds actually on hand in the municipality's treasury and budgeted for such indebtedness in any particular budget year. An irrevocable, non-recourse loan commitment or letter of credit issued to a city does not satisfy the requirement that sufficient funds be available in the city treasury to satisfy a contractual indebtedness. Cited herein: K.S.A. 10-1101; 10-1113; 10-1116.

* * *

Dear Mr. Bengtson:

You request our interpretation of K.S.A. 13-1017. Specifically, you ask whether an irrevocable letter of credit or loan commitment issued to a city may satisfy the requirement that money be available in the city treasury to pay for a public improvement before it is commenced.

K.S.A. 13-1017 prescribes the procedure under which cities of the first class may undertake public improvement projects. The statute provides, in part, as follows:

"Before any type of public improvements is [sic] commenced, the money to pay for the same must be available in the city treasury as provided by law or provision may be made for the issuance of internal improvement bonds to pay for any such improvement as provided by law."

The above-quoted requirement is, of course, merely a repetition of the cash-basis law, K.S.A. 10-1101 et seq. That law forbids a municipality to incur a contractual indebtedness in any amount which exceeds those funds which are actually on hand and budgeted for such indebtedness for that particular budget year. K.S.A. 10-1113. While K.S.A. 10-1116 sets forth exceptions where the limits of indebtedness prescribed by the cash-basis law may be exceeded, an irrevocable letter of credit or loan commitment is not included among the enumerated exceptions. While such a letter of credit from a bank may provide substantial security for repayment of a debt, the cash-basis law requires nothing less than sufficient funds on hand in the municipal treasury to pay a contractual indebtedness. Accordingly, it is our opinion that an irrevocable, non-recourse loan commitment or letter of credit issued to a city does not satisfy the requirements of the cash-basis law.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
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RTS:JLM:TRH:jm