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September 20, 1991

ATTORNEY GENERAL OPINION NO. 91- 113

Mr. Brad L. Jones  
Coffey County Attorney  
P.O. Box 310  
Burlington, Kansas 66839

Re: Bonds and Warrants--General Bond Law--Local  
Legislative Powers; Financing; Issuance of Bonds

Synopsis: Coffey county, may not issue its general  
obligation bonds to finance industrial development  
facilities pursuant to the home rule resolution no.  
263. The county must follow the procedure set  
forth in Blevins v. Hiebert, 247 Kan. 1  
(1990), if it wishes to issue bonds pursuant to  
home rule legislation.

\* \* \*

Dear Mr. Jones:

As Coffey county attorney you inquire whether the county is  
authorized to issue its general obligation bonds pursuant to  
home rule resolution no. 263 (resolution) to finance certain  
industrial development facilities.

The county is concerned with the effects that Blevins v.  
Hiebert, 247 Kan. 1 (1990) may have on their ability to  
issue bonds under the resolution. In Blevins, the Kansas  
Supreme Court examined municipal home rule powers and set  
forth guidelines for determining when and how municipalities  
may use home rule legislation. The court also took the  
additional measure of applying the decision prospectively  
stating that "because of the confusion caused by the dicta in

our prior decisions on home rule, we hold all general obligation bonds and temporary notes authorized or issued under home rule powers prior to the date of this opinion are hereby declared lawful and validated as to the home rule issue. All such bonds and temporary notes authorized or issued after the date of this opinion under home rule authority shall follow the procedure set out herein." Blevins at 14.

Whether the county may issue general obligation bonds under the terms of its resolution passed in 1988, is contingent upon whether the bonds were specifically authorized by the county prior to the July 1990 date of the Blevins decision. The Resolution states in part:

"[T]he Board of county commissioners . . . desires to stimulate economic development in the County by authorizing the Board to issue and sell its general obligation bonds (bonds) for the purpose of acquiring land, purchasing, constructing, or improving certain industrial development facilities of the County and all related facilities. . . .

. . . .

"It is in the best interest and a valid public purpose of the County to authorize the Board to issue and sell its Bonds for the purpose of acquiring land, purchasing, constructing or improving facilities of the County. . . ."

In our opinion, the county may not continue to issue general obligation bonds to finance industrial development facilities pursuant to this resolution as no bond issue was specifically authorized pursuant to this resolution. To do so would contravene the court's directive that all bonds authorized or issued after the date of the opinion follow the guidelines set forth in the opinion. The resolution is broad and fails to authorize specific bond amounts for specific projects, therefore, the county must necessarily pass a separate resolution authorizing the issuance of general obligation bonds in a specific aggregate amount for each new project the county wishes to undertake. This may be analogized to a situation where a statute exists which allows municipalities to issue bonds. The municipalities may have the authority

pursuant to the statute to issue bonds, but until the municipality opts to use the statute and passes a resolution or ordinance electing to use the statutory procedures, the bonds cannot be said to be authorized by the municipality. Coffey county's situation is similar; had the county opted under the home rule resolution to authorize a specific issue or issues prior to the date of Blevins those bonds would have been validated. The county had not taken this step, they merely had legislation in place under which they could have authorized the issuance of bonds prior to Blevins. The general obligation bonds issued under home rule legislation after the July 1990 date of the Blevins decision must conform with the terms set forth in the opinion, unless they were clearly authorized prior to the date of the decision.

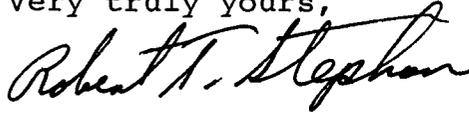
To reach a different conclusion would be to allow Coffey county and perhaps other municipalities to continue to issue obligations ad infinitum under broadly worded home rule resolutions. In our opinion the Court's objective was much narrower. The Court acknowledged that municipalities in reliance on previous home rule decisions had issued millions of dollars in general obligation bonds and sought to allay fears that these obligations may not have been legally issued by validating them. The court, in effect, grandfathered in all bonds previously issued under home rule legislation, as well as bond issues in progress authorized pursuant to home rule powers. This afforded municipalities an opportunity to complete projects, avoid breaking commitments and avoid having their credit ratings impaired.

To allow general obligation bonds to be issued indefinitely under a home rule resolution such as Coffey counties would subvert not only the court's intent, but also the principles behind "grandfathering," a concept designed to allow the fulfillment of previous commitments and to ensure that undue harm is not caused by a change in the law. See Com. Air Transport v. Stuart, 196 S.W.2d 866 (Ky. 1946), Paul Kimball Hospital, Inc., v. Brick Tp. Hospital, Inc., 432 A.2d 36 (N.J. 1981).

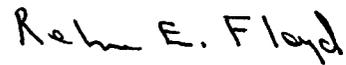
In conclusion, Coffey county may not utilize the provisions of the resolution no. 263 to continue to issue general

obligation bonds for the purpose of financing industrial development facilities.

Very truly yours,

A handwritten signature in cursive script that reads "Robert T. Stephan".

ROBERT T. STEPHAN  
Attorney General of Kansas

A handwritten signature in cursive script that reads "Rebecca E. Floyd".

Rebecca E. Floyd  
Assistant Attorney General

RTS:JLM:REF:jm