October 7, 1991

ATTORNEY GENERAL OPINION NO. 91-125

Fred W. Rausch, Jr.
Attorney at Law
Suite 201, 220 S.W. 33rd Street
Topeka, Kansas 66611-2230

Re: Bonds and Warrants--General Bond Law--Municipal Liability

Synopsis: All of the taxable, tangible property located within a municipality at the time general obligation bonds of the municipality are issued, is primarily responsible for the payment of principal and interest on bonds issued. Cited herein: K.S.A. 10-119.

Dear Mr. Rausch:

As counsel for community hospital district no. 1 you have requested an opinion concerning which property is primarily responsible for the payment of principal and interest on general obligation bonds issued by the various municipalities and quasi-municipalities in the state of Kansas. K.S.A. 10-119 provides:

"Whenever a part of the territory of any municipality has been detached and attached to some other municipality, or whenever any municipality has been disorganized according to law and the territory attached to or included in some other municipality or municipalities,
such territory shall be liable for the payment of all bonds issued or other indebtedness incurred by such municipality before such detachment or disorganization, and the proper taxing officers of the municipality to which such territory is attached shall levy such taxes upon such attached territory as are necessary to pay its proper proportion of the interest and principal of such bonds or other indebtedness as aforesaid, and such officers may be compelled by mandamus at the instance of the holders of such bonds or other indebtedness to levy such tax." (Emphasis added).

The provisions of K.S.A. 10-119 are clear. All of the taxable, tangible property located within a municipality at the time the municipality issues its general obligation bonds is primarily responsible for the payment of principal and interest on such bonds. Should the boundaries of a municipality later be changed, the property located within the municipality at the time the bonds were issued is still obligated for the payment of principal and interest on the bonds.

At the time general obligation bonds are issued a contract is formed between the municipality and the holders of the bonds, pledging that the municipality, as it exists at the time the bonds are issued, will retire said bonds and pay the interest thereon pursuant to their terms from taxes levied against all of the taxable, tangible property within the municipality. Although the legislature may provide other means for the payment of the principal and interest on said bonds, the bondholders may always look to the property within the issuing municipality at the time the bonds were issued for the payment of the principal and interest on those bonds. The constitutional prohibition against the legislature enacting laws which impair existing contracts precludes the legislature from removing the basic right of the bondholders to look to the property within the issuing municipality at the time the bonds were issued for the payment of the principal of and interest on those bonds.
Bonds characterized as "general obligation bonds" means that they are general obligations of all the taxable, tangible property located within the issuing municipality at the time the bonds are issued.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Rebecca E. Floyd
Assistant Attorney General

RTS:JLM:REF:jm