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ATTORNEY GENERAL OPINION NO. 91- 144

Philip B. Wolfe
Nichols & Wolfe, Chartered
Suite 1120, Bank IV Tower
534 Kansas Avenue
Topeka, Kansas

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

Synopsis: A county may in the exercise of its statutory home rule authority establish and fund an economic development program. Home rule is available to all cities and counties where not prohibited by article 12, § 1 of the Kansas constitution and K.S.A. 19-101a. Cited herein: K.S.A. 12-1740; 12-3801; 19-101a; 68-580; Kan. Const., Art. 12, § 5.

* * *

Dear Mr. Wolfe:

As bond counsel for Coffey county, Kansas, you inquire whether the county has authority to issue general obligation bonds under its statutory home rule powers to establish an economic development program.

You indicate that the county wants to issue general obligation bonds to fund a pool from which loans, grants and other economic development incentives would be made available to qualifying businesses that locate, develop or expand in Coffey county. The county will make these funds available to eligible businesses subject to terms specified by the county. These terms may include mortgages or other security

interests in the assets being purchased and owned by the businesses.

Authority for county home rule legislation exists in K.S.A. 19-101a which states in part:

"The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate subject only to the following limitations. . .

"(1) counties shall be subject to all acts of the legislature which apply uniformly to all counties."

The Kansas Supreme Court in Blevins v. Heibert, 247 Kan. 1 (1990) limited constitutional and statutory home rule authority by holding that where an enabling act applies municipalities must follow the statutory procedures prescribed by the enabling legislation.

The issue in Blevins was whether Douglas county had correctly used home rule authority to issue general obligation bonds for a highway improvement project. The Court concluded that Douglas county had incorrectly used its home rule authority to obviate a statutorily required vote requirement and to issue general obligation bonds. The court determined that the statute was an "enabling act" and defined it somewhat vaguely as one "uniformly applicable to all cities and counties if it authorizes all cities and counties to perform certain acts." Blevins at 11. The court explained that "the purpose of K.S.A. 68-580 et seq. is to authorize the issuance of general obligation bonds for financing construction of an arterial highway and the use of a different name or failure to designate the highway a 'primary arterial highway' . . . does not alter the applicability of the statute." The court further stated, "if general obligation bonds are needed the statute is applicable" . . . and if a municipality decides to build (a highway) and issue general obligation bonds then K.S.A. 68-580 is the authorized method. The court noted that Moore v. City of Lawrence, 232 Kan. at 357 presented a similar situation wherein they found that the application of the statutes may be initially optional, but once a city chooses to adopt a statutory method the legislature intended for the statutory procedures to be binding. Blevins, 247 Kan. at 12. The Blevins case

placed much emphasis on the fact that a statute existed which would have authorized Douglas county to issue general obligation bonds to construct the highway improvements. The court found it significant that Douglas county copied portions of the available statute in form and substance in their home rule resolution.

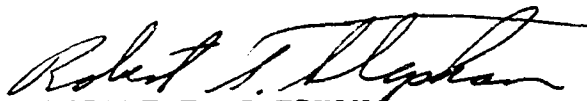
Coffey county's situation appears distinguishable. There are statutes which authorize the issuance of bonds for economic development purposes; these statutes, however, authorize the issuance of industrial revenue bonds. Both K.S.A. 12-1740 and K.S.A. 12-3801 authorize municipalities to issue industrial revenue bonds secured by lease commitments to finance certain facilities including industrial enterprises. Both statutes cite economic development as an appropriate public purpose. If Coffey county wanted to issue industrial revenue bonds for economic development purposes, using the Blevins rationale, either of these statutes would be the appropriate mechanisms. Coffey county does not, however, want to issue industrial revenue bonds to finance an economic development program. Coffey county's proposed resolution provides for the issuance of general obligation bonds to finance municipal development loans with a financing structure and methodology distinct from those authorized by the statutory enactments. We find no statutory enactment which would authorize the issuance of general obligation bonds for an economic development program of the type Coffey county is considering. In an earlier case, the court upheld the constitutionality of municipal development loans finding that as a general rule, a municipality may authorize by ordinance the appropriation of public money for private individuals as long as the appropriation is for a public purpose and promotes the public welfare. See Duckworth v. City of Kansas City, 243 Kan. 386 (1988).

Blevins acknowledges that home rule is available to all cities and counties in all areas of local government where not prohibited by article 12, § 5 of the Kansas constitution or by K.S.A. 19-101a. Blevins, 247 Kan. at 5. The court states that "constitutional and statutory home rule provisions must be given a liberal construction in order to provide counties and cities the largest measure of self-government and that where the legislature is silent, a municipality is free to carve out its own local solutions to problems." Blevins, 247 Kan. at 12, 13.

Based on the information you have provided and the proposed home rule resolution you included for our review, we find that no statutory framework or enabling act exists which would authorize Coffey county to establish exactly the type of economic development program it envisions. Likewise, there appears to be no state enactment which would prohibit the establishment of such a program to provide economic development funds.

In conclusion the county's resolution appears to comply with the home rule limitations established in Blevins because no statutory enactment either authorizes or prohibits the issuance of general obligations bonds for economic development purposes. The decision to establish an economic development program may serve a valid public purpose and is within the purview of the board of county commissioners.

Very truly yours,



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Rebecca E. Floyd

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