

FILE

Subject

Bonds
General

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

April 4, 1974

Opinion No. 74- 121

Mr. D. H. Corson, Jr.
Attorney at Law
434 Brotherhood Building
Kansas City, Kansas 66101

Dear Mr. Corson:

As City Attorney for the City of Bonner Springs you request our opinion relative to the legality of an ordinance establishing a procedure for the issuance of general obligation bonds or no-fund warrants for the purchase of "equipment of all types".

You state that the city has recently undergone an annexation and improvement program which has greatly expanded the needs of the city for additional equipment. Due to a lack of funds in its general operating fund the city has resorted to equipment rental which is often more expensive to the city than ownership. Equipment such as radios, trucks, graders, ditchers, fire apparatus, and automobiles is now or in the future will be needed.

You continue thus:

"After reviewing the statutes it appears that aside from K.S.A. 12-201, which gives cities the authority to buy equipment, make contracts for the equipment and to 'exercise such other and further powers as may be conferred by the constitution or statutes of the state' there are no other specific statutory or constitutional provisions relating to the manner in which equipment may be purchased and the manner in which the purchase may be funded (outside of payment by cash -- presumably from the general operating fund).

Mr. D. H. Corson, Jr.
April 4, 1974
Page Two

"I am not overlooking K.S.A. 12-110 (a) and (b) relating to the purchase of ambulance and fire fighting equipment, but do not feel that those situations apply. K.S.A. 12-110 (a) predicates the use of that procedure on an 'emergency' existing. While there is no question that we are without funds to purchase fire equipment to meet the needs of the greatly expanded area as a result of annexation (some two square miles before annexation and about seventeen square miles now), the statutory use of 'emergency' to me contemplates something other than 'normal' replacement or expansion of equipment. Because of our cooperation and arrangement with other fire companies it would be difficult, if not in some respects a subterfuge, to attempt to maintain that an emergency situation exists. K.S.A. 12-110 (b), on the other hand, provides a method of generating money over a period of time for purchase of ambulance and/or fire fighting equipment but such is not considered an exclusive method but merely 'authorizes' such a fund. We don't feel our needs will wait the period of time it would take to generate the funds needed. My conclusion in respect to this type of equipment is, therefore, that while the City may have the benefit of these provisions the City is not prohibited from funding the purchase of such equipment in the same manner or means as any other equipment.

"Our thought was that K.S.A. 12-137 provided authority for authorizing the City to levy a tax to purchase equipment and funding that purchase by the issuance of no-fund warrants or general obligation bonds since such is ' . . . not limited or prohibited or a procedure for the levy of which is not otherwise prescribed by enactment of the legislature

"Such an ordinance would have to conform to the requirement of passage set forth in K.S.A. 12-137. The ordinance we have in mind would merely establish the procedure and would pave the way for passage at a later time of specific bond ordinances when the definite needs of the City were more apparent.

Mr. D. H. Corson, Jr.
April 4, 1974
Page Three

"Such a bond issue would, of course, be within the City's bond indebtedness limitation inasmuch as we have no power to exclude it from such limitations."

You raise four questions in light of the foregoing.

"(1) Does the City have power to pass an ordinance establishing a procedure for the purchase of equipment and the funding of that purchase by the issue of general obligation bonds or no-fund warrants?"

"(2) Are K.S.A. 12-110 (a) and (b) exclusive methods of purchasing fire and ambulance equipment or can a city purchase such equipment under a procedure established by an ordinance such as described above and in question Number 1?"

"(3) Does the sample ordinance attached hereto meet all the requirements of the constitution and statutes, respecting ordinances of this type, and, in this respect:

(a) does it lack any elements of procedure required; or

(b) does it fully contain all that is necessary and, if not

(c) what additional elements are required?

"(4) Assuming that the ordinance is duly and regularly passed and published, as required by K.S.A. 12-137, contains all the elements you may proscribe, as requested above, and further assuming that the individual purchases are conducted in accordance with the procedure outlined in the proposed ordinance and are otherwise correct, would your office approve a bond transcript based on the procedure established in that ordinance?"

Mr. D. H. Corson, Jr.
April 4, 1974
Page Four

Article 12 §5 of the Constitution of Kansas provides:

"(b) Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class: Provided, That the legislature may establish not to exceed four classes of cities for the purpose of imposing all such limitations or prohibitions. Cities shall exercise such determination by ordinance passed by the governing body with referendums only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction and to enactments of the legislature prescribing limits of indebtedness. All enactments relating to cities now in effect or hereafter enacted and as later amended and until repealed shall govern cities except as cities shall exempt themselves by charter ordinances as herein provided for in subsection (c).

Under the provisions of the foregoing, Kansas cities may by "ordinary" ordinance exercise many of the powers formerly requiring state legislation. In Clafin v. Walsh, 212 Kan. 1, Pg. 6 it is stated:

"Prior to the home rule amendment Kansas cities were seriously limited in their power to solve local problems by local legislation. Cities existed by and through statutes and had only such powers as were expressly conferred by statute without resort to implication (Coronado Development Co. v. City of McPherson, 189 Kan. 174, 368 P.2d 51.)

This concept was substantially changed by the home rule amendment effective July 1, 1961.

The home rule power of cities is stated in Article 12, Section 5 (b) as follows:

'Cities are hereby empowered to determine their local affairs and government'

No longer are cities dependent upon the state legislature for their authority to determine their local affairs and government. Since home rule, cities have power granted directly from the people through the constitution without statutory authorization. (Capitol Cable, Inc. v. City of Topeka, 209 Kan. 152, 161, 496 P.2d 885; Hampton v. City of Wichita, 192 Kan. 534, 389 P.2d 757.)

"The home rule power of cities is not absolute. It is subject to the power of the legislature to act in certain areas--exclusively in some, optionally in others. These limitations on city power are expressly set forth in the home rule amendment. Section 5 (a) of the constitutional provision cited in full above vests absolute and exclusive power in the legislature in regard to the procedure for incorporating cities, the methods of altering boundaries, the methods by which cities may be merged or consolidated, and the methods by which cities may be dissolved. Statutory enactments in these areas are not subject to the exercise of home rule power by charter ordinance.

"The optional powers of the legislature are set forth in Section 5 (b) as limitations or exceptions to the exercise of home rule power by cities. The home rule power is subject to optional control by legislative action in four specific areas:

(1) Enactments of statewide concern which are applicable uniformly to all cities.

(2) Other enactments of the legislature applicable uniformly to all cities

(3) Enactments applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction.

(4) Enactments of the legislature prescribing limits of indebtedness.

Mr. D. H. Corson, Jr.
April 4, 1974
Page Six

"Section 5 (d) of Article 12 requires a liberal construction of the powers and authority granted cities for the purpose of giving to cities the largest measure of self-government. This provision simply means that the home rule power of cities is favored and should be upheld unless there is a sound reason to deny it. Where the legislature has acted in some area a city's power to act in the same area should be upheld unless the legislature has clearly preempted the field so as to preclude city action. Unless there is actual conflict between a municipal ordinance and a statute, the city ordinance should be permitted to stand. (Leavenworth Club Owners Assn. v. Atchison, 208 Kan. 318, 492 P.2d 183.)

K.S.A. 12-137 provides:

"Where, under the power of cities granted by paragraph (b) of section 5 of article 12 of the constitution of Kansas, effective July 1, 1961, the governing body of any city by ordinance proposes to levy and tax, excise, fee, charge or other exaction other than permit fees or license fees for regulatory purposes which is not limited or prohibited or a procedure for the levy of which is not otherwise prescribed by enactment of the legislature as provided by said paragraph (b), such ordinance shall require a two-thirds (2/3) vote of the members-elect of the governing body and shall be published once each week for two (2) consecutive weeks in the official city newspaper or, if there is none, in a newspaper of general circulation in the city.

"No such ordinance shall take effect until sixty (60) days after its final publication, and if within sixty (60) days of its final publication a petition signed by a number of electors of the city equal to not less than ten percent (10%) of the number of electors who voted at the last preceding regular city election shall be filed in the office of the clerk of such city demanding that such ordinance be submitted to a vote of the

Mr. D. H. Corson, Jr.
April 4, 1974
Page Seven

electors, it shall not take effect until submitted to a referendum and approved by a majority of the electors voting thereon: Provided, The governing body of any city may submit any ordinance providing for such levy to a referendum without petition. Ordinances authorizing such levies which shall be submitted to referendum without petition may be passed by a majority vote of the governing body and shall be published once in the official city newspaper, or if there is none, in a newspaper of general circulation in the city. Elections upon such ordinances shall be called and held as hereinafter provided."

The proposed ordinance which you have submitted establishes a procedure for the passage of subsequent city ordinances authorizing the issuance of general obligation bonds or no-fund warrants. It is contemplated that both the bonded debt limitation found at K.S.A. 10-303 and the pertinent provisions of the general bond law K.S.A. Chapter 10, Article 1 will apply to the obligations issued. The obligations will necessitate a tax levy for payment of principle and interest. Accordingly, the procedure strictly follows that established under K.S.A. 12-137 above since it is an "enactment applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction" optionally within the legislature's power to control under the Home Rule Amendment.

We have reviewed the proposed ordinance in light of various enactments limiting finances for cities. Of particular note is the cash basis law K.S.A. 10-1101 et seq., and the budget law K.S.A. Chapter 79, Article 29. We find no authority for disapproval of the procedure proposed by the city. The ordinance itself appears to be in good order. Obligations issued pursuant to it would be approved for registration by this office.

Very truly yours,



VERN MILLER
Attorney General

VM:DRH:bw