

FILE

Subject

Dingus
General

Copy to

STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

May 14, 1974

Opinion No. 74-148

Mr. Earl Dingus
Mayor
Kincaid, Kansas 66039

RE: City of Kincaid - general obligation and waterworks
revenue bonds.

Dear Mr. Dingus:

A few weeks ago this office received the bonds and bond transcript on Kincaid's \$65,000 general obligation bond issue for waterwork improvements. We carefully examined that transcript, and concluded that the controlling law relative to the peculiar circumstances surrounding the proposed issue prevented our approval for its registration. However, we have subsequently received a number of inquiries from the citizens of Kincaid concerning the reasons for turning down their bond issue. We therefore believe it would be helpful to the citizens of your community if this office presented a formal explanation as to our position in this matter.

A fundamental principle of bond law in this state requires the electorate to be accurately notified of the true nature of the scope and funding requirements for a project to be approved by special election. Where this requisite is not properly complied with the election held for such bond issues is void and of no effect. The Kansas Supreme Court has long taken this approach on bond elections and in the recent case, Kimsey v. Bd. of Education, 211 Kan. 618, 625, 507 P.2d 180 (1973), said:

"[t]here can be no quarrel with the general proposition - the elector is entitled to know what his money is going to be used for when he votes. In Unified School District v. Hedrick, 203 Kan. 478, 454 P.2d 536 we noted that this test is applied to all bond propositions, regardless of the authorizing statute or the type of issuing municipality."

The Court in the same case went on to succinctly illuminate its position.

"One general category of cases where this court has held bond propositions 'bad for obscurity' is where the scope and total cost of the project wasn't made known to the voters. The following are typical of this class. In Board of Education v. Powers, 142 Kan. 664, 51 P.2d 421, the total cost of a proposed school building was \$391,500, of which \$176,175 was to come from the federal government; the voters were merely asked to vote \$198,500 in bonds. In Kansas Electric Power Co. v. City of Eureka, supra, the proposal was merely to issue \$65,000 in bonds to construct a power plant and distribution system; no mention was made of an additional required outlay of \$99,974. Most recently, in Unified School District v. Hedrick, supra, the voters were asked to approve a \$15,000,000 bond issue for a long term building program; no mention was made of the fact that the cost of the project was to be \$27,000,000, with the balance of \$12,000,000 coming from building funds and federal grants. In each of these cases the election was voided because of the failure of the ballot proposition to fully apprise the electors of the true nature of the proposed action of the governing body." [Emphasis added]

The question thus precipitated is whether the election notice and ballot of the 1955 special election complied with this elemental requirement. As the notice clearly indicates, the specific purpose for the election was to vote on whether to issue bonds "providing funds to pay the cost of constructing a Water Works System for the purpose of supplying [Kincaid] . . . , and the inhabitants thereof with water." This notice advised the electorate that the total cost of the project would be \$65,000. No indication was ever given (or intended) that further funds would be necessary. Consequently the authority granted the city government to issue bonds was limited to the proposal as voted: one issue of general obligation bonds for \$65,000. Unfortunately Kincaid was unable to secure the waterworks system as planned, and not until nineteen years later was the project capable of being implemented. But, both the cost and method of financing had changed substantially.

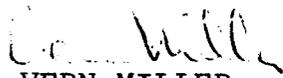
So the crucial issue thus becomes one of determining whether the authorization to issue the \$65,000 general obligation bonds remained valid notwithstanding the fact that the cost of the project nearly doubled and that revenue bonds were necessary to complete the project. We think that authorization based upon the 1955 election was clearly vitiated. The authority to issue those bonds was based solely upon the fact, and circumstances as presented to the electorate by the election notice and ballot. Once these were altered, in view of the requisites established by the Supreme Court of this state (i.e., scope and total cost of the project must be made known to the voters) then the objective for such notice was defeated. If the improvement's cost and method of financing had remained the same then it would have been left to the discretion of the governing as to whether it would be appropriate to issue the bonds after so long a period of time had passed. But these key elements have been greatly altered and in view of this fact we see no alternative but to withhold our approval.

We also think it necessary to advise you that a serious question as to the validity of your recent industrial revenue bond issue is raised by the election notice and ballot used in that election. It appears that the scope and total cost of the project was not accurately presented to the voters as the circumstances warranted.

We have carefully weighed the facts presented by Kincaid's bond issue for some time, and it is not easy for us to reach the conclusion that we have. Never do we like to thwart the efforts of local governments to provide their citizens with such vital necessities as water; it is neither our function nor desire to do so. But we are bound to follow the law as laid down by our courts, and have tried in this case to apply it as fairly as we possibly can.

If we may be of assistance to you with future bond proposals please feel at liberty to contact us.

Very truly yours,


VERN. MILLER
Attorney General

VM:JPS:bw

cc: Gwinn G. Shell
J. D. Conderman