



STATE OF KANSAS

*Office of the Attorney General*

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February 12, 1975

CURT T. SCHNEIDER  
Attorney General

Opinion No. 75- 65

Mr. R. G. Henley, Director  
Municipal Audit Program  
11th Floor - State Office Building  
Topeka, Kansas 66612

Re: K.S.A. 1974 Supp. 10-1116

Dear Mr. Henley:

You have requested an opinion from this office interpreting the phrase, "when provision has been made for payment by the issuance of bonds as provided by law," as it is employed in K.S.A. 1974 Supp. 10-1116. This phrase prescribes a qualification for an exemption to the cash basis law. K.S.A. 1974 Supp. 10-1116 provides in pertinent part:

"The provisions of this act [Cash-Basis Law] shall not apply to contracts and indebtedness created. When payment has been authorized by a vote of the electors of the municipality, or when provision has been made for payment by the issuance of bonds as provided by law, . . ."

Neither the Cash-Basis Act nor the General Bond Law provides definition for the phrase in question. Absent such specific definition it is the opinion of this office, premised upon what is generally accepted throughout the municipal bond industry, that provision is made for payment by the issuance of bonds when the governing body acts overtly to declare the corporation's intent to issue bonds (either by ordinance or resolution) for the payment of a particular project.

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However, the gravamen of your request pivots essentially on what effect, if any, does certain subsequent action or nonaction on the part of the municipality have upon this exempt status once it has been created. You advise that on certain (albeit rare) occasions, the normal process of issuing bonds for the payment of a particular project is substantially interrupted after a municipality has provided for the issuance of bonds as required by law. Two occasions are suggested which appear to so impede the bond issuing process: (1) when a city official negligently acts to obstruct the issuance of bonds (e.g., when a city clerk permits an excessive period of time to lapse between a project's completion and the implementing of a special assessment therefor); and (2) when the necessary expense of immediately issuing bonds is prohibitive to the extent that an excessive period of time is involved before they are finally issued. The specific question thus presented is whether this statutory exemption to the cash-basis law is sustained where the bond issuing process is interrupted as suggested.

The reason for this specific exemption to the cash-basis law, in question, here is evident. If provision for payment of a particular indebtedness by the issuance of bonds is made, the municipality may proceed to incur that indebtedness notwithstanding, it is "in excess of the amount of funds actually on hand in the treasury of such municipality at the time for such purpose," K.S.A. 1974 Supp. 10-1113. That indebtedness remains exempt from the cash-basis requirement only so long as the provision for payment thereof by the issuance of bonds proceeds without interruption or abandonment. The circumstances which may arise to cause such interruptions may vary widely, and it is difficult to conclude categorically as to the effect on the exemption of particular delays and interruptions. Where, for example, a negative cash balance occurs which the city proposes to pay by the issuance of bonds, but chooses to delay the issuance of bonds for its own convenience or expediency, there exists an indebtedness in violation of K.S.A. 1974 Supp. 10-1113. Similarly, where the issuance of bonds is authorized, but delayed through negligence, careless inattentiveness, or through other causes, there similarly results an indebtedness which has been incurred for which no good faith and substantial provision has been made to provide payment by the issuance of bonds. Accordingly, when a municipality provides for the issuance of bonds for the payment of a particular indebtedness, but for reasons of negligence, convenience, economy, or

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otherwise, the city delays or interrupts the normal procedure for the issuance of such bonds, it is the opinion of this office that the indebtedness in question may no longer be deemed to be exempt from the cash-basis requirement by K.S.A. 1974 Supp. 10-1116.

Yours very truly,

*Curt Schneider*  
CURT T. SCHNEIDER  
Attorney General

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