



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

October 15, 1975

ATTORNEY GENERAL OPINION NO. 75-392

Harry B. Phelps, Jr.
Attorney at Law
Logan County Attorney
710 West Second Street
Oakley, Kansas 67748

Re: County and County Officers---Hospitals---Limited
Tax Bonds

Synopsis: Any bonds issued pursuant to K.S.A. 19-1801a
constitute general obligation bonds of the
issuing county and are not subject to the two
mill levy limitation imposed by K.S.A. 79-1947.

* * *

Dear Mr. Phelps:

You have raised an opinion from this office concerning the
question raised by the following facts.

Pursuant to K.S.A. 19-1801, the Board of Commissioners of Logan
County, Kansas were presented with a valid Petition asking that
a tax may be levied for the establishment and maintenance of a
public hospital at Oakley, Logan County, Kansas with a maximum
amount of money proposed to be expended in building a new
hospital to be \$1,300,000.00. The petitioners further petitioned
the Commissioners to submit the questions to the qualified electors
of Logan County, Kansas and further petitioned the Commissioners

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to issue General Obligation Bonds of the county in an amount not to exceed a maximum of \$500,000.00 for the purpose of purchasing a site and constructing and equipping on said site a new hospital building as provided in K.S.A. 19-1801a.

Thereafter, a special bond election was conducted and the following proposition was duly adopted:

"Proposition to levy upon the assessed property of Logan County, Kansas, a tax of two mills on the dollar for the establishment of a new public county hospital in the City of Oakley, Kansas, for the purchase of real estate for hospital purposes, for the construction and equipping of hospital buildings and for maintenance of the same, and for all such purposes, under authority of K.S.A. 19-1801, et seq., in connection with which the Board of County Commissioners shall issue general obligation bonds of the County in an amount not to exceed a maximum of Five Hundred Thousand Dollars (\$500,000.00), to pay a portion of the cost of purchasing a site and constructing and equipping on said site a new public county hospital, the total cost of the same being estimated to be \$1,300,000.00, of which \$800,000.00 will be paid by gifts, devises and bequests from the estates of George Robb, Fritz Hanson and from other persons and from other funds presently available and on hand."

The question now arises whether these bonds, if and when issued, are General Obligation Bonds of Logan County, or in the alternative, are to be Limited Tax Bonds payable solely and only from the two mill tax levy as authorized by K.S.A. 79-1947.

The principal statute in question, K.S.A. 19-1801, provides in pertinent part:

"Whenever the board of commissioners of any county shall be presented with a petition signed by twenty-five percent (25%) of the qualified electors of such county, as determined by the vote for secretary of state at the last preceding general election, ten percent (10%) of whom shall not be qualified electors residing within the city, town or village where it is proposed to locate such public hospital, asking that a tax may be levied for the establishment and mainten-

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ance of a public hospital at a place in the county named therein, and shall specify in the petition the maximum amount of money proposed to be expended in purchasing or building said hospital, such board of commissioners shall submit the question to the qualified electors of the county at the next general election to be held in the county, or if no general election shall be held within six (6) months from the date of the presentation of said petition, then at a special election called for that purpose, if requested in the petitions, which tax shall not exceed the limitation prescribed by K.S.A. 79-1947, for any one year and be for the purchase of a site or sites and the erection thereon of a public hospital or hospital buildings, and for the support of the same; which tax shall be in addition to all other levies authorized by law and shall not be subject to the aggregate tax levy limitations prescribed by K.S.A. 79-1947, or acts amendatory thereof or supplemental thereto; which said election shall be held at the usual places in such county for electing county officers, the vote to be canvassed in the same manner as that for county officers."

The subject of this particular inquiry is brought more clearly to light by the provisions of K.S.A. 19-1801a which states:

"The board of county commissioners of any county which has voted or which may hereafter vote in favor of the establishment and maintenance of a county hospital under the provisions of section 19-1801 of the General Statutes of 1935 or any amendments thereto is hereby authorized and empowered to issue bonds of such county for the purpose of purchasing a site, constructing or purchasing a hospital building and equipping the same. Such bonds shall be issued, sold and retired under the provisions of article 1, chapter 10 of the General Statutes of 1935 and acts amendatory thereof and supplemental thereto." [Emphasis added]

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The controversy here specifically arises by virtue of K.S.A. 79-1947 which limits the maximum mill levy the county commissioners can make in regards to certain listed expenditures. Specifically, in regard to hospitals formed pursuant to K.S.A. 19-1801 it provides:

"The authority of the board of county commissioners of each of the several counties to fix a rate of levy annually for the following county purposes, is hereby limited as follows:

Hospital: Authorized by K.S.A. 1973
Supp. 19-1801 2.00 mills"

The emphasized portion of K.S.A. 19-1801a states that the board of county commissioners of any county are "authorized and empowered to issue bonds of such county for the purpose of purchasing a site, constructing or purchasing a hospital building and equipping the same." The phrase "bonds of such county" may, in our view, be interpreted in only one manner--that bonds issued pursuant to K.S.A. 19-1801a are to be considered as general obligations of the issuing county. It is a fundamental principle of municipal bond law that general obligation bonds are payable from an unlimited general ad valorem tax on all taxable property. 15 McQuillan, Municipal Corporation § 43.05, page 479. This conclusion is further statutorily supported by the fact that K.S.A. 19-1801a goes on to provide "Such bonds shall be issued, sold and retired under the provisions of article 1, chapter 10 of the General Statutes of 1935 and acts amendatory thereof and supplemental thereto."

Under article 1 of chapter 10, municipal bond is defined by K.S.A. 10-102 to "mean and include all bonds issued by any municipality, except railroad aid bonds." K.S.A. 10-112 firmly establishes that "all municipal bonds shall constitute a general obligation of the municipality issuing the same ..."

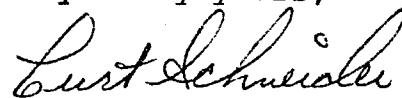
The conflict, however, still remains though as to whether repayment of bonds issued pursuant to 19-1801a are subject to the two mill limitation imposed by K.S.A. 19-1801 and K.S.A. 79-1947. A careful reading of K.S.A. 79-1947 shows that it does not undertake to impose any limitation on the annual levy needed to pay

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bonds issued under K.S.A. 19-1801a. In other words, it is our view that K.S.A. 19-1801 and K.S.A. 19-1801a provide complete and independent alternative procedures for a county to utilize in either the purchasing of a site, the construction of a building or the equipping of a hospital. The principal difference in the two lies in the fact that a county may utilize K.S.A. 19-1801 and the two mill tax levy to maintain a hospital while bonds issued under K.S.A. 19-1801a may not be used for that purpose. In lieu of issuing general obligation bonds, the county may, after approval by the voters, levy an annual tax not to exceed two mills. Conversely, the county may once again, after approval by the voters, issue general obligation bonds in lieu of making the annual two mill tax levy. The board of county commissioners may choose either alternative. Rather than issuing general obligation bonds under K.S.A. 19-1801a, they may instead derive the necessary revenue from the two mill levy. The limitation of K.S.A. 79-1947 is then applicable. If instead the county issues bonds, they constitute general obligations of the county and are payable from an unlimited ad valorem tax. In that instance, the limitation of K.S.A. 79-1947 is not applicable.

Accordingly, it is the opinion of this office that any bonds issued pursuant to K.S.A. 19-1801a constitute general obligation bonds of the issuing county and are not subject to the two mill levy limitation imposed by K.S.A. 79-1947.

Very truly yours,



CURT T. SCHNEIDER
ATTORNEY GENERAL

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