

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 28, 1976

ATTORNEY GENERAL OPINION NO. 76-137

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Wichita, Kansas 67202

Mr. Bernard V. Borst
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Re: Cities--Funds--Transfer and Use of

Synopsis: A contract providing for periodic payments in future years, which expressly provides that such payments are not contractually required, but only that the city shall make its best efforts to budget and appropriate such funds, and which provides that no obligation is created for any funds in excess of those funds lawfully on hand and available for the purpose, does not violate the Kansas cash-basis law, K.S.A. 10-1101 *et seq.*

* * *

Gentlemen:

You enclose for our review a document entitled "City of Wichita Installment Payment Agreement," and request our opinion of the legality of certain provisions thereof in light of the Kansas cash basis law, K.S.A. 10-1101 *et seq.*

The City of Wichita proposes to enter into this agreement with Duncan Industries for the purchase of parking meters. Under the contract, the city agrees to make a total cash payment of

Mr. John Dekker
Mr. Bernard V. Borst
Page Two
April 28, 1976

\$169,734.50, consisting of a cash down payment of \$60,000, and two periodic payments of \$54,867.25, due June 1, 1977 and June 1, 1978. The obligation to make these periodic payments, however, is made subject to certain conditions found in the contract.

One of these, found in paragraph III thereof, states thus:

"Notwithstanding the foregoing, the City of Wichita is obligated to pay only such Periodic Payments or installments thereof as may lawfully be made from funds budgeted and appropriated for the purpose. The City of Wichita agrees to notify Duncan Industries at the earliest possible time of the nonavailability of funds from which to make any Periodic Payment or installment thereof by a letter directed to"

Paragraph IV states thus:

"In the event the City of Wichita may not lawfully make further Periodic Payments or any installment thereof under this contract, Duncan Industries will, within a reasonable time after the end of the current Fiscal Period for which the Periodic Payment has been made, or within a reasonable time after an installment is due and unpaid, enter and take the meters from the City's premises and will retain all sums previously paid by the City of Wichita to Duncan Industries"

The City makes the following representation in paragraph VI:

"The City of Wichita acknowledges and represents to Duncan Industries that at the time of execution of this Agreement funds are available, encumbered for the purpose of this contract, and will remain available from which the City of Wichita lawfully will pay in full the Total Cash Payment and all Periodic Payments to be made within the City of Wichita's current budget year. The City of Wichita further agrees to use its best efforts to budget, appropriate,

Mr. John Dekker
Mr. Bernard V. Borst
Page Three
April 28, 1976

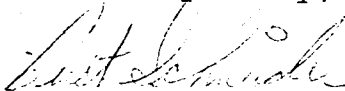
encumber and have available for the purpose, sufficient funds from which to make the Periodic Payments to be made in each succeeding budget year."

Under K.S.A. 10-1113, the city may not create any "indebtedness [which is] in excess of the amount of funds actually on hand in the treasury of such municipality at the time for such purpose" Under the contract as drawn, the extent of the city's obligation to make all or any part of the periodic payments in 1977 and 1978 is measured and limited by the availability of funds lawfully budgeted and appropriated for that purpose. The city incurs, under this agreement, no contractual obligation to make either of those payments, and failure to do so does not subject the city to any action for breach of contract or liability for liquidated damages.

Accordingly, the indebtedness contractually undertaken by the city does not exceed the amount available to and encumbered for the purpose, at the time of execution of the contract. It is contractually obligated to the payment of no funds other than those presently available for the purpose. The contract in substantial outline conforms with one discussed in an opinion issued by the Attorney General to Lawrence E. Christenson, Winfield city attorney, dated August 24, 1971, and we adhere to that opinion. In accordance therewith, we approve this contract as creating no indebtedness in violation of the Kansas cash-basis law.

In addition, in your letter of February 23, 1976, you inquired concerning the legality of a certain type of parking meter which the City of Wichita proposes to use. I have asked the State Sealer to examine one of these meters. I have been informed that since this meter permits the user to retrieve the time remaining on the meter by turning the dial, this solves the major objection to the type of meter in which the time indicator disappears after the coins are inserted. Since this meter you propose to use permits the retrieval of the remaining time, this meter conforms to Kansas law and those portions of the National Bureau of Standards Handbook 44 which have been adopted as administrative regulations by the State Sealer pursuant to the Kansas Weights and Measures Law.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj