

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 18, 1976

ATTORNEY GENERAL OPINION NO. 76- 155

James R. Fetters
Smith County Attorney
Office of County Attorney
Smith Center, Kansas 66967

Re: County and County Officers--County Buildings--
General Obligation Bonds

Synopsis: Smith County may combine ninety-eight thousand dollars (\$98,000) worth of general obligation bonds heretofore issued pursuant to K.S.A. 19-15,116(c) with other authorized financing under K.S.A. 19-15,116 to build a jail facility costing one hundred fifty-eight thousand dollars (\$158,000) without first submitting the question to a vote of the qualified voters.

* * *

Dear Mr. Fetters:

In June, 1975, Smith County issued, pursuant to K.S.A. 19-15, 115 ninety-eight thousand dollars (\$98,000) worth of general obligation bonds for construction of jail facilities. Thereafter, the Secretary of Corrections made certain recommendations concerning deficiencies in the proposed structure's specifications. Inclusion of the recommended changes in specifications have increased the costs to approximately one hundred fifty-eight thousand dollars (\$158,000).

You inquire specifically whether Smith County may utilize the ninety-eight thousand dollars (\$98,000) derived from general obligation bonds in combination with some alternative method of

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financing to meet the increased costs without violating the provisions of K.S.A. 19-15,116(c).

K.S.A. 19-15,116(c) provides:

"(c) Issue general obligation bonds of the county: Provided, That no bonds for any construction, acquisition or improvement, the cost of which exceeds one hundred thousand dollars (\$100,000) shall be issued until the question of the issuance of such bonds shall have been submitted to a vote of the qualified electors of the county and received the approval of a majority of those voting thereon at a general election or at a special election called for that purpose. Such election shall be called and held and bonds issued in the manner provided by the general bond law."

Two potential interpretations of this subsection exist. First, the language may be construed as requiring an election whenever the county intends to issue general obligation bonds, irrespective of the amount of that bond issue and when the entire cost of the project or structure exceeds one hundred thousand dollars (\$100,000). Secondly, the alternative construction holds subsection (c) as authorizing the board of county commissioners to issue up to one hundred thousand dollars (\$100,000) worth of general obligation bonds without an election, regardless of the total cost of the proposed improvement. For reasons discussed below, this latter interpretation is in harmony with my views.

Acceptance of the first of the above interpretations requires that the phrase contained in the proviso, "the cost of which exceeds one hundred thousand dollars (\$100,000)", be construed as modifying the words "construction, acquisition or improvement", objects of the preposition "for". However, it is equally arguable that the phrase was intended to modify the subject of the proviso, the word "bonds". Under such a construction, the meaning would be as if the proviso had been drafted as follows:

"That no bonds, the cost of which exceeds one hundred thousand dollars (\$100,000), shall be issued for any construction, acquisition of improvement until the question of

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drafted as follows:

"That no bonds, the cost of which exceeds one hundred thousand dollars (\$100,000.00), shall be issued for any construction, acquisition or improvement until the question of the issuance of such bonds shall have been submitted to a vote of the qualified electors of the county and received the approval of a majority of those voting thereon at a general election or at a special election called for that purpose."

Thus, with an apparent degree of ambiguity established through these contradictory constructions, it becomes essential to evaluate other indices as to subsection (c)'s intended meaning.

It is fundamental in the law of municipal securities that a general obligation bond constitutes a valid debt of the issuing municipality and is subject to repayment through the collection of taxes levied annually to meet the principal and accrued interest on matured bonds and coupons. Thus, irrespective of which interpretation to subsection (c) is adopted, the taxpayer's liability without an opportunity to vote on the question is limited to those annual taxes necessary to repay that amount not exceeding one hundred thousand dollars (\$100,000.00). In other words, if the county proposed to issue general obligation bonds in excess of one hundred thousand dollars (\$100,000.00), both interpretations to the proviso of subsection (c) would mandate an election.

Subsection (h) of K.S.A. 19-15,116 provides that the county ". . . may combine any two or more of such methods of financing for the purposes herein authorized." Subsection (b) states:

"(b) Receive and expend grants-in-aid of state or federal funds;"

In many instances, receipt of federal money requires a variable percentage matching commitment on the part of the recipient municipality. To conclude that in each instance where the total cost of the proposed public building exceeds one hundred

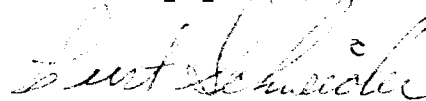
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thousand dollars (\$100,000), irrespective of the proposed amount of general obligation bonds to be issued by the county, would effectively truncate the authority granted by virtue of subsection (h). Realistically, it must be conceded that few are those public buildings which would not entail costs beyond one hundred thousand dollars (\$100,000). It cannot be gainsaid that the Legislature evidenced a clear intent in subsection (c) to require that county's taxpayers be burdened with the costs of an election each time a public building costing in excess of one hundred thousand dollars (\$100,000) is proposed irrespective of that amount the taxpayers would be called upon to repay through taxes.

No clearer example exists of the problems associated with these two varying interpretations than those presently encountered by Smith County. Smith County has heretofore validly issued ninety-eight thousand dollars (\$98,000) worth of general obligation bonds for construction of county jail facilities. Faced with additional costs precipitated by recommendations of the Secretary of Corrections, the county must either build a substandard facility for ninety-eight thousand dollars (\$98,000) or risk raising a possible challenge to the validity of the prior issue of general obligation bonds used in connection with a project costing in excess of one hundred thousand dollars (\$100,000) without first having an election on the proposition.

Thus, it is my considered opinion that the real focus of the proviso to K.S.A. 19-15,116(c) centers upon the taxpayers potential liability to repay the bonded indebtedness resulting from the construction, acquisition or improvement of a public building. No prejudice whatsoever results to the taxpayers by token of the fact that the proviso to subsection (c) is construed as monetary limitation on the issuance of bonds without an election as opposed to a monetary limitation on the entire project. Accordingly, it is my opinion that Smith County may combine the ninety-eight thousand dollars (\$98,000) worth of general obligation bonds heretofore issued pursuant to K.S.A. 19-15,116(c) with other authorized financing under K.S.A. 19-15, 116 to build a jail facility costing one hundred fifty-eight thousand dollars (\$158,000) without first submitting the question to a vote of the qualified voters.

Sincerely yours,



CURT T. SCHNEIDER
Attorney General