

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 30, 1976

ATTORNEY GENERAL OPINION NO. 76-239

J. Raymond Eggleston
Attorney at Law
P. O. Box 188
Medicine Lodge, Kansas 67104

Re: Corporations--Housing Law--Housing Authority--
Issuance of Bonds

Synopsis: The provisions of K.S.A. 10-101 et seq. are applicable to and govern the issuance of municipal bonds issued pursuant to the Municipal Housing Law, K.S.A. 17-2338 et seq. Accordingly, the potential maturity schedule for bonds issued pursuant to this authority is governed by K.S.A. 10-103.

* * *

Dear Mr. Eggleston:

As attorney for the Medicine Lodge Housing Authority, you have inquired whether the housing authority is empowered to issue in the name of the City forty-year tax exempt housing bonds.

K.S.A. 17-2340 provides:

"Every municipality in addition to other powers conferred by this or any other act, shall have power, by proper resolution of its governing body, to create as an agent of such municipality an authority to be known as the 'housing authority' of the municipality. The municipality may delegate to such authority any or all of the powers conferred on the municipality by this act, . . . "

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K.S.A. 17-2351 provides:

"A municipality shall have power to issue bonds from time to time in its discretion, for any of the purposes of this act. A municipality shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. A municipality may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds on which the principal and interest are payable (a) exclusively from the income and revenues of the project financed with the proceeds of such bonds, or (b) exclusively from the income and revenues of certain designated housing projects whether or not they are financed in whole or in part with the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any loan, grant or contribution or parts thereof from the federal government or other source, or a pledge of any income or revenues connected with a housing project or a mortgage of any housing project or projects.

Neither the governing body of a municipality nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof hereunder. The bonds and other obligations issued under the provisions of this act (and such bonds and obligations shall so state on their face) shall be payable solely from the sources provided in this section and shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not under any circumstances become general obligations of the municipality. Bonds issued pursuant to this

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act are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon and income therefrom, shall be exempt from taxes."

Thus, the municipality has the perogative to authorize the housing authority created pursuant to K.S.A. 17-2338 to issue bonds. K.S.A. 17-2351 makes clear that these bonds are payable solely from the income and revenues of the project financed with the proceeds of such bonds, or exclusively from the income and revenues of certain designated housing projects whether or not they are financed in whole or in part with the proceeds of such bonds. The statute goes on to specifically provide that bonds and other obligations issued under the provisions of this act, and such bonds and obligations shall so state on their face, shall be payable solely from the sources provided in this section and shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not under any circumstances become general obligations of the municipality. Finally, the statutes states that these bonds are to be tax exempt.

Thus, the law permits the municipality to specifically empower the housing authority to issue bonds. If the housing authority has acquired this perogative, it may issue tax exempt bonds for those purposes authorized by and set forth in K.S.A. 17-2338 et seq. or as otherwise granted or limited by the authorization contained in the enabling resolution of the governing body of the municipality.

The maximum length of the proposed maturity schedule bears separate consideration. K.S.A. 10-103 provides in pertinent part:

"All municipal bonds including bonds payable from assessments against the property benefited, shall be issued to mature in not more than twenty (20) installments of approximately equal

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amounts each year . . .
The first such installment shall mature
not more than two (2) years after the
date of issuance . . . "

K.S.A. 10-125 states:

"This act shall govern the issuance
of all municipal bonds, except where
different provisions are specifically
provided by law, in which case the
specific provisions shall control
only so far as they conflict with
this act."

In setting forth the provision to be contained in bonds issued
pursuant to the authority contained in K.S.A. 17-2351,
K.S.A. 17-2353(j) provides:

"Exercise all or any part or combination
of the powers herein granted, make such
covenants (other than and in addition
to the covenants herein expressly
authorized) and do any and all such acts
and things as may be necessary or con-
venient or desirable in order to secure
its bonds, or, in the absolute discretion
of said municipality, as will tend to make
the bonds more marketable notwithstanding
that such covenants, acts or things may
not be enumerated herein.

This act, without reference to other
statutes of the state, shall constitute
full authority for the authorization and
issuance of bonds hereunder. No other
act or law with regard to the authoriza-
tion or issuance of obligations that
requires a bond election or in any
way impedes or restricts the carrying
out of the acts herein authorized
to be done shall be construed as
applying to any proceedings taken
hereunder or acts done pursuant hereto."

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Furthermore, K.S.A. 17-2357 states in whole:

"In addition to the powers conferred upon a municipality by other provisions of this act, a municipality is empowered to borrow money or accept contributions, grants or other financial assistance from the federal government for or in aid of any housing project within its area of operation, to take over, lease or manage any project or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this act to authorize every municipality to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any housing project by such municipality. To accomplish this purpose a municipality, notwithstanding the provisions of any other law, may include in any contract for financial assistance with the federal government any provisions, which the federal government may require as conditions to its financial aid of a housing project, not inconsistent with the purposes of this act."

Finally, K.S.A. 17-2352 addresses itself specifically to the problem of the maximum maturity dates of housing authority bonds by providing:

"Bonds of a municipality shall be authorized by its resolution and may be issued in one or more series and

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shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, not exceeding the maximum rate prescribed by K.S.A. 1972 Supp. 10-1009, to be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium) as such resolution, its trust indenture or mortgage may provide."

K.S.A. 17-2353(j), 17-23-57, 17-2352, could arguably be construed to evidence a legislative intent that bonds issued pursuant to K.S.A. 17-2351 be governed exclusively by the requirements of the Municipal Housing Law, K.S.A. 17-2338 et seq., and are therefore not restricted by K.S.A. 10-103 or any other statute as to the maximum number of years in which the bonds must mature.

Several factors argue against such a broad conclusion. First, K.S.A. 10-125 mandates that the requirements of K.S.A. 10-101 et seq. shall govern the issuance of all municipal bonds, the only recognized exception being where different provisions are specifically provided. Close scrutiny of the Municipal Housing Law, and in particular K.S.A. 17-2353(j), 17-2357, 17-2353 reveals no instance in which housing authority bonds are specifically exempted from the requirements of the general bond law, K.S.A. 10-101 et seq. K.S.A. 17-2353(j) specifically recites that the Municipal Housing Law, K.S.A. 17-2338 et seq., shall constitute full authorization for the issuance of bonds without reference to any other statute. K.S.A. 10-101 et seq. does not vest authority for any Kansas municipality to issue bonds; it merely provides the ground rules of uniform procedure to employ in the issuance. Thus, the recital of complete authorization merely vests the municipality, or its delegatee, with complete and independent authority to issue bonds--not prescribe the manner of their issuance.

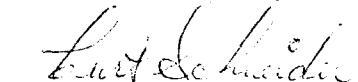
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Secondly, in first enacting K.S.A. 10-125, the Legislature clearly expressed a positive intent that both present and future legislative authorizations to issue municipal securities be governed by the prescriptions of the general bond law. Thus, the fact that the Municipal Housing Law was enacted subsequent in time to K.S.A. 10-125 is of no consequential significance.

You have further inquired whether the Medicine Lodge Housing Authority has legislative authority to utilize Section 231 of the National Housing Act of 1974 to issue bonds on the note. K.S.A. 17-2357, quoted earlier, probably empowers the municipality or its delegates to meet virtually any and all requirements the federal government may impose.

Thus, the Legislature has clearly demonstrated its desire that the Housing Authority have broad-reaching powers in its dealing with the federal government. The only limitation is that it not conflict with any other provision of the Municipal Housing Law. Whether Section 231 permits bonds to be insured is a matter within the province of federal law. I regret that I cannot provide an answer to this portion of your request.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv