



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 22, 1977

ATTORNEY GENERAL OPINION NO. 77-279

Mr. Richard A. Euson
Dresie, Jorgensen, Wood & Euson
433 North Broadway
Wichita, Kansas 67202

Re: Cash-Basis Law--Rental-Purchase Agreements--Cancellation

Synopsis: The privilege of cancelling a rental-purchase agreement does not excuse an obligation from compliance with the cash-basis law, K.S.A. 10-1101, et seq., for until that privilege is exercised, the obligation constitutes a binding obligation on the municipality, and which must comply with the cash-basis law for so long as it remains outstanding.

* * *

Dear Mr. Euson:

You inquire concerning the legality of a rental agreement entered into by the City of Maize, for the rental and purchase of certain radar equipment. The agreement provides for 36 monthly payments, in an amount constituting the purchase price thereof. The city may purchase the equipment at any time by payment of the total remaining unpaid installments. In effect, the agreement constitutes a purchase agreement for the property. You inquire whether section 3 of the agreement forecloses any question of violation of the cash-basis law. That section provides thus:

"Lessee may cancel this agreement at any time after making the first two payments by giving 30 days notice to the lessor and returning the above listed equipment to lessor,

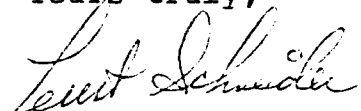
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or to its order, in good condition as received, less normal wear, tear, and depreciation. Upon such proper return lessee shall have no obligation to make any payments thereunder accruing."

The privilege of cancellation does not immunize the agreement from the cash-basis law. The agreement must be measured against the cash-basis law on the basis of the obligation which exists unless and until the privilege of cancellation is exercised, for unless and until that occurs, the agreement constitutes a binding obligation on the city for which sufficient funds must be on hand and available for that purpose at the time the obligation is incurred. K.S.A. 10-1113.

Accordingly, it is my opinion that section 3 does not constitute compliance with the cash-basis law.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj