



STATE OF KANSAS

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Curt T. Schneider
Attorney General

December 7, 1977

ATTORNEY GENERAL OPINION NO. 77-382

Mr. Theodore H. Hill
Sedgwick County Counselor
Room 434- Sedgwick County Courthouse
Wichita, Kansas 67203

Re: Counties--Home Rule--Industrial Development Bonds

Synopsis: A county in the exercise of its statutory home rule powers may authorize the issuance of industrial revenue bonds, analogous to those now authorized for cities by K.S.A. 12-1740 *et seq.* Questions regarding the taxability of all income or interest therefrom should be referred to the Internal Revenue Service and the Kansas Department of Revenue, for counties cannot in the exercise of their home rule powers exempt such interest and income from income tax liability.

* * *

Dear Mr. Hill:

You inquire whether a county, acting pursuant to K.S.A. 19-101 *et seq.*, may authorize the issuance of industrial revenue bonds, such as those cities are now authorized to issue pursuant to K.S.A. 12-1740 *et seq.* For the purposes of this opinion, I assume the county is considering the enactment of local legislation pursuant to K.S.A. 19-101a *et seq.* which is closely analogous to the statutory authority provided cities in the statutes referenced above.

K.S.A. 12-1740 declares the purpose of the authorizing legislation in somewhat elaborate language. Most essentially, the purpose of the act is to promote the general economic welfare and prosperity of the state through promotion and development of business and

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and industry, by facilitating the location of new business and industry, and the expansion of existing concerns, and to promote economic stability of the state by providing greater employment opportunities and diversification of industry. Ch. 62, § 5, L. 1977 provides the central authority of the act thus:

" . . . any city shall have power to issue revenue bonds, the proceeds of which shall be used only to purchase, construct, reconstruct, equip, maintain or repair buildings and to acquire sites therefor, and to enlarge or remodel said buildings and equip the same, for agricultural, commercial, hospital, industrial, natural resources, recreational development and manufacturing facilities with power to enter into leases or lease-purchase agreements by ordinance with any person, firm or corporation for said facilities, said facilities to be constructed in any city or its environs without limitation as to distance, providing the governing body of said city declares that said facility, if in being, would promote the welfare of the city"

K.S.A. 12-1742 specifies certain mandatory provisions of such lease or lease-purchase agreements, and prescribes the responsibility of the county treasurer for the distribution of any payment in lieu of taxes which is provided by the lease or lease-purchase agreement to be made by the occupant of the property. K.S.A. 12-1743 provides that any obligation issued under the act shall be payable solely from rentals of the facilities involved, and outlines those costs for which bonds may be issued. K.S.A. 12-1744 provides that the city may by ordinance pledge the facility purchased or constructed and net earnings therefrom to the payment of the bonds and interest thereon, and provide that the net earnings shall be set aside as a sinking fund for that purpose. K.S.A. 12-1745 restricts the amount of bonds issued to the actual cost of the facility and site therefor. K.S.A. 12-1746 provides that all bonds issued under this act and all income and interest therefrom shall be exempt from all state taxes except inheritance taxes.

K.S.A. 19-101a(a) commences thus:

"Counties are hereby empowered to trans-act all county business and perform such powers

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of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions or prohibitions"

This section grants counties a substantial measure of general legislative authority. The board of county commissioners may perform "such powers of local legislation and administration as they deem appropriate," subject to restrictions not applicable here. The primary question is whether the issuance of industrial revenue bonds is an appropriate matter of local legislation.

Certainly, the declared legislative purposes stated at K.S.A. 12-1740 for which cities are authorized to issue industrial revenue bonds apply equally to counties. A county, in the exercise of its general legislative and administrative authority, might reasonably wish to take appropriate steps to "promote, stimulate and develop the general economic welfare and prosperity" of the county, through the "promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources and of recreational development." The county might well wish to "encourage and assist in the location of new business and industry" and the "expansion of existing business and health development," and to "promote the economic stability" of the county by providing "greater employment opportunities, diversification of industry and improved physical and mental health," and thus promote the "general welfare" of its citizens. Clearly, the legislative purposes for which a city is authorized by statute to issue industrial revenue bonds apply equally to counties.

Thus, legislation promoting these concerns through the issuance of industrial revenue bonds is manifestly an appropriate county governmental function. It is necessary, however, that the legislation be "local" in nature. Under K.S.A. 12-1740 et seq., the issuance of industrial revenue bonds is entirely a local matter. The decision to authorize such bonds rests solely with the local governing body, upon a finding that the "facility, if in being, would promote the welfare of the city." Apart from the express authority to construct a facility either in the city or its environs, the issuance of such bonds has no extralocal effect whatever. Likewise, authority to enter into a lease or lease-purchase agreement respecting property purchased or constructed with the proceeds of such bonds, and the fixing of the terms and conditions of such agreements, is also a local matter. The amount of rental, the interest rate, and any provision for a payment in lieu of

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taxes are likewise matters to be determined locally. In appropriate county legislation, the board of county commissioners might provide for payments in lieu of taxes, and the apportionment thereof. Whether the lease or lease-purchase agreement should include a provision for payment in lieu of taxes is itself a local matter, to be determined by negotiation between the county and the occupant, and the distribution or apportionment of any such payment is likewise a matter which the county might prescribe as it deems appropriate. Local legislation is likewise appropriate for pledging the facility and net earnings therefrom to the payment of the bonds, and for providing a sinking fund for that purpose.

K.S.A. 12-1746 provides that "[a]ll bonds issued pursuant to this act and all income or interest therefrom shall be exempt from all state taxes except inheritance taxes." It is beyond the power of local county legislation to exempt any income whatever from state taxes, for the application of the state income tax code is not a "local" matter. Thus, this statutory exemption would not apply to income or interest from such bonds authorized by county resolution. Any question concerning income tax liability under the Internal Revenue Code should be referred to the Internal Revenue Service.

A further question may arise concerning the exemption of the leased property from ad valorem taxation. Exemptions from taxation are prescribed by K.S.A. 1976 Supp. 79-201 and -201a. The latter section, paragraph second exempts certain property as follows:

"All property used exclusively by the state or any municipality or political subdivision of the state: *Provided, That all property owned or operated by the state or any municipality or political subdivision of the state which is used or to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be 'used exclusively' by the state, municipality or political subdivision for the purposes of this act: Provided, however, That any property constructed or purchased with the proceeds of industrial revenue bonds issued . . . as authorized by K.S.A. 12-1740 to 12-1749 . . . issued on or after July 1, 1963, shall be exempt from taxation only for a period of ten (10) calendar years after the calendar year in which the said bonds were issued.*" [Emphasis supplied.]

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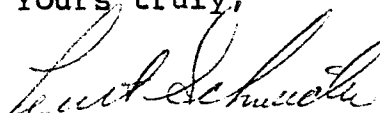
The facility acquired or constructed by the county is owned by it, and it is, of course, one for which bonds may be, and indeed were, issued, and it is used by the city for lease to a private corporation in the furtherance of legislative purposes such as those set forth at K.S.A. 12-1740. Without belaboring the distinction between governmental and proprietary purposes, certainly the property is being used by the city as its owner in one or the other fashion. The property, thus, would be exempt from ad valorem taxation under the underscored language. However, because the bonds would not be issued under K.S.A. 12-1740 *et seq.*, but under the county's own resolution, the property would not fall within the last-quoted proviso. The county cannot, of course, enlarge the statutory exemptions from taxation through the exercise of its home rule powers.

Next, you ask whether, if our opinion supports the authority of the county to issue industrial revenue bonds, whether the resolution authorizing them should contain language indicating that the bonds may be paid only from revenues received from the properties for which the bonds were issued, and providing that only the assets or property for which the bonds were issued, and the net income therefrom, are pledged to secure the bonds so issued. It is not clear from your letter what additional or alternative sources of revenue might be considered as available for pledging toward the payment of such bonds. At this point, I would suggest that the provisions you describe, which are analogous to provisions in K.S.A. 12-1740 *et seq.*, be included in the authorizing resolution.

Additionally, you ask whether the property or facility for which bonds may be authorized by the county may be located within incorporated cities within the county, or whether such facilities or property must be located outside the city limits of incorporated cities in the county. In my judgment, such bonds may be authorized for properties or facilities located anywhere within the county, within or without the limits of incorporated cities.

Lastly, I might point out that authority for such industrial revenue bonds is properly provided not by a charter resolution, but by an ordinary resolution adopted pursuant to K.S.A. 1976 Supp. 19-101a(b).

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj