

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 28, 1978

ATTORNEY GENERAL OPINION NO. 78- 98

Mr. William G. Nichols
Area Counsel
Department of Housing and
Urban Development
Two Gateway Center
Kansas City, Kansas 66101

Re: Cities--Housing Authorities--Powers

Synopsis: A municipality or housing authority in Kansas, organized under K.S.A. 17-2338, *et seq.*, is legally authorized to utilize a nonprofit corporation as its duly authorized agency or instrumentality to act on its behalf in the issuance of tax-exempt bonds, the proceeds of which would be used in the construction of housing under the Kansas Municipal Housing Law.

* * *

Dear Mr. Nichols:

You request my opinion upon a question which continues to surface in Kansas in the administration of certain federal housing programs.

Specifically, you inquire whether a municipality or housing authority in Kansas, which is authorized to act as a public housing authority under 24 C.F.R. § 811, is empowered to create or utilize a nonprofit corporation as its agent or instrumentality to act on its behalf in the issuance of tax-exempt bonds, the proceeds of which would be applied to the construction of housing, to be owned either by the public housing authority, a not-for-profit housing authority agent or private profit-motivated owner, for low and moderate income families under the Kansas Municipal Housing Law, K.S.A. 17-2336 *et seq.*

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I understand that the referenced regulation of the Secretary of Housing and Urban Development prescribes the terms under which the interest on bonds which are issued by a qualified entity for the purpose of financing a low-income housing project may be declared to be exempt from federal income taxation. One entity which may qualify as an issuer of tax exempt bonds is a not-for-profit corporation, and in the proposal which prompts your request, it is contemplated that this is the form of entity to be used. When the entity which issues the bonds is a not-for-profit corporation, the city or local housing authority must take certain actions in order to satisfy the requirements of the regulations. The city or local housing authority, the "parent entity," must "designate" the not-for-profit corporation as its duly authorized agent or instrumentality, and its utilization of the corporation as such agent or instrumentality shall not be prohibited by law. Section 811.105 also allows the not-for-profit corporation to be created by the parent entity, but that procedure is not proposed to be followed in the present instance, I understand. In the proposal which prompts your inquiry, it is proposed that the corporation would be created independently, and when organized, would be designated by resolution of the parent entity, as its duly authorized agent or instrumentality. Under the referenced regulations, the parent entity must approve the articles of incorporation and the bylaws of the not-for-profit corporation. The parent entity must also approve the project to be financed, the projected expenditures, and the issuance of bonds by the not-for-profit corporation.

You advise that 24 C.F.R. § 811 requires that a "city or local housing authority must have a parental relationship with a separate entity" which is created or utilized by the city or housing authority to issue bonds which are exempt from federal taxation. The application must identify the parent authority, and establish that the separate entity, in this instance, a not-for-profit corporation, was designated or created as the duly authorized agency or instrumentality of the parent authority, and that such creation or designation is not prohibited by state law.

K.S.A. 17-2337 *et seq.* comprises the Kansas Municipal Housing Law. Under K.S.A. 17-2370, the city is authorized to delegate its powers thereunder to a housing authority:

"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

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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, and may authorize it . . . to delegate to one or more of its agents or employees such powers or duties as the authority may deem proper."

K.S.A. 17-2345 constitutes a general enumeration of the powers of the city governing body and, hence, of its housing authority. Among those powers, under subsection (c), it is authorized

"[t]o arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project . . . and . . . to agree to any conditions attached to federal financial assistance, and to comply with any conditions which the federal government may have attached to its financial aid of the project."

In addition, under K.S.A. 17-2351, "[a] municipality shall have power to issue bonds from time to time in its discretion, for any of the purposes of the act."

Because the particular proposal which prompts your request does not envision, as I understand it, the creation of a not-for-profit corporation by the municipality or housing authority, but rather the designation of an existing not-for-profit corporation as the agent or instrumentality thereof, we deal only with the latter question here. As you point out, there is no explicit prohibition in the Municipal Housing Law or elsewhere in the Kansas statutes against the proposal described above.

A municipal housing authority created under K.S.A. 17-2338 et seq. is itself an agency of the city, to which the city governing body may delegate any or all of its powers under the act. There is no statutory inhibition against further delegation or, more precisely, subdelegation. Indeed, K.S.A. 17-2340 explicitly permits the municipality to authorize the housing authority to delegate to "one or more of its agents or employees such powers or duties as the authority may deem proper." This provision, standing alone,

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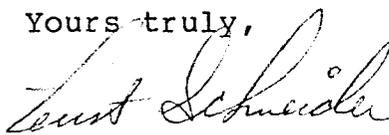
permits a local housing authority to enter into a relationship with a not-for-profit corporation whereby the latter acts as the agency or instrumentality of the former, upon approval of the city governing body. The powers to be exercised by the corporation in behalf of the authority would be those prescribed in the articles of incorporation which, as you indicate, would be subject to approval by the authority prior to the designation.

As you point out, under K.S.A. 17-2345(c), the authority may contract for the furnishing of "service, privileges, works, or facilities" in connection with a housing project. The designation of a not-for-profit corporation as the agency or instrumentality of the authority does not entail a bilateral contractual relationship, as I understand the proposal, for the question as it has been presented to us involves not the contractual authority of the housing authority or municipality, but the legal authority of the housing authority to constitute another entity, in this instance a not-for-profit corporation, to act as its "agency or instrumentality." That authority is provided by K.S.A. 17-2340, in my view, as indicated above, upon the approval thereof by a resolution of the city governing body.

As indicated under K.S.A. 17-2351, the municipality may issue bonds for any of the purposes of the act, and under K.S.A. 17-2340, it may delegate that power to its housing authority. For the reasons stated above, this power, too, may be delegated to a not-for-profit corporation which is duly constituted as the agent or instrumentality of the housing authority, once again, upon approval by a resolution of the city governing body.

Accordingly, to respond specifically to your question, it is my opinion that a municipality or housing authority in Kansas, organized under K.S.A. 17-2338, et seq., is legally authorized to utilize a nonprofit corporation as its duly authorized agency or instrumentality to act on its behalf in the issuance of tax-exempt bonds, the proceeds of which would be used in the construction of housing under the Kansas Municipal Housing Law.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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