

STATE OF KANSAS

## Office of the Attorney General

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*Curt T. Schneider*  
Attorney General

August 15, 1978

ATTORNEY GENERAL OPINION NO. 78- 263

Mr. R. Michael Latimer  
City Attorney of Wellsville  
Title Building  
Ottawa, Kansas 66067

Re: Bonds--Proceeds--Uses

Synopsis: Proceeds of general obligation bonds which were approved by the voters for construction of a 12-inch water transmission line may be used for the construction of a 10-inch water transmission line, for the reduced pipe dimension does not constitute a material departure from the project as approved by the electorate, nor a diversion of the bond proceeds for a purpose other than that for which they were approved.

\* \* \*

Dear Mr. Latimer:

As City Attorney for the City of Wellsville, you inquire concerning the use of proceeds of general obligation waterworks bonds which have been approved by the city governing body for the construction of a twelve-inch water transmission line. Reference to a "12-inch water transmission line" appear throughout the proceedings, including the ordinance calling the bond election, the notice of special bond election, the ballot proposition and the bond ordinance.

Apparently, since issuance of these bonds, the U.S. Farmers Home Administration, which had obligated funds for a part of the total cost of the project, now will agree to participate in the project only so long as the line does not exceed ten inches. The question

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is raised, thus, whether proceeds of the issue may be used to construct a 10-inch rather than a 12-inch line. K.S.A. 10-117 prohibits diversion of bond proceeds to any purpose other than that for which they were authorized:

"Any person who shall appropriate, use, or aid or abet in appropriating or using any of the funds procured by the sale of bonds by a municipality for any other purpose than that for which such bond issue was intended . . . shall be deemed guilty of a misdemeanor . . . and shall also be liable in a civil action to the municipality issuing the bonds for the amount so misappropriated or used."

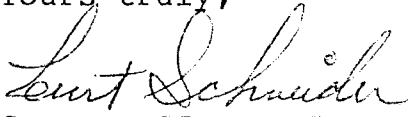
When the notice of election and ballot proposition all describe the purposes for which the funds must be used, the proceeds of bonds approved thereby may be used only for that purpose. When, however, the ballot proposition and other legal notices and recitals in the bond proceeds describe the proposed project in substantial detail, and for whatever reason it appears that the project cannot be executed in strict and absolute compliance with the proposition and like recitals, the question to be resolved is whether the project which can be realized is substantially, if not exactly, that which the voters approved. If the project does not entail a material departure from that which was approved by the voters, their wishes are deemed to have been respected. A departure is material if the resulting project will not serve the purposes for which the voters approved the issuance of bonds. A change in the diameter of the water transmission line from 12 inches to ten inches is not, in my view, a substantial departure from the project described on the ballot and in the other proceedings leading to the issuance of the bonds. A ten-inch pipe will serve exactly the same purpose as a twelve-inch pipe, the transmission of large amounts of water to provide an adequate supply for the community. You enclose various correspondence which outlines the consequences of using the smaller pipe from an engineering and technical standpoint.

In terms of the scope of the voters' approval, however, the use of a line of slightly reduced dimension nonetheless serves very substantially the same purpose for which the voters approved a twelve-inch line. In short, in my judgment, the use of the bond proceeds to construct a ten-inch water transmission line rather

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than a twelve-inch transmission line is not a substantial departure from the project approved by the voters, and does not constitute a diversion of the bond proceeds to a purpose other than that for which they were approved.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj