



STATE OF KANSAS

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October 4, 1978

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ATTORNEY GENERAL OPINION NO. 78- 317

Mr. Donald E. Martin  
City Attorney  
Ninth Floor - Municipal Office Building  
One Civic Center Plaza  
Kansas City, Kansas 66101

Re: Cities--Home Rule--General Obligation Bonds

Synopsis: With the repeal of K.S.A. 10-427, a city governing body may, in the exercise of its legislative authority under Article 12, § 5 of the Kansas Constitution, authorize the issuance and sale of general obligation bonds in order to pay judgments against the city.

\* \* \*

Dear Mr. Martin:

Formerly, K.S.A. 10-427 provided express statutory authority for the issuance of certain municipal refunding bonds, stating in part thus:

"Every municipality of the state . . . is hereby authorized and empowered to take up and refund, with the consent of the holders, any outstanding bonded indebtedness of such municipality, including any matured interest thereon and including any judgment or judgments upon any such indebtedness and also any other judgments and awards established against such municipality and to issue in lieu thereof the negotiable refunding bonds of such municipality . . . ."

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This provision was repealed by the 1978 legislature. Ch. 53, L. 1978. You enclose a copy of an ordinance which is proposed for enactment by the City of Kansas City, section 1 of which states thus:

"That the governing body of the City of Kansas City, Kansas is hereby authorized to pay judgments against the City from the Judgment Fund established by the City, or if moneys in the Judgment Fund are insufficient, or if the governing body deems it necessary, the governing body of the City may issue general obligation bonds payable by the City-at-large to pay such judgments. Such general obligation judgment funding bonds may be authorized and issued by resolution of the governing body of the City."

With the repeal of express statutory authority, you inquire whether enactment of this ordinance, and the issuance of general obligation bonds thereunder, is within the constitutional grant of legislative power given to Kansas municipalities under Article 12, § 5 of the Kansas Constitution. Subsection (b) thereof commences thus

"Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions . . . ."

In the exercise of this authority, cities are subject "to enactments of the legislature prescribing limits of indebtedness."

In *Claflin v. Walsh*, 212 Kan. 1, 509 P.2d 1130 (1973), the court addressed itself in some generality to the grant of power to cities under this constitutional provision:

"Prior to the home rule amendment Kansas cities were seriously limited in their power to solve local problems by local legislation. Cities existed by and through statutes and

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had only such powers as were expressly conferred by statute without resort to implication . . . . This concept was substantially changed by the home rule amendment effective July 1, 1971. . . . No longer are cities dependent upon the state legislature for their authority to determine their local affairs and government. Since home rule, cities have power granted directly from the people through the constitution without statutory authorization.

\* \* \*

Section 5(d) of Article 12 requires a liberal construction of the powers and authority granted cities for the purpose of giving to cities the largest measure of self-government. This provision simply means that the home rule power of cities is favored and should be upheld unless there is a sound reason to deny it." 212 Kan. at 6-7.

Article 12, § 5 vests a broad measure of self-government in Kansas cities. This direct constitutional grant vests in city governing bodies general legislative authority to determine the "local affairs and government" of the city. The management of a city's financial affairs, and the manner and method of meeting its financial obligations, are the preeminent responsibilities of the city governing body, and are clearly local in nature. Within the constraints of express statutory restrictions, the city governing body is free to exercise its legislative authority to provide such funds as are needful for the city's obligations. The issuance and sale of general obligation bonds of the municipality, and the levy of taxes therefor, is clearly a lawful municipal revenue source for the city. The city governing body may exercise its legislative powers to provide the necessary legal authority for such bonds and their sale, and for the levy of taxes therefor. In my opinion, the proposed ordinance is clearly within the direct grant of legislative authority to the city provided in Article 12, § 5.

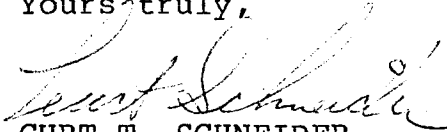
Indeed, as that amendment was submitted to the voters in 1960, it appears expressly to have contemplated such action. Subsection (b) sets forth essentially three constraints upon municipal action under the amendment. Cities are subject to enactments of the legislature which are applicable to all cities, to enactments

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of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levy of any tax, excise, fee, charge or other exaction, and to enactments of the legislature prescribing limits of indebtedness. The specific requirement that cities must exercise their home rule authority subject to statutory limits of indebtedness necessarily implies that the cities are authorized by Article 12, § 5 to incur indebtedness in the conduct of their local affairs and government. This latter limitation would be entirely superfluous if the home rule amendment did not carry that authority in the first instance.

Thus, it is my opinion that the proposed ordinance is within the constitutional authority of the city under Article 12, § 5.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj