



STATE OF KANSAS

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January 5, 1979

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ATTORNEY GENERAL OPINION NO. 79- 8

Mr. William P. Timmerman  
Suite 208 Woodlawn Central Building  
400 North Woodlawn  
Wichita, Kansas 67208

Re: Schools--Capital Outlay Levy, Fund And Bonds--Authoriza-  
tion To Issue Bonds In Lieu Of Tax Levy

Synopsis: The authority granted unified school districts pursuant to K.S.A. 72-8801 *et seq.*, as amended, authorizes only one annual tax levy for five years at a rate of four mills upon all assessed taxable tangible property within the district. Bond authority, granted as an alternative, but subject to enabling resolution, cannot be used to exceed either the four mill or five year limitation.

\* \* \*

Dear Mr. Timmerman:

You request our opinion on behalf of Unified School District No. 210 concerning the issuance and sale of general obligation bonds pursuant to the Capital Outlay Levy Act (K.S.A. 72-8801 *et seq.*, as amended). Specifically you ask what bond authority is delegated to the school board under the general scheme of the capital outlay levy.

K.S.A. 1978 Supp. 72-8801 provides thus:

"The board of education of any school district may make an annual tax levy for a period of not to exceed five (5) years in an amount not to exceed four (4) mills, upon the assessed

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taxable tangible property in such school district for the purposes specified in this act. No levy shall be made under this act until a resolution is adopted by such board of education in the following form . . . . As used in this act, 'unconditionally authorized to make a tax levy under authority of section 1 [72-8801] of this act' means that the school district has adopted a resolution under this section, has published the same, and either that such resolution was not protested or that it was protested and an election has been held by which the tax levy of the school district under this section was approved." [Emphasis added.]

K.S.A. 1978 Supp. 72-8805 provides further thus:

"Any school district which is unconditionally authorized to make a tax levy under section 1 [72-8801] of this act may, in lieu of making all or part of such tax levy, issue and sell general obligation bonds as now provided by law for the issuance of general obligation bonds for school buildings, except that such bonds shall be issued to mature in not more than five (5) years and except that no election shall be required. In the event that bonds are issued under authority of this section, the amount of such bonds which may be issued shall be determined as follows:

(a) The amount of such bonds shall not exceed the amount of the product which results from multiplying 4 mills (or such lesser amount as specified in subsection (b) of this section) times the assessed taxable, tangible valuation of the school district at the time the bonds are issued, less the sum of all amounts specified in subsections (c) and (d) of this section.

(b) In the event that the initial resolution adopted under section 1 [72-8801] of this act specified a lesser number of mills than four or a lesser number of years than five, the numeral 4 or the numeral 5, respectively,

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in the subsection (a) of this section shall be reduced accordingly.

(c) The maximum amount of bonds authorized by this section to be issued shall be reduced by all amounts which have been or will be received by such school district from any tax levy (made before such bonds are issued) under authority of section 1 [72-8801] of this act, and such maximum amount shall be further reduced by the estimated amount of interest to be paid on such bonds.

(d) The maximum amount of bonds authorized by this section to be issued shall be reduced by an amount equal to the amount of unpaid principal on bonds which have theretofore been issued under this section." [Emphasis added.]

These provisions empower a school district to provide for its various capital improvement needs by creating either a specific fund or through the issuance of general obligation bonds. And as the above clearly demonstrates, both vehicles are subject to an express condition precedent, which unless fully satisfied prevents the delegated authority from becoming operative: the district must become ". . . unconditionally authorized to make a tax levy under authority of section 1 of this act." That phrase is, of course, defined at K.S.A. 1978 Supp. 72-8801, as emphasized, *supra*. Two avenues of funding are thus available: the capital outlay fund or the issuance and sale of bonds. However, they must be carefully integrated when used concurrently.

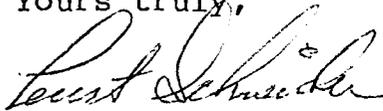
The entire financing program authorized under this Act pivots upon the identified annual tax levy set by the required resolution. That resolution dictates the parameters within which the annual levy for the fund and/or principal and interest requirements of the bonds must fall. In other words, the amount received by the district, whether by the levy alone, levy and bonds combined, or bonds alone, must unequivocally remain within the resolved limits which in turn cannot, of course, exceed the statutory five year-four mill levy limitations. There is no language whatever in the act, express or implied, that the mill levy and the bonds may be employed concurrently to expand the limitation set by the original resolution. So, from the date the resolution becomes operative the annual tax levy becomes the single vehicle

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to increase the fund or meet the principal and interest requirements for the bonds. Thus, the district's ability to issue bonds for any period of years is perforce limited to the number of years the tax levy has been in effect and the amount of money it has or will receive before the bonds are issued.

Accordingly, the provisions of K.S.A. 72-8801 *et seq.*, as amended, authorizes a school district to levy at a rate of four mills for a maximum of five years, upon all taxable tangible property within the district. That levy can be used only pursuant to the authorizing resolution or resolutions, if more than one is used. But, the issuance of bonds cannot be used to exceed either the statute limitations or the resolution limitations, whichever is less. Thus, whichever funding vehicle, or combination thereof, is used to satisfy the capital outlay requirements as identified by the resolution, the district is without authority to exceed the express limitations as found at K.S.A. 1978 Supp. 72-8805 and resolved by the board, and must perforce employ a formula which will respect such limits.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

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