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July 26, 1979

ATTORNEY GENERAL OPINION NO. 79- 163

Hon. Norman E. Gaar
Majority Leader
Kansas State Senate
Capitol Building
Topeka, Kansas 66612

Re: Cities and Municipalities -- Port Authorities -- Bonds --
Authority of Kansas City, Kansas, Port Authority to issue
bonds for the acquisition and construction of industrial
facilities -- K.S.A. 12-3401, et seq.

Synopsis: A city or county port authority is authorized by K.S.A.
12-3401, et seq., to acquire or construct facilities for
industrial use which are not necessarily related to the
operation of a port, terminal, or transportation facility.
Further, said authority may issue revenue bonds for the
acquisition or construction of said facility so long as
the statutory guidelines for issuance of such bonds are
complied with.

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Dear Senator Gaar:

You inquire whether the Kansas City, Kansas, Port Authority (The
Authority) may issue bonds, pursuant to K.S.A. 12-3415, for the acquisition
and construction of industrial facilities not specifically related to
a port, terminal, or transportation facility, as those terms are used
in K.S.A. 12-3401, et seq.

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The Authority was created pursuant to K.S.A. 12-3401, et seq., which by definition gives the Authority the status of a "public body corporate and politic which . . . shall be an agency of the state of Kansas . . ." (K.S.A. 12-3402). The legislature clearly stated that port authorities were ". . . necessary for the welfare of the state and its inhabitants and for the growth and development of commerce and industry in the state of Kansas. . . ." The legislature further made it extremely clear that K.S.A. 12-3401, et seq., were to be ". . . liberally construed to effect the purposes . . ." stated above (K.S.A. 12-3433). These statutes, K.S.A. 12-3401, et seq., should, therefore, be read to allow a port authority to do acts in furtherance of the stated goals.

The purpose or authority of The Authority is spelled out in K.S.A. 12-3406, which, in pertinent part, reads:

A port authority . . . shall have full power and authority to:

- (a) Purchase, construct, sell, lease, and operate docks, wharves, warehouses, piers, and other port, terminal, or transportation facilities within its jurisdiction, consistent with the purposes of the port authority, and to make charges for the use thereof, which shall be not less than the charges established for the same services furnished by a public utility or common carrier in the particular port authority area;
- (b) borrow money from either private financial institutions or any agency of the state of Kansas or of the United States of America, and to issue therefor such notes or other evidence of indebtedness as may be required and to mortgage, pledge, or otherwise encumber the assets of the authority as security therefor;
- . . .
- (e) acquire, own, hold, sell, lease, or operate real or personal property for the authorized purposes of the port authority;
- (f) acquire, own, maintain, sell, or lease such land within its jurisdiction as it may deem desirable for the development, planning, construction, operation, or

leasing of land for industrial use which exercise of such authorization is hereby declared to be for a public purpose; (Emphasis added).

Besides the ability to borrow money from numerous sources, The Authority is also given the power to issue revenue bonds pursuant to K.S.A. 12-3415, which reads:

12-3415. Same; borrowing moneys; issuance of bonds. For the purpose of paying all or any part of the cost of acquiring land or interest therein, and the cost of constructing, acquiring, equipping, and furnishing buildings, structures, plants, docks, wharves, warehouses, piers and other port, terminal and transportation facilities, or any part thereof; including additions, improvements, relocations, renovations, extensions and modifications thereof (all of which as are included in a single project are hereafter referred to in this act as "facility or facilities"), a port authority created pursuant to this act, is authorized to borrow money upon credit of the income and revenues to be derived from the operation of such facilities, together with any other available income and revenues from other revenue producing facilities of such port authority, and to issue negotiable bonds of such port authority in such amount as the board of directors of the port authority shall deem necessary for the purpose; and to provide for payment of such bonds and rights of holders thereof as herein provided. (Emphasis added.)

It is within the authority of the legislature to create public corporate bodies and to specify the powers and purpose of the corporate body created.

Such bodies have been referred to as quasi-municipal corporations or authorities. See McQuillin, Municipal Corporations, 3d Ed., Secs. 2.29a and 3.02a. Generally, such quasi-corporation is created for some special or particular purpose. Id. at 2.27.

The general purpose for which port authorities exist in Kansas is described in K.S.A. 12-3406, supra. Subsection (a) of this section clearly indicates the ability of a port authority to deal in any real or personal property connected with the functions of "port, terminal or transportation facilities." But, an authority's purpose is not limited to the function designated in subsection (a). Subsection (f)

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gives a port authority the additional power and purpose to develop land for an industrial use. To paraphrase this subsection, a port authority may "Acquire . . . land . . . it may deem desirable for the development, planning, construction, operation or leasing of land for industrial use . . ." (Emphasis added.) The context of this section clearly authorizes a port authority to develop land for industrial use to include the "construction" and "operation" of facilities located thereon.

Section 3406 of Chapter 12 allows port authorities several other purposes in addition to granting such authorities several powers by which to carry out the delegated purposes. Specifically, subsections (b) and (e) grant port authorities broad powers to acquire and finance its operations. In addition to the power of finance granted in subsection (b), Section 3415 specifically authorizes the issuance of revenue bonds "for the purpose of paying . . . the cost of acquiring land . . . and the cost of constructing, acquiring, equipping, and furnishing buildings, structures, plants, docks, wharves, warehouses, piers and other port, terminal and transportation facilities. . ." (Emphasis added.) This section clearly allows the issuance of revenue bonds for the construction of those facilities authorized by K.S.A. 12-3406(a). The question is whether a port authority may issue revenue bonds for the construction of facilities for industrial use, which is authorized in K.S.A. 12-3406(f).

The language of K.S.A. 12-3415 appears to limit the issuance of revenue bonds to the construction of "port, terminal and transportation facilities." However, this section does permit the revenues from "other revenue producing facilities" of a port authority to be pledged as credit upon the issuance of any revenue bonds. This indicates a recognition, on the part of the legislature, that a port authority may have other revenue-producing facilities besides "port, terminal and transportation facilities." The implication is that the legislature did not intend to exclude construction of other facilities from the provisions of K.S.A. 12-3415. Reading Section 3406(b), it appears obvious that a port authority is empowered to issue any type of "evidence of indebtedness" to fulfill any of its statutory purposes to include the issuance of revenue bonds to construct industrial facilities. Therefore, it appears that 12-3415 through 3428 places procedural requirements on the issuance of revenue bonds when an authority decides to finance a project in that fashion, so long as the project is intended to fulfill one of the authority's statutory purposes.

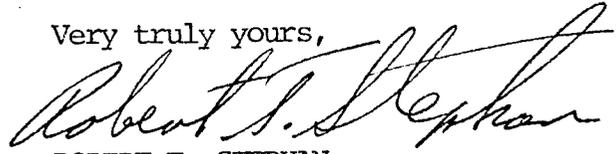
In conclusion, the Port Authority of Kansas City, Kansas, is authorized to acquire and construct facilities for industrial use which are not

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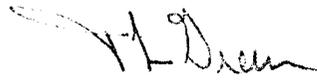
necessarily related to "port, terminal or transportation facilities" and to issue revenue bonds to finance said operations, the limitation being that the authority comply with the requirements for issuance of such bonds as prescribed in K.S.A. 12-3401, et seq.

We regret the delay in sending this opinion to you and hope it satisfactorily answers your questions. If this office may be of further assistance, please do not hesitate to contact us.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



T. L. Green
Assistant Attorney General

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