



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 15, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 80- 10

C. V. Reed, Superintendent
Unified School District No. 320
815 Fifth
Wamego, Kansas 66547

Re: Schools--School Unification Acts--Issuance
of Bonds to Construct School Buildings

Synopsis: A school district may issue bonds for the purpose of constructing new school facilities or improving existing facilities only after an election approving the issuance is held pursuant to K.S.A. 72-6761. If adequate notice is provided as to the amount of the bonds and the purpose for which they are to be issued, it is immaterial that the final building plans differ in degree from those proposed by a pre-election brochure, as long as the basic purpose remains the same as that approved by the voters.

*

*

*

Dear Superintendent Reed:

As Superintendent of Unified School District No. 320 (Wamego), you have requested the opinion of this office concerning a matter which has arisen as a result of a bond election held in the district last April. At that time, voters approved (albeit by a narrow margin) the issuance of \$3,920,000 in bonds to be used in part for the construction and equipping of "an additional elementary school building." A brochure which was circulated prior to the election indicated that the structure was to contain grades kindergarten through six, and additionally provided a floor plan diagram showing the same arrangement. Now, however,

C. V. Reed
Page Two
January 15, 1980

the board of education is considering having the building house only grades four through six. Your inquiry concerns the legality of such a move, in light of the statements made in the pre-election brochure.

The authority of a school board to issue bonds for the construction or improvement of school facilities is derived from K.S.A. 72-6761. In pertinent part, that statute provides:

"When a board determines that it is necessary to purchase or improve a school site or sites, or to acquire, construct, equip, furnish, repair, remodel or make additions to any building or buildings used for school purposes, or to purchase school buses, such board may submit to the electors of the unified district the question of issuing general obligation bonds for one or more of the above purposes, and upon the affirmative vote of the majority of those voting thereon, the board shall be authorized to issue such bonds. The board shall adopt a resolution stating the purpose for which bonds are to be issued and the estimated amount thereof. The board shall give notice of said bond election in the manner prescribed in K.S.A. 10-120 and said elections shall be held in accordance with the provisions of the general bond law." (Emphasis added.)

K.S.A. 1979 Supp. 10-120, to which one is referred by the above, additionally provides that the notice required before such an election shall state the purpose for which the bonds are to be issued. We note that under current law the exact form of the ballot itself is left up to the district, although formerly this was also regulated by statute. See K.S.A. 1967 Supp. 72-67,114(f) (repealed by L. 1968, ch. 59, §45).

It has clearly been the intent of both the legislature and the courts to make certain the question to be voted upon (i.e., the amount and purpose of the bonds) is so clearly stated that voters may not be misled. Since bonds may be issued only for such purposes as authorized by statute, with the approval of the electors, each voter must have a fair opportunity to register an intelligent expression of his will. West v. Unified School Dist. No. 346, 204 Kan. 29 (1969). This includes the disclosure

C. V. Reed
Page Three
January 15, 1980

of the whole improvement which is proposed, and not only a part, Heller v. Rounkles, 171 Kan. 323 (1951), and requires that different propositions be presented in an intelligible, yet distinct, manner. Kimsey v. Board of Education, Unified School Dist. No. 273, 211 Kan. 618 (1973).

In our opinion, the wording of the ballot used here meets the above tests, in that it sets forth the amount of bonds involved and the purposes for which the money so raised will be used. Specifically, the ballot asks if funds may be raised "to pay the cost of purchasing a site or sites, constructing, furnishing and equipping an additional elementary school building." This language is sufficient to put voters on notice of the purpose involved in this part of the proposition. See, e.g., Unified School Dist. No. 259 v. Hedrick, 203 Kan. 478 (1969) and Board of Education v. Powers, 142 Kan. 664 (1935).

The question then remains whether, in using the funds generated by the bond issue, the board may deviate from the statements made in the pre-election brochure, at least to the extent of utilizing the new elementary school building for only certain grades. It is our opinion that such a relatively minor change would in no way invalidate the bonds or leave the district open to liability under K.S.A. 1979 Supp. 10-117, which provides criminal penalties for diversion of bond proceeds. The change is minor in that the function of the proposed building would remain the same (that of an elementary school) as that which appeared on the ballot approved by the voters. Of course, our conclusion would be different if a basic alteration were proposed, i.e., using the funds to construct classrooms for the junior high school.

What effect, then, do statements made in the pre-election brochure have? It has been previously recognized in Kansas that such informational items as brochures or newspaper articles, while perhaps supplemental in explaining the use to which the bond-generated funds will be put, are not a substitute for an official notice. West v. Unified School District No. 346, supra, at 34. Kansas courts have also recognized that any plans made prior to the authorization of bonds are of necessity uncertain, in that an architect has not been employed to "fill in" the final details. Kimsey v. Board of Education, supra, at 626.

Facts very similar to those presented here were found in the case of Baker v. Unified School Dist. No. 346, 206 Kan. 581 (1971). There, the ballot proposed the construction of a "necessary new school building" without further elaborating on the use to which it would be put. Those details were supplied by a brochure which

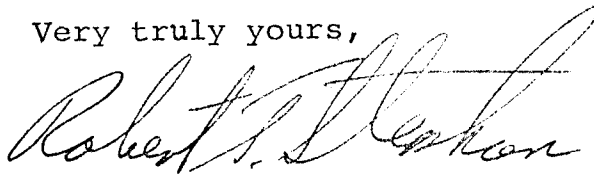
C. V. Reed
Page Four
January 15, 1980

was issued, according to the court, "touting the election." 206 Kan. at 583. The brochure explained where the building was to be constructed, the types of materials to be used, and the arrangement of classrooms. However, following the election, the plan was changed in some particulars as to size and construction materials. The court noted that such decisions reflected the fact that no final plans could feasibly be assembled until after the election, and went on to state that discretion and responsibility for construction of school buildings are vested in school boards, not in the courts or in local taxpayers. Baker v. Unified School District, supra, at 583.

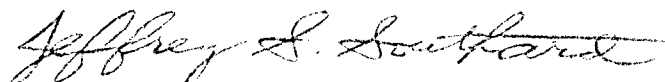
The change contemplated by the district here would appear to be such a discretionary decision, in that the function of the building would remain unchanged from that stated on the ballot. Children in grades four through six are still in elementary school, and the use of the bond revenues to construct a building which is used now only for such grades would not preclude the later use of it by younger grades. A school board is given control of all buildings within the district by K.S.A. 72-1033, and one element of this control must be the power to decide what use to make of individual structures. In the absence of any finding that voters were misled, we would conclude that no abuse of the board's discretion occurred here.

In conclusion, a school district may issue bonds for the purpose of constructing new school facilities or improving existing facilities only after an election approving the issuance is held pursuant to K.S.A. 72-6761. If adequate notice is provided as to the amount of the bonds and the purpose for which they are to be issued, it is immaterial that the final building plans differ in degree from those proposed by a pre-election brochure, as long as the basic purpose remains the same as that approved by the voters.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk