



STATE OF KANSAS

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June 26, 1980

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ATTORNEY GENERAL OPINION No. 80-141

Mr. Daniel A. Young
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Young & Rumsey
P.O. Box 585
Lawrence, Kansas 66044

Re: Bonds and Warrants--Cash-Basis Law--Installment
Agreements, Lease-Purchase Agreements Authorized
by 1980 House Bill No. 2955

Synopsis: The Cash-Basis Law forbids a municipality to incur a contractual indebtedness the amount of which exceeds money actually on hand in the municipality's treasury and budgeted for such indebtedness in any particular budget year. Lease-purchase agreements entered into by municipalities must include a specific statement phrased in the clear and unambiguous language of 1980 House Bill No. 2955, or language substantially similar, to assure compliance with the Cash-Basis Law. Cited herein: K.S.A. 10-1101 et seq., 10-1113, 1980 House Bill No. 2955.

* * *

Dear Mr. Young:

You have submitted for our review a proposed lease-purchase agreement for telephone equipment and you have asked for our opinion relating to a "nonappropriation clause" contained in the proposed agreement and your suggestions for modifying the agreement to assure compliance with the Cash-Basis Law, K.S.A. 10-1101 et seq., and a recent amendment thereto, 1980 House Bill No. 2955, which amendment became effective April 12, 1980.

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The proposed agreement describes certain telephone equipment and telephones and states that First Municipal Leasing Corporation, the Lessor, "hereby rents and leases to Lessee [Douglas County] with the option to purchase and Lessee hereby rents and leases from Lessor, upon the terms and conditions contained herein, the property set forth above." On page two of the agreement, the "nonappropriation clause" in question appears, which states as follows:

"NONAPPROPRIATION. If the Lessee is not allotted funds for the next Fiscal Period to continue the leasing of the Leased Equipment and it has no funds for such leasing from other sources, Lessee may terminate this Lease at the end of the then current Fiscal Period, and Lessee shall not, in this sole event, be obligated to make any payments beyond the end of the then Fiscal Period. Lessee shall have all the rights and remedies to take possession of the Leased Equipment."

In our judgment, the above-quoted clause does not satisfy the requirements of the Cash-Basis Law or amendments thereto. The Cash-Basis Law forbids a municipality to incur a contractual indebtedness the amount of which exceeds money actually on hand in the municipality's treasury and budgeted for such indebtedness in any particular budget year. K.S.A. 10-1113. In the 1980 session, the Kansas Legislature enacted a measure which expressly authorizes municipalities to enter into lease agreements and installment-purchase agreements,

"if any of such agreements specifically state that the municipality is obligated only to pay periodic payments or monthly installments under the agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during such municipality's current budget year or (b) funds made available from any lawfully operated revenue producing source." 1980 House Bill No. 2955, Section 1. (Emphasis added.)

The clause in question contains no such specific statement limiting the county's obligation under the agreement.

To be sure, the clause limits the county's contractual liability "[i]f the Lessee is not allotted funds for the next Fiscal Period to continue . . . leasing" and further provides that the "Lessee may terminate this Lease . . . in this sole event." (Emphasis added.) But, this language makes the agreement ambiguous, suggesting

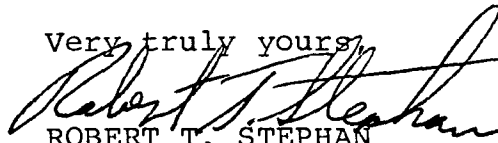
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to us that but for the lack of an appropriation of funds in a particular fiscal period, the county is bound under the agreement for the full term, which makes the clause in question merely a cancellation provision. Former Attorney General Curt Schneider concluded that such a cancellation provision could not be used to circumvent the requirements of the Cash-Basis Law. He wrote :

"The privilege of cancellation does not immunize the agreement from the cash-basis law. The agreement must be measured against the cash-basis law on the basis of the obligation which exists unless and until the privilege of cancellation is exercised, for unless and until that occurs, the agreement constitutes a binding obligation on the city for which sufficient funds must be on hand and available for that purpose at the time the obligation is incurred."
Attorney General Opinion No. 77-279, p. 2.

We affirm that conclusion, and we respectfully suggest that the proposed lease-purchase agreement you have submitted must include a specific statement phrased in the clear and unambiguous language of House Bill No. 2955, quoted above, or language substantially similar, to assure that the county creates no indebtedness in excess of the amount of funds on hand in the county treasury in a given budget year.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Steven Carr
Assistant Attorney General

RTS:SC:pf
Encl.