



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

August 5, 1980

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ATTORNEY GENERAL OPINION NO. 80-178

Mr. James D. Waugh
Attorney at Law
Cosgrove, Webb & Oman
1100 First National Bank Tower
534 Kansas Avenue
Topeka, Kansas 66603

Re: Roads and Bridges--General Provisions--Bridges and
Culverts, Bonds

Synopsis: Bonds issued by a county pursuant to K.S.A. 1979
Supp. 68-1103(b) for financing the cost of bridge
repair in the county are general obligation bonds,
payable from unlimited ad valorem taxes, and are
not bonds payable solely from the proceeds of the
two (2) mill levy authorized in K.S.A. 1979 Supp.
68-1103(c). Cited herein: K.S.A. 1979 Supp.
68-1103.

* * *

Dear Mr. Waugh:

You inquire whether general obligation bonds issued pursuant to
K.S.A. 1979 Supp. 68-1103(b) are general obligation bonds payable
from unlimited ad valorem taxes or are bonds payable solely from
the levy of two (2) mills authorized by K.S.A. 1979 Supp.
68-1103(c). With one exception not pertinent here, K.S.A. 1979
Supp. 68-1103 relates to any county in which the board of com-
missioners thereof has determined the necessity for building or
repairing any bridge or culvert, where the county's share of the
cost thereof does not exceed \$160,000. The provisions of this
statute relevant to your inquiry read as follows:

Mr. James D. Waugh
Page Two
August 5, 1980

"(b) In any such county or counties where there has been constructed prior to the passage of this act or shall be hereafter constructed any bridge or bridges which shall have been destroyed or rendered impassable, or shall be hereafter destroyed or rendered impassable, by flood, high water, fire or other casualty, or where there is any bridge or bridges condemned by the board of county commissioners and the county engineer as unsafe and inadequate to meet the demands of present day traffic and said bridge or bridges are more than thirty (30) days old, then such board of county commissioners may immediately thereafter repair and reconstruct such bridge or bridges; may adopt a resolution finding and determining a necessity for such repair or reconstruction and may at once proceed to repair or rebuild the same at a cost to be determined by the county engineer's estimate not exceeding one hundred sixty thousand dollars (\$160,000) per bridge and shall appropriate a sufficient amount of money therefor, or if there be not a sufficient amount of money therefor in the proper funds of the county, such board is hereby authorized and empowered to issue bonds or warrants of said county to pay the costs for the work herein provided for. . . .

"(c) Such board is hereby authorized and empowered to levy and collect taxes for the purpose herein named or for the purpose of retiring any warrants that have been issued, which shall not exceed two (2) mills upon the assessed valuation of the county."

From the foregoing it is apparent these statutory provisions provide various financing methods for the repair of bridges. The board may repair any such bridge from existing funds available for such purpose, or if such funds are insufficient, it may issue bonds, issue warrants or levy and collect taxes in the amount not to exceed two (2) mills upon the assessed valuation of the county to provide the necessary funding. You have offered your opinion that the bonds authorized to be issued hereunder are general obligation bonds of the county. However, because a question has been raised as to whether said bonds are payable only from the proceeds of the two mill levy authorized in subsection (c), you have requested our opinion. For two reasons,

Mr. James D. Waugh
Page Three
August 5, 1980

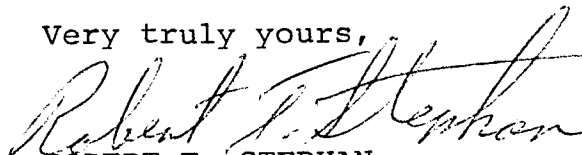
we concur in your conclusion that bonds issued under 68-1103(b) are general obligation bonds, payable from unlimited ad valorem taxes of the county.

First, the language of 68-1103(c) dictates such conclusion. In our judgment, the proceeds derived from the levy authorized therein are to be used either for paying the bridge repair costs, i.e., "for the purpose herein named," or they are to be used for "retiring any warrants that have been issued" under 68-1103(b). Clearly, then, had the legislature intended that the bonds issued under subsection (b) be payable from the proceeds of said levy, it could have so stated.

Second, although, the statute does not expressly use the term "general obligation bond," absent any qualifying language the term "bond" has consistently been construed by this office to mean a general obligation bond. It has long been accepted in the State of Kansas to be a certificate of indebtedness which pledges the full faith and credit of the issuing municipality for the payment of the bonds from unlimited ad valorem taxes. Further, we find no expression of legislative intent to create a "special obligation" bond that would be retired by a limited tax levy pursuant to K.S.A. 1979 Supp. 68-1103(c).

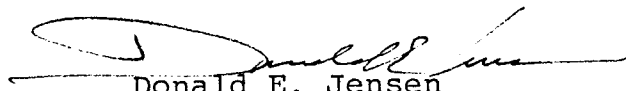
Therefore, it is the opinion of this office that bonds issued pursuant to K.S.A. 1979 Supp. 68-1103(b) are general obligation bonds and would be payable from unlimited ad valorem taxes by the issuing county. It is our further opinion that the two (2) mill levy upon the assessed valuation of the county provided for in K.S.A. 1979 Supp. 68-1103(c) is a tax levy authorized to pay the cost of the bridge repair and/or retire warrants issued to pay such costs.

Very truly yours,



ROBERT T. STEPHAN

Attorney General of Kansas



Donald E. Jensen

Assistant Attorney General

RTS:BJS:DEJ:jm