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ATTORNEY GENERAL

October 7, 1980

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ATTORNEY GENERAL OPINION NO. 80-222

Honorable Edward F. Reilly, Jr.
State Senator, Third District
430 Delaware
Leavenworth, Kansas 66048

Re: Cities of the First Class -- Board of Public
Utilities -- Applicability of Cash Basis and
Budget Laws

Synopsis: A board of public utilities which is organized
and existing pursuant to K.S.A. 13-1220 et seq.,
and amendments thereto, is not subject to either
the cash-basis law or the budget law of the State
of Kansas. Cited herein: K.S.A. 10-1101, 10-1113,
13-1220 (as amended by L. 1980, ch. 72, §2), K.S.A.
1979 Supp. 13-1223 (as amended by L. 1980, ch. 72,
§3), 13-1253, K.S.A. 79-2925 (as amended by L. 1980,
ch. 89, §4) and 79-2935.

* * *

Dear Senator Reilly:

You have asked whether we concur in an opinion issued by
Attorney General Schneider in 1977, stating that a board
of public utilities created pursuant to K.S.A. 13-1220, et
seq., is not subject to the Kansas budget law (K.S.A. 79-2925,
et seq.), and you have further inquired whether the board of
public utilities is covered or bound by the cash-basis law
(K.S.A. 10-1101, et seq.).

We are satisfied that Attorney General Opinion No. 77-367
correctly determines the legal status of a board of public
utilities, and properly concludes that such a board formed

pursuant to statute is not subject to the budget law, since it is neither a "taxing subdivision" nor a "municipality" as those terms are defined in K.S.A. 79-2925 (as amended by L. 1980, ch. 89, §4).

Similarly, the applicability of the cash-basis law to a statutorily derived board of public utilities depends, of necessity, on whether such board comes within the purview of the statutory definitions of "municipality" or "governing body" established in 1929 by the legislature. Subsection (a) of K.S.A. 10-1101 construes "municipality" to mean

"county, township, city, municipal university, school district, community junior college, drainage district, and any other similar political subdivision or taxing district of the state."

Subsection (b) thereof defines the words "governing body" to mean a

"board of county commissioners of any county, township board of any township, mayor and councilmen or board of commissioners of any city, board of education of any school district, board of trustees of any community junior college, board of regents of any municipal university, board of directors of any drainage district, board of park commissioners of any city, and any other governing body or board of a municipality having authority under the laws of this state to create indebtedness against a municipality."

The 1980 legislature, in passing House Bill No. 2841, extensively amended K.S.A. 13-1220 et seq. While the statute had previously been silent in stating just what type of entity a board of public utilities was, the amendments added language which now clearly states that a board of public utilities is an "administrative agency" elected by the voters of a city to "manage, operate, maintain and control the daily operation of the water plant and electric-light plant of a city" (K.S.A. 13-1220, as amended by L. 1980, ch. 72, §2). The underlined language was added to the statute to clarify the legal status of such an entity. Shortly before that legislation the Kansas Supreme Court, in Board of Public Utilities v. City of Kansas City, 227 Kan. 194, 198 (1980), finally laid to rest the rather troublesome question of the legal status of such a board when they held that it was an administrative agency of the city. The primary question

Honorable Edward F. Reilly, Jr.
October 7, 1980
Page Three

before the court in that case was whether the board or the city had the power to refund revenue bonds. In deciding that the city, rather than the board, was authorized under K.S.A. 1979 Supp. 13-1253 to issue and refund revenue bonds, the court held that an agency such as a board, has no power to levy taxes, and is neither a municipal corporation nor a quasi-municipal corporation. Id. at 198-199.

"Exclusive control" of water and electric utilities is vested in a board of public utilities by K.S.A. 1979 Supp. 13-1223 (as amended by L. 1980, ch. 72, §3). Such a board was created by the legislature, as were the governing boards of community mental retardation centers and county hospitals, about which this office rendered opinions addressing the cash-basis law. Attorney General Opinion Nos. 76-149 and 77-352. In those opinions Attorney General Schneider concluded in each case that the governing board involved did not constitute a "municipality" or "governing body" in exempting both from the cash-basis law. Further support is detailed in the opinion previously cited (77-367) which notes that a board of public utilities is not a "taxing subdivision" or a "municipality" for purposes of the budget law, but rather an administrative and managerial entity. Reference to section 10-1113 of the cash-basis law and to section 79-2935 of the budget law reflect the similarity of the language in each. The cash-basis law condemns as unlawful the creation of indebtedness in excess of the amount of funds actually on hand by the governing body of a municipality, while the budget law makes it unlawful to create indebtedness in excess of funds budgeted by the governing body of the taxing division or municipality.

We agree with the conclusions reached in the foregoing opinions as they apply to both the cash-basis and budget laws. The cash-basis law applies only to municipalities and governing bodies as those terms are defined by subsections (a) and (b) of K.S.A. 10-1101. Although legislative changes followed the court's decision in Board of Public Utilities v. City of Kansas City, supra, we are satisfied that the question of the legal status relating to the power and authority of such a board has not been changed so far as your inquiry is concerned. In addressing the question of creating indebtedness, the court found after reviewing the entire act (K.S.A. 13-1220 et seq.) that, "it is the intent of the legislature to place the ultimate debt responsibility on the governing body of the city. The title to all property remains in the city; the bonds are issued and sold in the name of the city; the city is a necessary party to sue and be sued." Id. at

Honorable Edward F. Reilly, Jr.
October 7, 1980
Page Four

A board of public utilities is not a municipality or a governing body of a municipality with authority to create indebtedness against a municipality itself. Such a board may only obligate those funds which are under its control. The governing body of a city's waterworks and electric plant, established pursuant to K.S.A. 13-1220 et seq., (as amended by L. 1980, ch. 72), is clearly not a "municipality" or a "governing body" as those terms are defined in the cash-basis law.

It is our opinion, therefore, that it was never the legislature's intention for a board of public utilities to be covered or bound by either the cash-basis law or the budget law.

Sincerely,

ROBERT T. STEPHAN
Attorney General of Kansas

Carl M. Anderson

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RTS:CMA:vlb

EDWARD F. REILLY, JR.
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 SENATE CHAMBER

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ATTEST THE
 ATTORNEY GENERAL
 W. B. S.
 Anderson
 Recd 4/8/80

February 28, 1980

Honorable Robert T. Stephan
 Attorney General
 Kansas Judicial Center
 Topeka, Kansas 66612

Dear General Stephan:

Several questions have arisen regarding the status of the Kansas City Board of Public Utilities (BPU) in connection with our Committee's consideration of SB 794.

As background, it is the BPU's position that it is covered or bound by the cash basis law (K.S.A. 10-1101 et seq.) as amended, but not covered or bound by the budget law (K.S.A. 79-2925 et seq. as amended.) The BPU's view of their status in regard to the budget law is supported by an opinion of a former Attorney General (No. 77-367.)

The BPU's concern with the cash basis law and its ability to utilize or expend cash equivalents, which include income producing negotiable U.S. government securities, lead to its request for SB 794. The BPU apparently was unaware of K.S.A. 12-1671, which appears to provide exactly what it hoped to accomplish under SB 794. On the other hand, if the BPU is not covered by the cash basis law, apparently it would have unrestricted ability to utilize cash equivalents anyway.

The discussion above has lead the Committee to be independently concerned as to the exact status of the BPU in regard to both the cash basis and budget laws. Specifically, the Committee requests your opinion as to whether the BPU is covered by the cash basis law and whether you concur with the former Attorney General's opinion that the BPU is not covered by the budget law.

Your opinion is necessary for the Committee to evaluate whether legislation should be introduced to clarify the BPU's status in regard to both of the above laws.

Honorable Robert T. Stephan
February 28, 1980
Page Two

Thank you for your prompt attention to this matter.

Sincerely,

Edward F. Reilly, Jr.
Chairman
Senate Federal and State Affairs Committee

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