



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 29, 1981

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

ATTORNEY GENERAL OPINION NO. 81-117

Mr. Ray A. Neale
City Attorney
City Hall
7th & Walnut
Coffeyville, Kansas 67337

Re: Cities and Municipalities--Buildings, Structures
and Grounds--Industrial Revenue Bonds

Synopsis: Bond proceeds and other funds including rental payments paid to a municipality as a result of the issuance of industrial revenue bonds in accordance with K.S.A. 12-1740 et seq. may properly be invested in a mutual fund or "trust" composed entirely of United States Treasury obligations if such investment is authorized in the ordinance issuing said bonds in accordance with K.S.A. 12-1743. Cited herein: K.S.A. 10-101, K.S.A. 1980 Supp. 10-131, 10-1009, 12-1675, K.S.A. 12-1740, K.S.A. 12-1743.

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Dear Mr. Neale:

As city attorney of Coffeyville, Kansas, you inquire whether funds received by the city as landlord from tenants under the terms of lease and ordinance provisions of an industrial revenue bond issue pursuant to K.S.A. 12-1740 et seq. can properly be invested in a mutual fund or "trust" composed entirely of United States Treasury obligations. Specifically, you ask whether such funds may be invested in a trust (managed by a private business trust corporation) for United States Treasury obligations (which are issued or guaranteed as to principal and interest by the United States Treasury).

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There is no express provision in the industrial revenue bond law relating to the investment of funds resulting from the issuance of industrial revenue bonds. Such funds would include bond proceeds and other revenues as a result of the lease payments paid to the city to retire the bonds.

A general investment statute for governmental subdivisions can be found at K.S.A. 1980 Supp. 12-1675 and provides in pertinent part:

"The governing body of any . . . city . . . having authority to receive, hold and expend public moneys or funds may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other act of the legislature." (Emphasis added.)

The statute then identifies those investments which are permitted under this provision. None of the authorized investments include mutual funds or trusts composed entirely of United State Treasury obligations.

Hence, absent other statutes concerning such investments of proceeds and rents from Industrial Revenue Bonds, K.S.A. 1980 Supp. 12-1675 would preclude the investment you propose. However, we believe the Kansas legislature intended a different result by the enactment of the industrial revenue bond law, K.S.A. 12-1740 et seq.

The industrial revenue bond law is a broad grant of authority to Kansas cities to issue certain bonds for the construction of industrial facilities. Such bonds create no obligation upon the issuing city "except such as shall be payable solely out of the rentals from such facilities." K.S.A. 12-1743. Indeed, it is this section of the law which most vividly exemplifies the breadth of authority granted to the cities to issue such bonds. K.S.A. 12-1743 further provides in relevant part: "All details pertaining to the issuance of such bonds and the terms and conditions thereof shall be determined by ordinance of the city."

The investment of bond proceeds and other revenues of an industrial revenue bond issue is an integral part of the financing structure of such bond issues. The investment choices are, indeed, details pertaining to the issuance and certainly terms and conditions

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of such issue. Thus, terms and conditions of the bond issue, including the choice of investments for proceeds, rents and other revenues are to be determined by the city issuing the bonds.

Consistent with this conclusion, we call your attention to Kansas Attorney General Opinion No. 80-58 in which we held that the interest payable on industrial revenue bonds issued pursuant to K.S.A. 12-1740 et seq., was a "detail" of the issuance to be determined by the city and, therefore, was not a matter subject to K.S.A. 1980 Supp. 10-1009, a section of the general bond law which generally determines rates of interest for municipal bonds.

We believe the statutory authorization to determine the terms and conditions of an industrial revenue bond issue is sufficient statutory declaration to satisfy the emphasized language of K.S.A. 1980 Supp. 12-1675, supra. That is, the investment of proceeds and revenues associated with an industrial revenue bond issue is a matter "subject to or regulated by" another act of the legislature, namely K.S.A. 12-1743. Thus, the investment of funds generated by bonds issued pursuant to K.S.A. 12-1740 et seq., are not subject to the limitations on the investment of public moneys generally provided for in K.S.A. 1980 Supp. 12-1675.

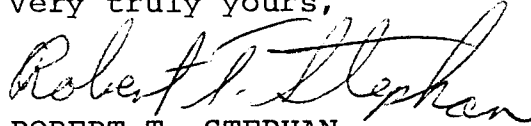
We note in passing that a provision of the general bond law, K.S.A. 10-101 et seq., concerning investment of bond proceeds, specifically, K.S.A. 1980 Supp. 10-131, is not applicable to bonds issued pursuant to K.S.A. 12-1740. This office has previously opined that since bonds issued pursuant to K.S.A. 12-1740 et seq. (industrial revenue bonds) do not constitute general obligations of the issuing municipality the statutory provisions of the general bond law, K.S.A. 10-101 et seq. are inapplicable to such bonds. See Kansas Attorney General Opinion No. 76-336.

Therefore, it is our opinion from the foregoing that K.S.A. 1980 Supp. 10-131 and 12-1675 do not apply to such investments, and the investment of bond proceeds and other funds resulting from the issuance of industrial revenue bonds is a detail pertaining to the issuance of such bonds, and the terms and conditions thereof shall be determined by ordinance of the city. Thus, such funds may be invested in a mutual fund or "trust" composed entirely of United States Treasury obligations, if such an investment is authorized by the ordinance issuing said bonds in accordance with K.S.A. 12-1743.

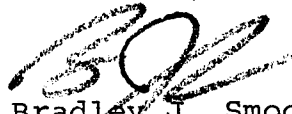
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However, it should be noted, that even within the broad authority of the statutes, only prudent investments should be made in order to insure the financial integrity of the bond issue.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:jm