



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

August 27, 1981

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ATTORNEY GENERAL OPINION NO. 81- 204

Mr. M. Dean Burkhead
Attorney at Law
1027 Vermont
P. O. Box B
Lawrence, Kansas 66044

Re: Townships -- Buildings -- Use of Township Funds to
Rebuild House Used by Road Supervisor

Synopsis: The ownership by a township of a residence which is provided to the road supervisor is a public purpose, insofar as the supervisor also oversees the equipment, materials and supplies of the township that are kept on the premises, as well as maintaining the township hall. Accordingly, in the event that such residence is damaged or destroyed by fire, the township may issue general obligation bonds following an election approving same, with the proceeds used for repair or reconstruction. Cited herein: K.S.A. 1980 Supp. 80-104, K.S.A. 80-113.

* * *

Dear Mr. Burkhead:

As attorney for Marion Township in Douglas County, you request the opinion of this office on a question concerning the construction of a building by the township, and the use of general obligation bonds to finance such construction. Specifically, you inform us that the township wishes to reconstruct a building which was destroyed by fire that had been provided to the township road supervisor as a residence.

You inform us that the structure in question was located on a three acre tract owned by the township pursuant to K.S.A. 1980 Supp. 80-104, on which are also located the township hall and several machine sheds, in which were stored all of the

M. Dean Burkhead

Page Two

equipment, materials and supplies of the township. In addition to overseeing the day-to-day aspects of road maintenance (and, in winter, road clearing), the supervisor also maintains the township hall and supervises the township's property. Furthermore, you inform us that the township board made the decision to provide the residence to the supervisor in order to safeguard the township's assets and to contribute to the more efficient operation of the township's business.

The general statutes which speak to this question are K.S.A. 1980 Supp. 80-104 and K.S.A. 80-113. The latter specifically concerns the reconstruction of township buildings, and states:

"The township board of any township is hereby authorized and empowered to issue its general obligation bonds in an amount not to exceed one percent of the assessed tangible valuation of such township for the purpose of obtaining funds for the reconstruction, repair and equipment of township buildings: Provided, however, Such township shall not issue such bonds until and after an election therefor has been had, which election shall be held in accordance with the provisions of K.S.A. 80-104 and 80-105."
(Emphasis added.)

Township buildings are defined in the former statute, which provides, in part, that:

"The township trustee, clerk and treasurer of the several organized townships in the state of Kansas, in addition to the powers that are now conferred upon them by law, shall have power to procure not to exceed three acres of land for the township, and to build thereon permanent buildings, or to purchase school building or grounds or both the building and grounds the same to be used for public purposes, such as meetings relating to township business, political gatherings, township fairs, entertainments, whether for free use or for hire and profit, at which an admission price may be charged, and such other meetings as may be authorized by the township board"
(Emphasis added.)

Courts have generally left the determination of what is a public, as opposed to a private, purpose to be decided on a case-by-case basis. McQuillin, Municipal Corporations, §10.31, 3rd rev. ed. (1979). From the information you supplied us that is summarized above, we are of the opinion that the use

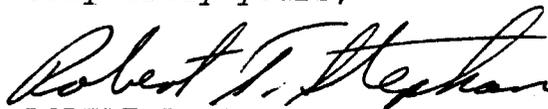
M. Dean Burkhead

Page Three

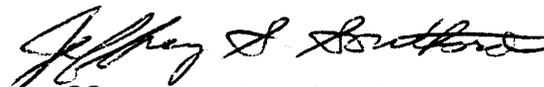
contemplated by the township for the residence clearly falls within the "public purpose" authorization of K.S.A. 1980 Supp. 80-104. While the statute delineates several types of public purposes, it is not worded so as to exclude any other uses which benefit the public by furthering the providing of township services or the management of township property. A previous opinion of this office, No. 72-243, interpreted this statute so as to allow uses which, though not specifically enumerated, were nevertheless of benefit to the "public," i.e. the people of the township. Accordingly, if the voters of Marion township give their approval in the manner prescribed by K.S.A. 1980 Supp. 80-104, general obligation bonds may be issued and the proceeds thereof applied to rebuild the residence provided by the township for the supervisor's use.

In conclusion, the ownership by a township of a residence which is provided to the township road supervisor is a public purpose, insofar as the supervisor also oversees the equipment, materials and supplies of the township that are kept on the premises, as well as maintaining the township hall. Accordingly, in the event that such residence is damaged or destroyed by fire, the township may issue general obligation bonds following an election approving same, with the proceeds used for repair or reconstruction.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle