



STATE OF KANSAS

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January 20, 1982

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ATTORNEY GENERAL OPINION NO. 82-14

Jack Alexander
Water Commissioner
City of Topeka
P. O. Box 1038
Topeka, Kansas 66601

Re: Bonds and Warrants -- Cash-Basis Law -- Creation
of Indebtedness; Estimate of Liability Provided
for in Budget

Cities and Municipalities -- General Provisions --
Uniform Procedure for Payment of Claims

Synopsis: The City of Topeka may contract with an insurance company for the payment of claims filed by the employees of the city for health services covered by their employment agreements. Provided the city commission makes an adequate budget estimate of its probable liability to pay claims filed by its employees, and its levies accord therewith, the provisions of the Cash Basis Law, K.S.A. 10-1101 et seq., are not violated by such a contract. A self-insurer arrangement of this type could likewise be made consistent with the Uniform Procedure for Payment of Claims Act, K.S.A. 1980 Supp. 12-105a et seq., provided the procedures therein (*i.e.*, approval of claims by the city commission following an audit by a financial officer of the city) are followed. Cited herein: K.S.A. 10-802, 10-803, 10-1112, 10-1113, K.S.A. 1980 Supp. 12-105a, 12-105b, K.S.A. 13-2108.

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Dear Commissioner Alexander:

You have informed us that the Topeka City Commission is considering a change in the city's employee group health insurance program by entering into either an administrative services

only contract ("A.S.O. Contract") or a "minimum premium" arrangement. It is our understanding that under the A.S.O. contract the city would contract with an insurance company to review claims and make payments to health vendors providing covered services to city employees. These claims would ultimately be paid out of the city's funds rather than those of the insurance company. Thus, the city would basically be acting as a self-insurer with the insurance company administering the services for them. Under the minimum premium arrangement, the insurer would establish a fixed monthly premium, with any claims in excess of this amount paid at the end of the year. Alternatively, if claims made did not equal premiums paid in, such difference would be refunded to the city.

In regard to the city commission entering into either one of these arrangements, you have requested our opinion as to what extent and effect K.S.A. 1980 Supp. 12-105a, 12-105b, K.S.A. 10-1112, 13-2108 and 10-801 et seq. bear on the commission's ability to do so and the administration thereof. Your request contains two primary issues: first, whether the entry by the city commission into either of these arrangements would violate the Cash Basis Law K.S.A. 10-1101 et seq.; and second, whether either of these arrangements can be administered consistent with the Uniform Procedure for Payment of Claims, K.S.A. 1980 Supp. 12-105a et seq. The other two statutes you cite present the same issue as is involved with the latter question.

The first issue concerning the Cash Basis Law arises due to the wording of K.S.A. 10-1112, where it is made unlawful for

"the governing body of any municipality to create any indebtedness in excess of the amount of funds actually on hand in the treasury of such municipality at the time for such purpose, or to authorize the issuance of any order, warrant, or check, or other evidence of such indebtedness of such municipality in excess of the funds actually on hand in the treasury of such municipality at the time for such purpose."

Furthermore, K.S.A. 10-1113 provides that it is unlawful

"for any member of any governing body of any municipality to knowingly vote for or in any manner aid or promote the passage or adoption of any order, motion, ordinance, resolution, legislation or other act of said governing body, creating an indebtedness in excess of the amount of funds actually on hand in the

treasury of such municipality at the time for such purpose, or to knowingly vote for the drawing of any order, warrant or check, or other evidence of such indebtedness on the treasury of said municipality, in payment of any such indebtedness, in excess of the amount of funds actually on hand in the treasury at the time for such purpose."

Therefore, if the amount of the claims presented under the A.S.O. contract exceeds the amount of funds actually on hand in the treasury for the payment of employee health benefits at that time, there could be a possible violation of the cash basis law. Further, if the year-end balance under the "minimum premium" arrangement was in the negative and required the city to pay out additional funds, a possible violation could exist if there were not sufficient funds on hand to pay such indebtedness at that time. Finally, since the city's liability would necessarily be contingent upon the amount of claims presented and paid, there could be a violation of the cash-basis law through the mere passage of such a resolution.

A situation similar to that presented here existed in Wichita v. Wyman, 158 Kan. 709 (1944), wherein the Kansas Supreme Court held that the City of Wichita could serve as a self-insurer of its employees under the worker's compensation law. In that case the Workers' Compensation Director objected to the plan because of the practical difficulties in articulating the city's contingent liability to pay compensation to its employees with the provisions of the Cash-Basis and budget laws. However, the court did not view the city's contingent liability as a severe problem, describing it as "more specious than real." Id. at 712. The opinion then goes on to discuss the issue in detail, stating at 712 and 713:

"Of course the city will need to make a budget estimate of its probable liability to pay such compensation during each ensuing fiscal year, and its cash-basis levies will have to be made to accord therewith. But the city's verified application for the writ alleges that such financial estimate has already been provided for, and a financial statement of its various budgeted funds, included in its application, which need not be reproduced, establishes that fact. Moreover, the cash-basis and budget laws do not forbid, and they do necessarily imply, that for certain contingent expenses the existence and amount of which is uncertain, a rational estimate thereof, by the proper officials charged

therewith, is all that the cash-basis and budget regulations can require To apply the hypertechnical interpretation to these appropriations which the compensation commissioner would apply to the city's requirement to specify precisely in advance just what and how much it must levy to pay its contingent liability for compensation to its injured workmen, would compel a holding that a statutory appropriation to a state officer as a contingent fund did not conform to the constitution, but that every item thereof for postage, lead pencils, etc., would have to be budgeted in detail. Surely a common sense interpretation of the cash-basis and budget laws requires no greater particularity of detail than the constitution itself.

"Moreover, until an award and judgment to pay compensation to an injured workman are assessed against the city, its liability is only contingent, not absolute. When it does become absolute by a judgment, a proper estimate and levy to provide for its payment will need to be included in the next make-up of the cash-basis and budgetary provisions of the statutes-- unless it can be met out of the 10 percent leeway allowed in the regular budget 'for sundry or miscellaneous purposes' authorized by G.S. 1943 Supp. 79-2927." (Emphasis added.)

In accordance with the foregoing decision, it is our opinion that as long as the city commission supports the estimates of its probable liability to pay compensation under either of the proposed arrangements with an adequate budgeted amount, no violation of the Cash Basis Law would occur. Therefore, the fact that the city's liability under either of these arrangements would necessarily be contingent, does not in and of itself violate the Cash Basis Law.

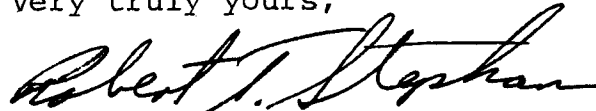
In determining whether these arrangements can be administered consistent with the Uniform Procedure for Payment of Claims Act, as well as other provisions relating to the payment of claims, it is necessary to look at the procedures for payment under each of the arrangements. The minimum premium arrangement would apparently require a set monthly payment plus a potential payment at the end of the contract year. Since these payments would be made to the insurance company pursuant to the contract and a valid levy in support thereof, they could be made following the usual procedures for payment of claims, i.e., presented in writing to the city commission after being first audited by the appropriate financial officer of the city. K.S.A. 1980 Supp. 12-105b(a), (e).

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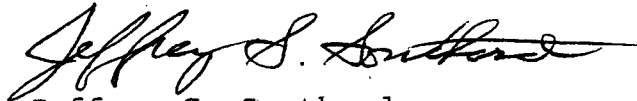
As described above, an A.S.O. contract would apparently require payments when claims are presented. This arrangement could pose a problem, in that an insurance company is not able to issue warrants or warrant checks on the city's funds. However, this problem could be solved in a variety of ways. One method would involve the making of a request by the insurance company to the city auditor (or other official authorized to issue warrants under K.S.A. 10-802 and 10-803) that a specified amount be paid to an employee/claimant. That city official could then issue the warrant or warrant check as if an individual voucher had been submitted, after the steps of K.S.A. 1980 Supp. 12-105b were taken. As an alternative, the insurance company could make payments out of its own funds, then submit a claim to the city for reimbursement, again using the procedures of K.S.A. 1980 Supp. 12-105b. Under either of these methods, the city could avoid the problem of the insurance company not being able to issue warrants or warrant checks.

In conclusion, the city of Topeka may contract with an insurance company for the payment of claims filed by the employees of the city for health services covered by their employment agreements. Provided the city commission makes an adequate budget estimate of its probable liability to pay claims filed by its employees, and its levies accord therewith, the provisions of the Cash Basis Law, K.S.A. 10-1101 et seq., are not violated by such a contract. A self-insurer arrangement of this type could likewise be made consistent with the Uniform Procedure for Payment of Claims Act, K.S.A. 1980 Supp. 12-105a et seq., provided the procedures therein (i.e., approval of claims by the city commission following an audit by a financial officer of the city) are followed.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle