



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82-79

Fred W. Johnson
Labette County Counselor
805 West Fourth
Oswego, Kansas 67356

Re: Bonds and Warrants -- Cash-Basis Law -- Installment-Purchase Agreement

Synopsis: K.S.A. 1981 Supp. 10-1116b exempts certain agreements from the scope of the Cash-Basis Law, K.S.A. 10-1101 et seq. Among such agreements are installment-purchase agreements where the municipality is obligated only to make periodic payments from funds appropriated for that purpose, either from the current budget or other revenue sources. A transfer of title in the property to the municipality would not affect the validity of such an agreement, provided that the required language of K.S.A. 1981 Supp. 10-1116b is included in the agreement. Cited herein: K.S.A. 10-1101, K.S.A. 1981 Supp. 10-1116b.

* * *

Dear Mr. Johnson:

As Counselor for the Board of Commissioners of Labette County, you request our opinion on a question involving the Cash-Basis Law. Specifically, you wish to know whether an agreement being considered by the commission would violate the law by obligating the county to pay for funds which are not currently on hand or budgeted.

You inform us that the county wishes to obtain five vehicles for the sheriff's office. As funds are not available for an outright purchase of the vehicles, the commission is exploring an agreement providing for an extended payment period. To reduce costs under a lease agreement, the commission desires to obtain title to the vehicles, thus eliminating property

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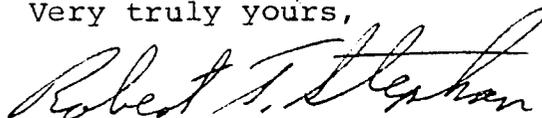
taxes (which a lessor would otherwise pay and pass on) and reducing insurance costs (for the same reason). The seller would retain a security interest in the property until all installments were made.

Generally speaking, political subdivisions and taxing districts of the state are prohibited from entering into obligations in excess of the amount of funds actually on hand by the Kansas Cash Basis Law, K.S.A. 10-1101 et seq. However, this law sanctions exceptions under certain conditions. K.S.A. 1981 Supp. 10-1116b states as follows:

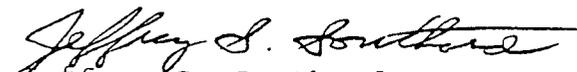
"Nothing in the provisions of K.S.A. 10-1101 et seq. shall prohibit a municipality from entering into (1) an agreement to pay for electric interconnection or transmission facilities or services, (2) a lease agreement, with or without an option to buy, or (3) an installment-purchase agreement, if any of such agreements specifically state that the municipality is obligated only to pay periodic payments or monthly installments under the agreement as may lawfully be made from (a) funds budgeted and appropriated for that purpose during such municipality's current budget year or (b) funds made available from any lawfully operated revenue producing source."
(Emphasis added.)

In our opinion, the underscored language above would allow the type of agreement envisioned here. Although title would have passed to the county, ownership free of any security interest would not occur until the installment schedule was completed. Thus, payments could conceivably be spread over a period of several years, i.e. longer than would otherwise be permitted under the Cash-Basis Law. The mere fact of title passing is in our view unimportant, as the statute contemplates both installment-purchase arrangements and leases, with or without the option to buy. As long as the terms of the agreement made it clear that the municipality could not be obligated to pay from funds which had not yet budgeted and appropriated or received from another source, no conflict with K.S.A. 10-1101 would occur.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle