



STATE OF KANSAS

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June 10, 1982

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ATTORNEY GENERAL OPINION NO. 82- 122

Michael F. Willcott  
Attorney at Law  
419 Shawnee Street  
Leavenworth, Kansas 66048

Re: Bonds and Warrants--General Bond Law--Temporary Notes  
for Improvements

Synopsis: A temporary note, issued by a municipality under the provisions of K.S.A. 1981 Supp. 10-123, constitutes a "bond" of that municipality for the purposes of K.S.A. 10-131, governing investment of the proceeds of certain bond issues. Pursuant to K.S.A. 10-131 the governing body of a municipality may make deposits of temporary note proceeds in commercial banks or trust companies located in the county or counties in which the municipality is located. Cited herein: K.S.A. 1981 Supp. 10-123, 10-131.

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Dear Mr. Willcott:

As city attorney of Lansing, you have inquired of this office whether the city of Lansing may deposit temporary note proceeds in banks located outside the city of Lansing, in order to obtain the best possible interest rate on the investment. You also advise that there is only one bank located within the city limits, and it is presently used as the regular city depository.

Pertinent to your inquiry is K.S.A. 1981 Supp. 10-131, which states in part:

"The governing body of any municipality, as defined in K.S.A. 10-101 which has heretofore issued or may hereafter issue bonds for any purpose, is hereby authorized and empowered to invest any portion of the proceeds of said bonds, which is not currently needed, in investments authorized by K.S.A. 1980 Supp. 12-1675 . . . or in interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the municipality is located." (Emphasis added.)

Clearly, the above provisions of the general bond law authorize the investment of bond proceeds in commercial banks located outside the corporate limits of Lansing, but within the boundaries of Leavenworth County. However, the statute is silent as to the investment of temporary note proceeds, and the question for our determination is whether the authority provided by K.S.A. 1981 Supp. 10-131 for the investment of bond proceeds implicitly applies to the investment of proceeds of temporary notes, as well.

Temporary notes are authorized by the general bond law in K.S.A. 1981 Supp. 10-123, which states:

"If a municipality shall have theretofore duly authorized the making of an improvement which is to be paid for in whole or in part by the issuance of bonds, then the governing body of such municipality may issue temporary notes, bearing interest at a rate not to exceed the maximum rate of interest prescribed by K.S.A. 10-1009, payable semiannually, maturing not later than the due date of the first installment of such bonds, or four (4) years from the date of said notes whichever is sooner, not exceeding in the aggregate the amount of bonds which are to be issued and are then unissued, as shown by the approved estimates on file (except in the case of road bonds when the amount of said notes shall not exceed the total amount of the unissued bonds and the state and federal aid granted to said project), but any municipality may issue renewal temporary notes to pay for the cost of taking up any previously issued temporary notes as they mature when the improvement will not be completed at the maturity date of such notes or when the municipality has completed the improvements and the issuance of bonds is prevented, hindered or delayed by reason of any court order or litigation.

"Said temporary notes shall be in the form usual for such bonds, except that coupons evidencing the interest need not be attached and the entire temporary note shall be contained on one sheet of paper. Such notes shall be executed and registered as are such bonds, and shall be redeemed and canceled before or at the time permanent bonds are issued in lieu thereof, so that the amount of temporary notes and bonds issued and outstanding shall not at any time exceed the estimated cost and expense of said improvement. Said temporary notes may be issued from time to time, as required during the progress of said work, shall be negotiable and shall constitute a general obligation of the municipality issuing the same. Said temporary notes shall not be negotiable until countersigned, following registration, by the clerk of the issuing municipality, and a statement to that effect shall appear on the face of all such temporary notes. Such temporary notes may be sold in the manner provided for the sale of bonds or may be sold at private sale at not less than par and accrued interest."

Although temporary notes are separate, negotiable instruments, it is evident from the provisions of K.S.A. 1981 Supp. 10-123 that they are inextricably tied to a municipality's general obligation bonds. Such notes must be "in the form usual for bonds" (except for interest coupons), have the same maximum interest rate limitations as general obligation bonds and must be "executed and registered as are such bonds." Moreover, it is apparent that they are issued only in anticipation of receipt of the bond proceeds necessary to finance an improvement project of the municipality, and the proceeds of the notes are dedicated to the same purpose as are the proceeds of the bonds themselves.

Therefore, by considering K.S.A. 1981 Supp. 10-123 and 10-131 as statutes in pari materia, since they are both sections of the general bond law, we believe the legislature intended in K.S.A. 1981 Supp. 10-131 to authorize the investment of the proceeds of a municipality's general obligations which have been issued for an improvement project. Hence, it is appropriate to construe "bond proceeds," as used in this statute, so as to include proceeds of temporary notes issued in anticipation of the issuance of the bonds.

Our conclusion that temporary notes may be regarded as bonds for the purposes of K.S.A. 1981 Supp. 10-131 is consistent with a prior opinion of this office, which concluded that a municipality's

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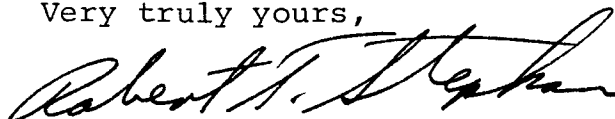
temporary note constituted a bond for the purposes of K.S.A. 1981 Supp. 9-1402. In VI Op. Att'y Gen. 76 (1973), it was stated:

"After reviewing the provisions of K.S.A. 10-123 relative to temporary notes of municipalities and considering the observations of the Court in The First State Bank v. Bone, 122 Kan. 493 (1927), we are of the opinion that a temporary note issued by a municipality under the provisions of 10-123, constitutes a 'bond' of that municipality for the purposes of 9-1402."

We concur in that opinion, and we find that the authorities cited in support of its rationale lend further credence to the conclusion reached herein.

In summary, it is our opinion that the guidelines established with respect to investment of proceeds of certain bond issues under K.S.A. 1981 Supp. 10-131 are equally applicable to proceeds of temporary notes issued pursuant to K.S.A. 1981 Supp. 10-123, and the governing body of a municipality may make deposits of temporary note proceeds in commercial banks or trust companies located in the county or counties in which the municipality is located.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



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RTS:BJS:DEJ:jm