



STATE OF KANSAS

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December 12, 1985

ATTORNEY GENERAL OPINION NO. 85-167

Ronald Heberling
Elk Township Trustee
Route 2
Overbrook, Kansas 66524

Re: Bonds and Warrants--Cash Basis Law--Lease or
Installment Purchase Agreement; When Allowed

Synopsis: The Cash Basis Law, K.S.A. 10-1101 et seq., forbids a municipality to incur a contractual indebtedness in excess of funds actually on hand in the municipality's treasury and budgeted for such indebtedness in any particular budget year. K.S.A. 10-1116b allows municipalities to enter into lease-purchase agreements which provide for periodic payments or monthly installments, but only if such agreements specifically state that the municipality is obligated only to pay such payments or installments as have been provided in the budget of the municipality for the current year, or which can be derived from a lawfully operated revenue producing source. Accordingly, an agreement which may obligate a municipality for an amount in excess of the funds provided in the budget for the current budget year does not comply with the Cash Basis Law. Cited herein: K.S.A. 10-1101; 10-1113; 10-1116b.

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Dear Mr. Heberling:

As trustee for Elk Township, you request our opinion as to whether the provisions of a "lease-purchase agreement," to be entered into by the township to acquire road maintenance equipment, are in compliance with the requirements of the Cash Basis Law, K.S.A. 10-1101 et seq. The agreement purports to lease the described equipment to the township, subject to the terms and conditions stated in the agreement. Your concern is that certain of these terms and conditions obligate the township beyond what is allowed under the Cash Basis Law.

For example, the final paragraph of item 2 of the agreement provides that the township "covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Lease Payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its bona fide best efforts to have such portion of the budget approved and exhausting all available and administrative reviews and appeals in the event such portion of the budget is not approved. . . ." Item 3 of the agreement allows the township to terminate the agreement at the end of any fiscal period during the payment schedule, but only if "(i) funds for the succeeding fiscal period cannot be obtained, (ii) Lessee has exhausted all legally available means for making the payment called for under this Agreement, (iii) Lessee has invoked and diligently pursued all legal procedures by which payment called for under this Agreement may be made, (iv) such failure to obtain funds has not resulted from any act or failure to act of Lessee, (v) Lessee has not acquired and has no intent to acquire during the subsequent fiscal period, items of property having functions similar to those of the equipment or which provide similar benefits to Lessee, and (vi) no funds have been appropriated for the acquisition of such property. . . ." Finally, item 18 describes the events constituting default of the agreement and includes failure to perform any other covenant or condition of the agreement. Item 19 then provides that, upon default, the balance of the amounts due under the lease shall become immediately due and payable.

In our opinion, the agreement in question does not satisfy the requirements of the Cash Basis Law. The Cash Basis Law forbids a municipality to incur a contractual indebtedness in any amount which exceeds those funds which are actually on hand and budgeted for such indebtedness for that particular budget year. K.S.A. 10-1113. While K.S.A. 10-1116b allows a municipality to enter into lease and installment-purchase agreements which provide for

periodic payments or monthly installments over a period in excess of one year, this is only under the conditions provided; such conditions being:

"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." K.S.A. 10-1116b (Emphasis added.)

Under this statute, a lease or installment-purchase agreement may not obligate a municipality to make payments in any year subsequent to its current budget year. In addition, it may not obligate a municipality to pay more in the current year than is budgeted for that particular purpose in the current year's budget.

The lease-purchase agreement in question does not contain the specific statement limiting the township's obligation as required by K.S.A. 10-1116b. This office has previously opined that the inclusion of such a statement is mandatory. See Attorney General Opinion Nos. 84-117, 82-46 and 80-141. Moreover, the agreement obligates the township to do everything legally possible to provide for payments from future budgets, and states that failure to do so may result in the balance of the lease payments becoming due and payable, regardless of whether there are funds on hand to pay the balance. This language is a clear violation of the Cash Basis Law, in that it obligates the township to make payments other than the periodic payments or monthly installments.

The township's right to terminate (item 3 of the agreement) does not compensate for this lack of compliance with the Cash Basis Law. Attorney General Schneider concluded in his Opinion Number 77-279 that:


"The privilege of cancellation does not immunize the agreement from the cash-basis law. The agreement must be measured against the cash-basis law on the basis of the


obligation which exists unless and until the privilege of cancellation is exercised, for unless and until that occurs, the agreement constitutes a binding obligation on the city for which sufficient funds must be on hand and available for that purpose at the time the obligation is incurred."

We affirmed that conclusion in Attorney General Opinion No. 80-141, and do so again here.

In conclusion, it is our opinion that the lease-purchase agreement in question is in violation of the Cash Basis Law, in that it obligates the township to pay more than periodic payments or monthly installments as have been provided for in the budget of the township for the current budget year, or which can be derived from a lawfully operated revenue producing source.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Assistant Attorney General

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