



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 86- 167

William D. Rustin
County Counselor
Sedgwick County Courthouse, Suite 315
Wichita, Kansas 67203-3790

Re: Counties and County Officers--County
Buildings--Financing Cost; Issuance of Bonds

Synopsis: The failure of county voters to approve a proposition to issue general obligation bonds of the county pursuant to subsection (c) of K.S.A. 1985 Supp. 19-15,116 to finance construction of a new county jail does not effect the exercise of the authority granted to the board of county commissioners in subsection (d) of the same statute. Thus, the board of county commissioners may continue to levy a tax authorized by a resolution adopted pursuant to subsection (d) to create a building fund for a new county correctional facility. Similarly, the board of county commissioners may issue general obligation bonds of the county, as authorized by subsection (d), for the same purpose. In subsections (c) and (d) of K.S.A. 1985 Supp. 19-15,116 the legislature has given Kansas counties two separate authorizations for the issuance of general obligation bonds to finance the construction and improvement of county public buildings. The failure of a prerequisite election under subsection (c) does not prevent the county from issuing duly authorized bonds for the same purpose under subsection (d). In subsection (d) the legislature has given a board of county commissioners due authority to issue general obligation bonds of the

county, as limited therein, without submitting the proposition to a vote of the county electorate.
Cited herein: K.S.A. 19-15,114; K.S.A. 1985 Supp. 19-15,116; K.S.A. 19-1901.

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Dear Mr. Rustin:

As Sedgwick County Counselor and on behalf of the Board of County Commissioners you request an opinion on questions relating to the possible issuance of general obligation bonds of the county pursuant to K.S.A. 19-15,114 et seq. to finance construction of additional correctional facilities in the county.

We preface our discussion with an examination of the factual and legal matters which comprise the background of your questions. As you are aware, K.S.A. 19-15,114 et seq. authorizes the board of county commissioners of any Kansas county to acquire, construct, and improve any "public building" in the county. "Public building" is defined as any building or structure which the board of county commissioners determines is necessary for any public county purpose.

K.S.A. 1985 Supp. 19-15,116 authorizes a board of county commissioners to utilize a variety of tools to finance the construction, acquisition, or improvement of a public building. The statute provides in relevant parts:

"The board of county commissioners of any county may for the purposes hereinbefore authorized and provided:

"(a) Receive and expend gifts;

"(b) Receive and expend grants-in-aid of state or federal funds;

"(c) Issue general obligation bonds of the county. If it is determined that it is necessary to issue more than \$300,000 in general obligation bonds for the purposes hereinbefore authorized, such bonds shall not be issued until the question of their issuance has been submitted to a vote of the qualified

electors of the county and has been approved by a majority of those voting thereon at a general election or at a special election called and held for that purpose. Such election shall be called and held and bonds issued in the manner provided by the general bond law;

"(d) Make an annual tax levy of not to exceed one mill for a period of not to exceed 10 years upon all taxable tangible property in the county for the purpose of creating a building fund to be used for the purposes herein provided and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, except that no such levies shall be made until a resolution authorizing the same shall be adopted by the board of county commissioners stating the specific purpose for which such fund is created, the total amount proposed to be raised, the number of years such tax levy shall be made and shall be published once each week for three consecutive weeks in the official county newspaper. Whereupon such levies may be made unless a petition requesting an election upon the proposition, signed by electors equal in number to not less than 10% of the electors of the county who voted for the secretary of state at the last preceding general election, is filed with the county clerk within 30 days following the last publication of such resolution. In the event such petition is filed, the board of county commissioners shall submit the question to the voters at an election called for that purpose and held within 90 days after the last publication of the resolution or at the next general election if held within that time and no such levies shall be made unless such proposition shall receive the approval of a majority of the votes cast thereon. Such election shall be called and held in the manner provided in the

general bond law. Such building fund may be used for the purposes stated in the resolution establishing the same at any time after the making of the second levy and if there are insufficient moneys in the building fund for such purpose the board of county commissioners may, in the manner provided by the general bond law of the state issue general obligation bonds of the county in an amount which together with the amount raised by the tax levies will not exceed the total amount stated in the resolution creating such fund. . . .

"(e) Issue no-fund warrants in the manner and form and bearing interest and redeemable as prescribed by K.S.A. 79-2940, except that they may be issued without the approval of the state board of tax appeals, and without the notation required by such section. The board of county commissioners shall make a tax levy at the first tax levying period after such warrants are issued, sufficient to pay such warrants and the interest thereon. All such levies shall be in addition to all other levies authorized or limited by law and the tax limitations provided by article 19 of chapter 79 of the of the Kansas Statutes Annotated shall not apply to such levies;

"(f) Use moneys from the general operating fund or other appropriated budgeted fund when such is available;

"(g) Use moneys received from the sale of public buildings or buildings and sites without regard to limitations prescribed by the budget law;

"(h) Or may combine any two or more of such methods of financing for the purposes herein authorized, except that counties shall first use funds received from the payment of insurance claims for damages sustained by any such public

building before resorting to methods of financing herein authorized;

"(i) Authorize the county engineer to supervise the work necessary for the purposes herein provided, including the right of such county engineer to have such work done by force account as well as by contract."

The Sedgwick County Commissioners have determined that it is necessary for public county purposes to build additional correctional facilities in the county. To that end the Board has sought to utilize the authority provided by K.S.A. 19-15,114 et seq. On January 29, 1986 the Board, relying on subsection (c) of K.S.A. 1985 Supp. 19-15,116, provided that the following question should be submitted to Sedgwick County voters:

SHALL THE FOLLOWING BE ADOPTED?

"A proposition to issue general obligation bonds of the County of Sedgwick, State of Kansas, in an amount not exceeding \$23,870,000, to pay the cost of constructing and equipping a new County jail, pursuant to K.S.A. 19-15,114 et seq. and K.S.A. 19-1901."

At the election held April 10, 1986, Sedgwick County voters rejected this proposition.

Nine months before this election was held, on July 10, 1985, the Board adopted a resolution authorizing the creation of a special public building fund through the levy of an annual tax of 1 mill for a period not exceeding 10 years, all as provided in K.S.A. 1985 Supp. 19-15,116(d). In compliance with subsection (d), the resolution, providing for a levy to raise a total of not more than \$27.5 million for the construction of additional correctional facilities, was published 3 consecutive weeks in the official county newspaper. No petitions legally sufficient to require an election on the question of making the levy were filed within the 30 days permitted by the statute and two levies have been made for the special building fund.

Under these circumstances you raise the following questions:

". . . whether the election held on April 10, 1986, wherein the proposition to issue bonds under K.S.A. 19-15,114 et seq. for purposes of constructing correctional facilities was defeated by the electorate, precludes the continuation and use of the mill levy and the issuance of bonds as permitted under K.S.A. 19-15,116(d) for the purpose of proceeding with the construction of said correctional facilities."

In response to your first question, in our opinion it is apparent that the voter's rejection of the county's proposed issuance of general obligation bonds pursuant to K.S.A. 1985 Supp. 19-15,116(c) does not prevent the continuation and use of the mill levy authorized by 19-15,116(d). The obvious intent of K.S.A. 1985 Supp. 19-15,116 is to provide a county with several options for financing necessary public buildings. The authority to levy an annual tax under subsection (d) for such purposes is not dependent upon approval or rejection by the voters of the issuance of general obligation bonds under subsection (c). The statute provides at least two distinct financing options in subsections (c) and (d). In rejecting the subsection (c) proposal to issue bonds to finance a county jail, the Sedgwick county voters did not address or speak to the question of the mill levy authorized by subsection (d). The voter's statutory opportunity to speak on the mill levy for the special building fund is provided by subsection (d) of the statute and, as noted above, the time for calling that question to an election has long since passed. Subsection (c) provides for an election on a separate matter and does not provide an opportunity to retroactively speak to the question of a levy authorized by subsection (d).

Your second question is whether the voter's rejection of the proposition presented for election on April 10, 1986, precludes the issuance of bonds for the same purpose under K.S.A. 1985 Supp. 19-15,116(d). It is our opinion it does not based upon much the same reason we concluded the election results do not prevent continuation and use of the special building fund levy established under subsection (d) of 19-15,116.

The proposition submitted to the voters on April 10, 1986, sought approval of the issuance of general obligation bonds pursuant to K.S.A. 19-15,114 et seq. and K.S.A. 19-1901. The latter statute provides:

"There shall be established and kept at every county seat, by authority of the board of county commissioners, at the expense of the county, a jail for the safekeeping of prisoners lawfully committed."

The only provisions of K.S.A. 19-15,114 et seq. which authorize a county to issue general obligation bonds are K.S.A. 1985 Supp. 19-15,116(c) and (d). Only subsection (c) requires the question of issuance be submitted to the voters if more than \$300,000 in bonds will be issued. It was this subsection (c) authorized proposition regarding financing a new jail which was presented to and rejected by Sedgwick County voters.

Issuing general obligation bonds as authorized by subsection (d) of K.S.A. 1985 Supp. 19-15,116, however, is a wholly different matter. That subsection authorizes the issuance of bonds only when a county has established and levied a tax to create a special building fund. Only after the second levy has been made may the county issue general obligation bonds and then only in an amount which, together with the tax levies, will not exceed the amount stated in the resolution authorizing the levy and creating the special building fund. Thus, the amount of general obligation bonds which may be issued pursuant to subsection (d) should not exceed an amount which, in addition to the amounts raised by the tax levy, will be more than the amount stated in the resolution creating the levy. The bonds issued under subsection (d) clearly are designed to provide those funds necessary to make the building fund sufficient for its stated purposes before the end of the 10 year levy period. All these requirements and limitations distinguish the issuance of bonds pursuant to subsection (d) from the issuance of bonds pursuant to subsection (c).

Subsection (d), by its specific language, does not require an election to issue bonds under its authority and we can find no language indicating that the legislature intended that general obligation bonds issued pursuant to subsection (d) be subject to the requirements of subsection (c). We are not unmindful that an argument may be made that subsection (c) speaks generally to the issuance of general obligation bonds in excess of \$300,000 and that its provisions apply to the issuance of such bonds under subsection (d). Such a conclusion, however, requires an interpretation of legislative intent as expressed in K.S.A. 1985 Supp. 19-15,116 which, in our opinion, is not warranted by the statutory language.

It is the paramount rule of statutory construction that the purpose and intent of the legislature governs when that intent may be ascertained from the statute. In re Estate of Estes, 239 Kan. 192, 195 (1986); State v. Thompson, 237 Kan. 562, 563 (1985). Reading K.S.A. 1985 Supp. 19-15,116 in its entirety and giving effect to all its various provisions, it is apparent to us that the legislature has provided several distinct options for financing the acquisition, construction, or improvement of county public buildings. K.S.A. 1985 Supp. 19-15,116(h) provides that a county may combine any two or more of the methods of financing authorized by the statute in order to accomplish the authorized purposes. This specific statement authorizing the combination of prescribed methods of financing indicates the legislature regarded the various methods of financing as distinct authorities which may be used separately or in conjunction. This fact, combined with the clear language of the statute, indicates to us that the authority to issue general obligation bonds under K.S.A. 1985 Supp. 19-15,116(d) is not dependent upon compliance with subsection (c). Thus, the failure of the voters to approve and thereby authorize the issuance of bonds under subsection (c) does not effect the county's authority to issue bonds as authorized by subsection (d).

In our opinion the statute is unambiguous on its face. Under these circumstances the plain and obvious language of the legislature must control. See Krauzer v. Farmland Industries, Inc., 6 Kan.App.2d 107, 113 (1981). Had the legislature intended to require that bonds issued pursuant to subsection (d) be first approved by the voters, plain language to that effect easily could have been inserted in the statute. The language utilized does not hint that subsection (d) bonds may only be issued in the manner provided by subsection (c) and we can find no reason in the statute or circumstances to interpret the language employed to supply such a requirement.

To reach the conclusion that the county may not issue the general obligation bonds authorized in subsection (d) without first complying with the requirements for issuing general obligation bonds pursuant to subsection (c) requires the assumption that the legislature regarded the issuance of general obligation bonds under K.S.A. 1985 Supp. 19-15,116 as a single matter. If subsection (d) cannot be read independently of subsection (c) then the converse must also be true, subsection (c) provides no authority, independent of subsection (d), for the issuance of county general obligation

bonds. The language employed by the legislature in 19-15,116 belies such an interpretation and we do not believe that the statute provides but one authorization to issue general obligation bonds in two separate subsections. When the meaning of a particular section or phrase standing alone is clear, no other section or phrase should be applied to create doubt. Cf., Sutherland, Statutory Construction §47.02 (Sand, 4th ed., 1984). In our opinion the two subsections standing alone are clear and provide two distinct methods of issuing general obligation bonds which may be employed independently of the other if the separate statutory requirements are met.

We conclude thus, that in subsections (c) and (d) of K.S.A. 1985 Supp. 19-15,116 the legislature has provided Kansas counties with two distinct authorizations to issue general obligation bonds. The failure of the prerequisite election under subsection (c) does not prevent a county from issuing duly authorized bonds for the same purpose under subsection (d). The legislature has given the county due authority in subsection (d) to issue general obligation bonds, as limited therein, without submitting the matter to a vote of county citizens. The failure to obtain necessary approval to issue bonds under one authority does not foreclose authority to issue bonds for the same purpose under a separate provision.

In reaching this conclusion we are very much aware that the voters of Sedgwick County have rejected a proposal to issue general obligation bonds of the county to finance construction of a county jail. Yet we are concluding here that, despite the voter's rejection of a new jail financed by subsection (c) authorized general obligation bonds, the county has authority under K.S.A. 1985 Supp. 19-15,116(d) to issue general obligation bonds for that purpose without voter approval. Given what we believe is the accurate interpretation of the relevant statutes we can reach no other conclusion. If the county commissioners choose to issue bonds in compliance with subsection (d) of 19-15,116 they will be acting according to clear statutory authority. Nothing evasive of the law, either in letter or spirit will occur if this is the case. See, Fairchild v. City of Holton, 101 Kan. 330, 335, (1917). Under K.S.A. 19-15,114(a) the determination of what buildings or structures are necessary for public county purposes belongs entirely to the board of county commissioners. In an election held pursuant to subsection (c) the voters speak to a proposed method of financing such public county buildings. A negative decision by the voters on one proposed method does not prevent the board of county

commissioners from using other methods of financing authorized by the same statute which do not require an election.

Moreover, the county voters had an opportunity to speak to the wisdom of the subsection (d) tax levy when the resolution establishing that levy, stating its purpose, and providing the amount to be raised, was published once a week for 3 consecutive weeks in the official county paper. As stated in the published resolution, it did not take effect until 30 days after the last publication and then only if no petitions sufficient to call the matter to an election were filed. No such petitions were filed. Thus, the county voters have tacitly agreed, by failure to protest, to a tax levy to raise not to exceed \$27.5 million to build a new county correctional facility. That levy has been lawfully made for two years and, as provided by subsection (d), there are insufficient sums in the building fund to achieve its stated purpose. The county is thus authorized by subsection (d) of K.S.A. 1985 Supp. 19-15,116 to issue general obligation bonds in an amount which together with the amounts raised by the tax levies will not exceed \$27.5 million. This authority is not lost because Sedgwick County voters rejected a proposition to issue \$23,870,000.00 in general obligation bonds pursuant to subsection (c) of K.S.A. 1985 Supp. 19-15,116.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Mary F. Carson
Assistant Attorney General

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