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ATTORNEY GENERAL OPINION NO. 87- 56

Gerald E. Williams
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Re: Constitution of the State of Kansas--
Corporations--Cities' Powers of Home Rule; Issuance
of Special Obligation Bonds

Synopsis: Acquiring and constructing certain municipal improvements, to be paid for in whole or in part by special assessments upon property benefited by such improvements, is a valid exercise of the City of Lenexa's constitutional powers of home rule as provided in Article 12, Section 5 of the Kansas Constitution. Special assessments levied under the home rule ordinance and payable in installments may be paid by issuing special or limited obligation bonds of the city payable solely from such special assessments. K.S.A. 12-6a01 et seq., which also permits cities to acquire and construct municipal improvements, the costs of which may be paid (in whole or in part) by special assessments on benefited property, and which authorizes a city to issue bonds which are general obligations of the city, does not address a city's authority to issue special obligation bonds payable solely from special assessments. Thus, K.S.A. 12-6a01 et seq., while it addresses a similar subject and provides an alternative methodology, does not preclude nor preempt the utilization of home rule powers proposed by the City of Lenexa. Special obligation bonds issued pursuant to the home rule

ordinance would not be subject to statutory aggregate debt limitations applicable to the city because such bonds are not a pledge of the city's faith and credit nor of its general power to levy ad valorem taxes. While the home rule amendment states that cities shall be subject to enactments of the legislature prescribing limits of indebtedness this limitation does not make those bonds issued by a city pursuant to home rule which are otherwise exempt from statutory debt limitations subject to such limitations. Cited herein: Kan. Const., Art. 12, Sec. 5; K.S.A. 1986 Supp. 10-308; K.S.A. 12-6a01 to 12-6a14.

* * *

Dear Mr. Williams:

As attorney for the City of Lenexa you have requested an opinion on the validity a proposed exercise of the city's home rule powers as granted in Article 12, Section 5 of the Kansas Constitution.

You inform us that the Lenexa city council proposes to use home rule powers to enact an ordinance authorizing the City to provide for internal public improvements such as streets, sidewalks, sewer and water lines, etc., and to pay the cost of such improvements, in whole or in part, solely from special assessments levied against the property specially benefited by the improvements. The ordinance would authorize funding improvements through the use of any lawfully available funds including federal and state grants, funds available from other local governments, funds available from the City, and the special assessments. The costs payable from special assessments which will be paid in installments may be paid by the issuance of special obligation bonds of the City payable solely from the special assessments to be levied by the City on the property benefited by the improvement. If the assessments were not paid the debt would not become a general obligation of the City. The City would have no responsibility or authority to levy ad valorem taxes against the property in the City to pay costs of the improvements or the principal and interest on bonds issued to finance such improvements. Because such special obligation bonds will be payable solely from the special assessments and not secured by the city's general authority to levy ad valorem taxes, such bonds would

not be subject to the statutory aggregate debt limitations applicable to the City.

The proposed ordinance, as described in your letter, would authorize the construction and acquisition of public improvements which confer a special benefit upon definable property within the City and in unincorporated areas within three miles of the City limits. All or any part of the cost of such improvements would be payable solely from special assessments upon the property deemed by the governing body of the City to have received special benefit; provided, however, that such improvements could be made and such assessments levied only if the governing body received a petition requesting such improvement signed by a majority of the owners of record and the owners of record of more than one-half of the area liable for the assessment under the proposal, describing the boundaries of the benefit district, and stating the estimated cost of the improvement and proposed method of assessment. The ordinance would provide that notice of a public hearing by the governing body of the City on the proposed assessments would be both published in the official City newspaper and mailed to owners of record of property in the benefit district prior to the hearing and that notice of final assessments would be mailed to owners of record.

It is the opinion of the City and the City's bond counsel that the proposed ordinance may be enacted utilizing the city's constitutional powers of home rule. You seek our concurrence in this opinion.

The home rule amendment provides in significant part:

"Cities are hereby empowered to determine their local affairs and government . . . by ordinance passed by the governing body . . . subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments of the legislature applicable uniformly to all cities, to enactments of the legislature applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction and to enactments of the legislature prescribing limits of indebtedness." Art. 12, §5(b).

As the Kansas Supreme Court has stated, the home rule amendment gives cities the power to determine their local affairs and government without legislative authorization in the form of an enabling statute. Home rule powers are subject to limitation by the legislature in certain cases but the powers are to be liberally construed for the purpose of granting cities the largest measure of self-government. Claflin v. Walsh, 212 Kan. 1 (1971); City of Junction City v. Lee, 216 Kan. 495, 498 (1975). In our opinion, the ordinance proposed by the City of Lenexa fits well within the City's constitutional home rule powers and is not precluded by any of the optional limitations stated in Article 12, §5.

The home rule amendment makes cities subject to uniformly applicable enactments of statewide concern and to other uniformly applicable enactments of the legislature. As you note, K.S.A. 12-6a01 et seq. is a uniformly applicable legislative enactment which authorizes Kansas cities to acquire and construct municipal improvements and to finance such improvements by levying special assessments against the benefited property. K.S.A. 12-6a14 provides that such special assessments which will be paid in installments shall be paid by the issuance of bonds of the city. The bonds so issued are general obligations of the city secured by the special assessments and the city's obligation to levy ad valorem taxes against all taxable property in the city should such special assessments be insufficient to pay the principal and interest on the bonds. Such bonds must be issued within the city's aggregate debt limitations (unless otherwise excluded).

It is apparent that K.S.A. 12-6a01 et seq. is not a matter of statewide concern. It addresses local concerns in providing a methodology for acquiring, constructing and financing local municipal improvements. The statutes apparently are uniformly applicable to Kansas cities, however, we do not believe that this precludes the exercise of local home rule powers in the case you have described.

As the Kansas Supreme Court has often noted, the home rule amendment requires a liberal construction of the powers and authority granted to cities for the purpose of granting the largest measure of self-government. Art. 12, §5(d). Where the legislature has acted in some area, the city's power to act in the same area should be upheld unless the legislature has clearly preempted the field to preclude city action. "Unless there is actual conflict between a municipal ordinance

and a statute, the city ordinance should be permitted to stand." Claflin v. Walsh, 212 Kan. 1, 7 (1973).

The subject matter addressed by K.S.A. 12-6a01 et seq. and also by the proposed ordinance is the provision of certain municipal improvements financed by the levy of special assessments on specially benefited property. K.S.A. 12-6a01 et seq., on its face, is uniformly applicable to all cities and provides a specific methodology for Kansas cities to accomplish certain municipal improvements. It does not, however, provide the exclusive methodology for providing and financing such improvements and, in fact, states that it is intended as "a complete alternative to all other methods provided by law." K.S.A. 12-6a02. We do not find in K.S.A. 12-6a01 any evidence of a legislative intent to preempt all local authority on the subject of providing for municipal improvements to be financed by special assessments upon benefited property. Nothing in the statutes indicates that the legislature intended to occupy the field nor retain exclusive jurisdiction to legislate on this subject matter. See Anderson Construction Co. v. City of Topeka, 228 Kan. 73, 79 (1980). If a city proposed to do exactly that which K.S.A. 12-6a01 et seq. authorized, i.e., issue general obligation bonds to finance the costs of improvements to be paid by special assessments paid in installments, then the uniformly applicable provisions of K.S.A. 12-6a01 et seq. might arguably preclude the exercise of home rule authority on the subject.

The proposed exercise of city home rule by Lenexa, however, addresses a similar but different subject, i.e., the issuance of special obligation bonds to finance the type of improvements often accomplished and financed under the provisions of K.S.A. 12-6a01 et seq. We find no conflict between the proposed ordinance as described in your letter and the provisions of K.S.A. 12-6a01 et seq. The fact that the legislature has provided an alternative method of accomplishing the improvements does not preclude the exercise of city home rule authority as long as there is no conflict in terms with state legislation and the state legislature has not preempted the field. See City of Junction City v. Lee, 216 Kan. 495, 499 (1975). There is no statutory enactment which permits the issuance of special obligation bonds to finance the improvements the City hopes to authorize pursuant to the proposed ordinance. K.S.A. 12-6a01 et seq. provides a mechanism whereby the improvements may be accomplished and financed but only through the issuance

of bonds to be paid by special assessments and which are also general obligations of the city.

In our opinion K.S.A. 12-6a01 et seq. does not provide the exclusive method of accomplishing the kinds of improvements which the city hopes to provide. It exists as an alternative which the city may utilize but does not, in our opinion, preclude the exercise of home rule described in your letter. The legislature has not spoken to the specific matter of issuing special obligation bonds backed solely by special assessments to finance municipal improvements and the existence of statutes which provide different methods of financing similar improvements do not preclude the use of home rule powers in the area. In our opinion, both the statutes and the constitution provide the city with a method to accomplish and finance certain municipal improvements. The fact that two alternatives exist does not make one bad or one exclusive of the other. Cf., Clark v. City of Overland Park, 226 Kan. 609, 617 (1979). Moreover, the proposed local ordinance does not conflict with the provisions of the state law on the same subject since the ordinance does not address the exact same subject but provides an alternative method of financing not addressed by the state statute. Thus, the city need not enact a charter ordinance exempting from any state enactment which addresses the same subject because no such enactment exists.

The final limitation on city home rule which might be at issue here is the constitutional provision that cities shall be subject to "enactments of the legislature prescribing limits of indebtedness." It is the city's opinion that special obligation bonds issued pursuant to the proposed home rule ordinance would not be included in the city's aggregate debt limitation. In our opinion, the special obligation bonds issued pursuant to the home rule ordinance are not the type of bonds which traditionally are included within the "enactments of the legislature prescribing limits of indebtedness" described in the home rule amendment.

The language of the home rule amendment relevant here was interpreted in Attorney General Opinion No. 80-229 which concluded that "enactments prescribing limits of indebtedness" only referred to limitations on total or aggregate indebtedness. Thus, a city may not utilize home rule power to exempt from the statutory limits on total indebtedness found in K.S.A. 1986 Supp. 10-308. (See also Attorney General Opinions No. 82-186, 77-368). It does not appear that this is what the City of Lenexa proposes to do. The City will be

subject to enactments prescribing limits of indebtedness while operating under its home rule ordinance. The special obligation bonds proposed to be issued by the City, however, are not the type of bonds which, in our opinion, are limited by the aggregate debt limitations applicable to the City. Thus, the City is not attempting to use home rule to exempt from aggregate debt limitations; it is using home rule to issue a type of bond which is not included in the City's aggregate debt limitation.

The bonds authorized by the proposed ordinance are special obligations secured solely by a pledge of the special assessments to be levied on the property benefited by the improvement. You inform us that the City will not pledge its faith and credit and the bonds will not be general obligations. Thus, the City will have no obligation or authority to levy general ad valorem taxes on the property in the City to pay principal and interest on the bonds. Unlike bonds issued pursuant to K.S.A. 12-6a01 et seq., the bonds issued under the proposed ordinance will not obligate the City for repayment of principal and interest except to the extent of the revenues pledged, i.e., the special assessments. In this respect the bonds issued pursuant to the ordinance are equivalent to revenue bonds. The credit of the city is not pledged as security for the bonds and to that extent the relevant aggregate debt limitations do not apply. See Gelfand et al., State & Local Government Debt Financing, §2:07 (1985); 15 McQuillin, Municipal Corporations §41.31 (3d Ed. 1985).


The general aggregate bonded debt limitation applicable to Kansas cities is expressed as a percentage of the city's assessed valuation. K.S.A. 1986 Supp. 10-308. Thus, the type of bonded debt which the statute is designed to limit is that bonded indebtedness which pledges the faith and credit of the city through its general powers to levy ad valorem taxes. (Cf. 15 McQuillin, Municipal Corporations, §41.17 (3d Ed., 1985). Bonds issued for local improvements and payable solely from special assessments on the property benefited are generally held not to create a municipal indebtedness within the context of debt limitation laws. See 14 McQuillin, Municipal Corporations, §§41.31; 41.32 (3d Ed. 1985) and Gelfand, supra at §12:11. Like revenue bonds, such special obligations cannot be regarded as municipal indebtedness for the purposes of debt limitations as long as payment of the special obligations is limited to the special assessments. The holders of the bonds will not be entitled to look to the general credit of the city for payment of the


bonds but only to the funds to be derived from the special assessments. We find nothing in your description of the proposed ordinance to indicate that if the revenues produced by the special assessments are insufficient to meet principal and interest the bond holders would have any claim on the faith and credit of the city. Cf., State, ex rel. v. Kansas City, 148 Kan. 623, 625 (1938) and 149 Kan. 252, 257 (Same Case, Supplemental Opinion 1939.) Of course, to the extent that such bonds would obligate the city's general credit they would be included within general debt limitation laws. We repeat, however, that the proposed home rule ordinance appears to authorize the issuance of special obligation bonds payable solely from the special assessments on benefited property. In such a circumstance the city does not violate the provisions of the home rule amendment making city's "subject to" enactments of the legislature prescribing limits of indebtedness. The city is certainly still subject to such limits; it is simply issuing bonds which are not subject to such limits. In our opinion the constitutional provision making cities subject to enactments of the legislature prescribing limits of indebtedness means that cities may neither use home rule to exempt from such enactments nor issue types of bonds which are subject to such limitations and provide that such bonds are exempt. It does not mean that any type of bond which might be issued by a city utilizing home rule powers (e.g. revenue bonds, special obligation bonds) becomes subject to general statutory aggregate debt limitations.

We conclude, therefore, that acquiring and constructing certain municipal improvements to be paid for in whole or in part by special assessments upon property benefited by such improvements is a valid exercise of the City of Lenexa's constitutional powers of home rule as provided in Article 12, Section 5 of the Kansas Constitution. Special assessments levied under the home rule ordinance and payable in installments may be paid by the city issuing special or limited obligation bonds payable solely from such special assessments. K.S.A. 12-6a01 et seq., which also permits cities to acquire and construct municipal improvements, the costs of which may be paid (in whole or in part) by special assessments on benefited property, and which authorizes a city, to issue bonds which are general obligations of the the city does not address a city's authority to issue special obligation bonds payable solely from special assessments. Thus, K.S.A. 12-6a01 et seq., while it addresses a similar subject and provides an alternative methodology, does not preclude nor preempt the utilization of home rule powers

proposed by the City of Lenexa. Special obligation bonds issued pursuant to the home rule ordinance would not be subject to statutory aggregate debt limitations applicable to the city because such bonds are not a pledge of the city's faith and credit nor of its general power to levy ad valorem taxes. While the home rule amendment states that cities shall be subject to enactments of the legislature prescribing limits of indebtedness this limitation does not make those bonds issued by a city pursuant to home rule which are otherwise exempt from statutory debt limitations subject to such limitations.

Very truly yours,


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