



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87-123

Leonard J. Dix  
Attorney at Law  
517 Main Street  
Stockton, Kansas 67669

Re: Procedure, Civil -- Liens for Labor and Material --  
Certificate of Deposit in Lieu of Surety Bond for  
Public Works

Synopsis: K.S.A. 60-1112 authorizes the state director of  
purchases to accept a certificate of deposit from a  
bidder for state capital improvement projects in  
lieu of a required surety bond. This statute is  
not applicable to public works projects for  
municipalities. Accordingly, a rural water  
district may not accept a certificate of deposit  
from a bidder in lieu of a performance  
bond-payment bond. Cited herein: K.S.A.  
60-1112; Ks. Const. Art. II, § 16; G.S. 1867,  
ch. 132, § 4..

Dear Mr. Dix:

As legal counsel for Rural Water District No. 2, Osborne  
County, you ask whether K.S.A. 60-1112 is applicable to public  
works projects for municipalities. You inform us that the low  
bidder for the construction of a new water system wishes to  
supply the water district with a certificate of deposit in the  
bid amount, in lieu of a performance bond-payment bond.

K.S.A. 60-1112 provides at subsection (a):

"The director of purchases may accept a certificate of deposit payable to the state instead of any required surety bond from a bidder. . . ."

Thus, the state director of purchases may accept a certificate of deposit from a bidder for state capital improvement projects in lieu of any required surety bond. To determine whether this statute could apply to a local governmental entity, such as a rural water district, it is helpful to examine relevant legislative history and case law.

Article II, Section 16 of the Kansas Constitution provides that "[t]he subject of each bill shall be expressed in its title." The title to 1983 Senate Bill No. 224, by which K.S.A. 60-1112 was enacted, provides:

"AN ACT concerning the division of purchases of the department of administration; authorizing acceptance of certificates of deposit instead of surety bonds for state construction, repair or improvement projects; procedures for resolving claims;. . . ." (Emphasis added).

We find this language, which expressly refers to the division of purchases, and to state construction, repair or improvement projects, to be restrictive. It is indicative of legislative intent and therefore eliminates the possibility that a statute contained within the act could be interpreted as applying to municipalities. In our opinion, if the legislature had intended to include municipalities within the scope of 1983 Senate Bill No. 224, the title to the act would have expressly so provided.

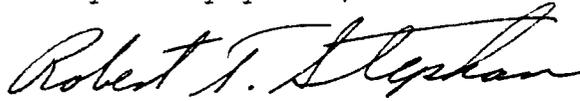
This conclusion is supported by the decision in City of Concordia v. Hagaman, 1 Kan. App. 35 (1895), in which the Kansas Court of Appeals interpreted G.S. 1867, ch. 132, § 4. The act containing the statute was entitled "An act to restrain state and county officers from speculating in their offices." The city's attorney argued that G.S. 1867, ch. 132, § 4 could be construed as including city officials. The Appeals Court rejected this argument, stating:

"Were it not for the restrictive title of the act, this language would warrant the construction claimed by the city. The legislature, however, saw fit, by the title, to limit the provisions of the act to state and county officers. It would have been an easy matter to have made the title comprehensive enough to include all public officials. The fact that the title was thus limited clearly indicates that it was the legislative intention to restrict the act to these two classes of officers."

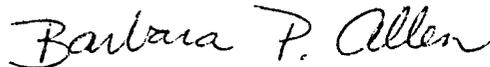
Similarly, we believe the limited title to 1983 Senate Bill No. 224 clearly indicates legislative intention to restrict the scope of the act with which we are presently concerned to state bidding procedures.

In summary, K.S.A. 60-1112 authorizes the state director of purchases to accept a certificate of deposit from a bidder for state capital improvement projects in lieu of a required surety bond. This statute is not applicable to public works projects for municipalities. Accordingly, a rural water district may not accept a certificate of deposit from a bidder in lieu of a performance bond-payment bond.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Barbara P. Allen  
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