Approved 4-30-1987
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Senator Don Montgomery at
Chairperson

9:12 a.m./~~p.m.~~ on April 8, 19 87 in room 531-N of the Capitol.

All members were present except:

Committee staff present: Theresa Kiernan, Mike Heim and Lila McClaflin

Conferees appearing before the committee:

R. Scott Beeler, Johnson County Rural Water District No. 5
Ernie Mosher, The Kansas League of Municipalities

The Chairman called attention to Senate Sub. for H.B. 2480 (ATTACHMENT I). The changes that were made in H.B. 2480 were reviewed. The Chairman invited committee discussion. By consensus of the Committee, clarifying language was inserted in line 6, new language is "in an annexed area".

Written testimony was distributed to the Committee from R. Scott Beeler. (ATTACHMENT II)

The League proposed several amendments and the copies were distributed, as well as a letter addressed to Senator Bud Burke from Marylin J. Swartley, Mayor of Olathe, KS. (ATTACHMENT III and IV)

Senator Salisbury moved to insert the stronger language proposed by the League and insert conceptual language on page 2. The motion was seconded by Senator Winter. After discussion on the proposed amendments, the motion failed.

Senator Winter moved to amend page 1, to insert all of the language proposed by the League. The motion was seconded by Senator Salisbury. The motion failed.

Senator Bogina moved to amend the bill on page 2, b (1) in line 4 after units to insert 'connected to and served within'. In (2) line 3 the same language was inserted. The last line on page 2, the language "of publication" would be added before "of the annexation". The motion was seconded by Senator Ehrlich and the motion carried.

Senator Ehrlich moved to insert on Page 3, new section (f) that was recommended by the League. The motion was seconded by Senator Salisbury. The motion carried.

Senator Winter was concerned with the bill taking affect and being enforce upon publication in the Kansas Register. He wanted to know why this was included in the bill.

Scott Beeler stated he did not think there were any pending annexations that would be affected by this legislation. There was support for this legislation from Kansas Rural Water Districts and both Douglas County and Shawnee County had had Rural Water Districts testify in support of the measure.

Senator Winter moved to insert a new section that stated this legislation would apply only to annexations after April 1, 1987. Senator Salisbury seconded the motion. The motion failed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT,

room 531-N, Statehouse, at 9:12 a.m./~~p.m.~~ on April 8, 1987

Senator Ehrlich moved Senate Sub. for H.B. 2480 be passed as amended. The motion was seconded by Senator Bogina. The motion carried.

Senator Gaines presented Attorney General Opinion No. 87-57, concerning cities issuing obligation bonds and to what extent cities can use them. He asked the Chairman if he would recommend an interim study of cities' powers of Home Rule and to what extent they can issue general obligation bonds. (ATTACHMENT V) After committee discussion, Senator Gaines moved to request to the Legislative Coordinating Counsel that this be considered for an interim study. The motion was seconded by Senator Bogina. The motion carried.

Senator Bogina moved to adopt the minutes of the April 1, 1987 meeting. The motion was seconded by Senator Daniels. The motion carried.

The Chairman stated this was the last meeting he planned to hold for the 1987 Session. The meeting adjourned at 10:00 a.m.

Don Montgomery

Chairman, Senator Don Montgomery

Date: April 8, 1987

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
DAN GROVER	WATER DIST 5 JO. CO.	P.O. BOX 22 OLATHE
Jim Kaup	League of Municipalities	Topeka

SENATE Substitute for HOUSE BILL NO. 2480

By Committee on Local Government

AN ACT concerning water districts; relating to lands annexed by cities; amending K.S.A. 1986 Supp. 12-527 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1986 Supp. 12-527 is hereby amended to read as follows: 12-527. (a) Whenever a city annexes land located within a rural water district organized pursuant to the provisions of K.S.A. 82a-612 et seq., and amendments thereto, the city shall negotiate with the district to acquire title to all facilities used for the transportation or utilization of water belonging to the water district. Title shall vest in or become the property of the city upon payment by the city to the water district of the reasonable value of such property, as agreed upon by the governing body of the city and the board of directors of the district~~,--or--if--such--agreement--is--not--made,--then--as determined--by--the--city.---The--board--of--directors-of-any-such district~~. If the district is unable to reach agreement with the city on the reasonable value for such facilities, then the reasonable value shall be determined by the district. The city may bring an action in the district court to determine the reasonableness of the value fixed and determined by any such ~~city~~ district.

~~(b)--Such-compensation-shall-include-an-amount-to--reimburse the-district-for-any-bonded-indebtedness-of-the-district-existing at-the-time-the-annexation-ordinance-took-effect-and-attributable to-the-annexed-area,-based-on-the-following-factors:~~

~~(1)--The--cost--of-the-construction-of-the-facilities-within the-annexed-area-in-proportion-to-the-construction-costs-for--the entire-district-at-the-time-of-annexation;~~

~~(2)--the--number--of--benefit--units-connected-to-and-served within-the-annexed-area-in-proportion-to-the--number--of--benefit units--connected-to-and-served-by-the-entire-district-at-the-time of-annexation;-and~~

~~(3)--the-current-revenue-received-from-benefit-units--within the--annexed--area--in-proportion-to-the-current-revenue-received from-all-benefit-units-of-the-entire--district--at--the--time--of annexation.~~

(b) The "reasonable value" of the property shall include, but not be limited to, the following factors:

(1) An amount to reimburse the district for any bonded indebtedness of the district existing at the time of payment by the city and attributable to the annexed area based upon the ratio of the benefit units in the annexed area compared with the total benefit units served by the district; and

(2) an amount to reimburse the district for all the facilities to be transferred to the city based upon the ratio of the benefit units in the annexed area compared with the total benefit units served by the district, applied to the original construction cost adjusted to the current construction value and depreciated at a straight line rate over a forty-year period. The depreciated reduction of value shall be applied for the actual number of years the system has been in service or 30 years whichever is the lessor of time expended; and

(3) an amount equal to the gross revenue loss for the immediate past one business year from those benefit units in the annexed area or the actual current benefit unit costs for those benefit units in the annexed area whichever is the greater.

(c) The compensation required by this section shall be paid to the district whether or not the city actually utilizes the facilities of the district for the delivery of water to property within the city and shall be paid at a time not later than 60 days following the date ~~the-city-provides-water-to-one-or-more benefit-units-who-were-supplied-water-by-the-district-at-the-time of-annexation~~ of the annexation ordinance, or at such later date

as may be mutually agreed upon by the city and the water district or as may be determined by the district court. ~~Payment of any such compensation shall be made on a basis which is in proportion to the number of benefit units within the annexed area which are connected to and served by the city and the total number of benefit units within the annexed area.~~ In no case shall the city provide water to one or more benefit units who were supplied water by the district until an agreement has been reached by the city and the district. The city, as part of its service extension plan required under the provisions of K.S.A. 12-520b and 12-521c, and amendments thereto, shall notify each affected rural water district of its future plans for the delivery of water in areas proposed for annexation currently being served by the district.

(d) The governing body of the city and board of directors of the district may provide, on such terms as may be agreed upon, that water transmission facilities owned by the district and located within the city may be retained by the district for the purpose of transporting water to benefit units outside the city.

(e) Except for nonpayment of bills, the district shall not diminish service to benefit units who were supplied water by the district at the time of annexation during the period of negotiations pursuant to this section.

Sec. 2. K.S.A. 1986 Supp. 12-527 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

TO: Members of the Senate Ways and Means Committee

FROM: R. Scott Beeler -
Johnson County Rural Water District No. 5

RE: Senate Substitute For HB 2480

RURAL WATER DISTRICTS HAVE VALID AND WELL-FOUNDED RIGHTS TO PROVIDE WATER SERVICE TO CUSTOMERS WHEN SUCH DISTRICTS ARE STATUTORILY ORGANIZED UNDER THE LAWS OF THIS STATE.

The effect of the existing law under K.S.A. 12-527 is to grant to municipalities a power of condemnation which results only from the exercise of rights of annexation. I would submit, despite the real constitutional questions on the enforceability of this type of condemnation power, that an exercise of the power flies in the face of the intent of the legislation passed last year by the House and Senate to provide additional protection to rural water districts upon annexation by cities.

The Kansas Rural Water Association has been represented at every level of these proceedings and they fully support the intent of this legislation. Individual water districts in Johnson County and Shawnee County have also been represented and a great deal of interest expressed from Douglas County. All of these are developing areas where, in many instances, strong, progressive water districts have better

facilities, better staffing, and better management of water service than does the neighboring city. It is simply and utterly a misstatement of fact for anyone to suggest that an annexation necessarily implies that the existing water services in the annexed area are substandard. It is a fact that there are counties in this state where water facilities and servicing potential of an expanding city cannot even begin to compare with the existing facilities of an annexed water district.

As a supporter of the intent of a defined protection for rural water districts, I certainly support itemized criteria to determine reasonable value whenever a water district agrees to sell its facilities. But before you focus your attention on the "reasonable value" formulas, I urge you to first remove this misplaced condemnation power and insert language which will reaffirm the right of the water district to determine whether it will sell its facilities.

Considerable rhetoric, exaggeration and questionable interpretation have arisen from opponents to these legislative changes as the original bill and the substitute bill have moved through the hearing process. I simply ask . . . what are these people so afraid of? The changes we suggest do nothing to lessen the ability of a municipality to annex

land. The present annexation legislation requires cities to set forth a plan for providing utility services. In the many areas throughout this state where water districts provide excellent service, the city need only incorporate that service into its plan. A water service plan of this type is no different than any other utility or other necessary service to be provided within the annexed area. The cities do not provide the electricity . . . in my area, Kansas City Power & Light does! The cities do not provide the gas . . . in my area, KPL does! The cities do not provide the sewers . . . in my area, we are included within the Johnson County Waste Water District! The cities do not provide the refuse service . . . in my area, it is independently contracted. In other words, all of these necessary services provided by independent business entities are provided very nicely and very smoothly within the municipal format. Why should water service be any different?

The opponents of the legislation continue to raise an issue about the level and quality of service upon annexation. We certainly agree that there are areas in the State of Kansas which should be served by the municipality upon annexation. I would submit that the proposals noted above cover the realities of those situations. Upon annexation,

the city would be required to negotiate with the rural water district for the purchase of its facilities. The realities are that districts which are substandard in condition are also substandard in the budget area. Those districts will be the first in line to agree to sell the facilities. Even in the unlikely event that a district with substandard facilities would refuse to sell to the city upon annexation, that city has the complete ability to lay its own lines to serve the area. In fact, as opponents of this legislation have mentioned, the city would not even plan to use the facilities of a substandard rural district even if they agreed to sell. In other words, one way or the other, the city would be laying its own lines. There simply is no real disadvantage to this legislation, but there are plenty of advantages for the cities and the districts. The fact is . . . the only time the city will not be providing water service is in an instance where the rural water district has the better equipment and the better ability to serve the area. It is in those instances that the best interest of public health, safety and welfare are being best addressed.

There is indeed an urgency that this Legislature take up these changes to the existing law. In at least three counties in eastern Kansas (and I suspect in numerous others

around the state) annexations have occurred over the last two or three years without addressing the issue of water service. Now is the time to reaffirm the rights of these districts to determine their own business fate prior to an exercise of an unneeded and unfair condemnation. If this Legislature were to pass on taking any action at this time, it will mean a potential death knell to several of the districts involved in these annexed areas.

In conclusion, we totally support the changes which have been suggested to the "reasonable compensation" formulas. But most importantly, we respectfully request the inclusion of language within subsection (a) of 12-527 which would reaffirm the ability of a water district to make its own determination on the question of whether to sell its facilities to a municipality after annexation. Such a provision is in the best interest of the patrons of the rural water districts and the citizens of the municipalities. In Johnson County alone, there are 20-some cities operating in growth modes where water service is being provided by a water district. It is time to dispense with the antiquated notion that water districts cannot provide water service equal to or better than municipalities and work with municipalities in a harmonious manner.

The attached exhibit contains the suggested language for subsection (a) of 12-527. We would respectfully request that those changes be incorporated with the draft modifications for subsection (b) as determined by the committee.

Respectfully submitted,

R. Scott Beeler

SENATE Substitute for HOUSE BILL NO. 2480

By Committee on Local Government

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Amendments Proposed by the League of Kansas Municipalities April 3, 1987

7 RS 1402

SENATE Substitute for HOUSE BILL NO. 2480

By Committee on Local Government

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~~(b) Such compensation shall include an amount to reimburse the district for any bonded indebtedness of the district existing at the time the annexation ordinance took effect and attributable to the annexed area, based on the following factors:~~

~~(1) The cost of the construction of the facilities within the annexed area in proportion to the construction costs for the entire district at the time of annexation;~~

It is hereby declared to be the policy of the State of Kansas that cities shall have the lawful authority to designate the entity, public or private, that shall provide water service within the city's boundaries subject only to payment of just compensation as required by law.

(restore struck language)

~~(2)--the--number--of--benefit--units-connected-to-and-served within-the-annexed-area-in-proportion-to-the--number--of--benefit units--connected-to-and-served-by-the-entire-district-at-the-time of-annexation;-and~~

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connected to and served within

(2) an amount to reimburse the district for all the facilities to be transferred to the city based upon the ratio of the benefit units ~~in~~ the annexed area compared with the total benefit units served by the district, applied to the ~~original construction cost adjusted to the current construction value and depreciated at a straight line rate over a forty year period. The depreciated reduction of value shall be applied for the actual number of years the system has been in service or 30 years whichever is the lesser of time expended; and~~

connected to and served within

depreciated replacement cost.

~~(3) an amount equal to the gross revenue loss for the immediate past one business year from those benefit units in the annexed area or the actual current benefit unit costs for those benefit units in the annexed area whichever is the greater.~~

(c) The compensation required by this section shall be paid to the district whether or not the city actually utilizes the facilities of the district for the delivery of water to property within the city and shall be paid at a time not later than 60 days following the date ~~the-city-provides-water-to-one-or-more benefit-units-who-were-supplied-water-by-the-district-at-the-time of-annexation~~ of the annexation ordinance, or at such later date

of publication

as may be mutually agreed upon by the city and the water district or as may be determined by the district court. ~~Payment of any such compensation shall be made on a basis which is in proportion to the number of benefit units within the annexed area which are connected to and served by the city and the total number of benefit units within the annexed area. In no case shall the city provide water to one or more benefit units who were supplied water by the district until an agreement has been reached by the city and the district.~~ The city, as part of its service extension plan required under the provisions of K.S.A. 12-520b and 12-521c, and amendments thereto, shall notify each affected rural water district of its future plans for the delivery of water in areas proposed for annexation currently being served by the district.

(d) The governing body of the city and board of directors of the district may provide, on such terms as may be agreed upon, that water transmission facilities owned by the district and located within the city may be retained by the district for the purpose of transporting water to benefit units outside the city.

(e) Except for nonpayment of bills, the district shall not diminish service to benefit units who were supplied water by the district at the time of annexation during the period of negotiations pursuant to this section.

(f) Nothing in this section shall be interpreted as limiting in any manner the authority of a city to select water service suppliers to areas within the city limits, or to limit in any manner the authority of a city to adopt and enforce regulations for the operation of a water service supplier, including but not limited to standards of water quality, classification of water customers, capacity of water system, water system connections to sanitary sewer systems, rates and billing practices, and such other regulations for protection of the public health, safety and welfare.

Sec. 2. K.S.A. 1986 Supp. 12-527 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

April 1, 1987

Bud Burke
Senator
State Capitol
Room 357E
Topeka, KS 66612

Dear Bud:

I am writing this letter to express our opposition to House Bill 2480 that has passed the general assembly and is now in the State Senate. I am guessing a bit, but assume this bill was instigated by Rural Water District No. 5 in Johnson County.

The City of Olathe currently wholesales water to Rural Water District No. 5. The agreement provides that when areas served by Water District No. 5 are annexed that the City of Olathe would assume the responsibility for providing water service to the annexed area unless the city agreed to let Rural Water District No. 5 continue to serve an area. Over the last several years annexations have occurred along and south of 151st Street in Olathe where service was provided by Rural Water No. 5. The city did not grant permission to Rural Water District No. 5 to continue to serve the area, but we also did not attempt to assume ownership of the system as provided in state statutes but instead let the status quo prevail.

The area south of 151st Street has generally been identified as one of the most promising industrial areas in the Olathe community. Several areas have recently been annexed and rezoned for residential, commercial and light industrial development. In order to assure an adequate water supply for industrial, commercial, and fire protection purposes, the City of Olathe notified Rural Water District No. 5 of our intent to commence negotiations with them in hopes of accomplishing a friendly acquisition of those portions of the Water District No. 5 system within the Olathe corporate limits. The response to this overture was not positive and soon thereafter, the above bill was introduced. Olathe looks upon the provision of water service as one of the basic elements that a municipal government can provide to its residents and property owners. A recent 120 acre annexation was petitioned for by the property owners with the intent of developing their land with the assumption that they would receive water service from the City of Olathe at municipal rates. If the above bill is adopted and we are unable to negotiate an amicable acquisition of any Rural Water District No. 5 mains in this area, we may find ourselves with parallel systems pumping water in opposite directions down the same road. This prospect hardly seems cost effective for anyone.

(ATTACHMENT IV) LOCAL GO 4/8/87

We are further concerned about the prospect of the impact of House Bill 2480 on our ultimate ability to annex when read in conjunction with the new annexation law. It is my understanding that with many annexations it will be necessary for the cities to be able to demonstrate their ability to provide basic service to the area proposed for annexation. It is my further understanding that this includes water, not only for domestic consumption but also adequate for fire protection. If this House Bill 2480 were adopted and interpreted to preclude Olathe from providing service to any area served by a rural water district without that water district's concurrence, then we would find ourselves unable to state with assurance that such services could be provided because the provision of water service would be beyond our control. Hence, we would not be able to tell an area that we could provide water or fire protection comparable to that in the rest of the city.

I am also concerned that water rates in the rural water districts are different from those for water provided by the City of Olathe. I have been anticipating litigation from those Olatheans now served by Water District No. 5 demanding that their rates be equalized with those on the city water system since we failed to previously acquire that portion of the service area now in Rural Water District No. 5. I am not sure we would be able to effectively defend ourselves from such a charge. The adoption of House Bill 2480 could conceivably prevent us from adopting the most cost effective remedy.

Once urbanization of Johnson County is complete, it is likely that the county will be served by a few large water systems. Some of these may be municipally owned and operated and others may be some form of independent water district. Until that stage is reached, however, inhibiting cost effective urbanization by reducing a municipality's ability to provide basic water service does not seem to be a wise move.

I strongly urge your opposition to House Bill 2480.

Sincerely,

Philip L. Deaton
City Manager

TP
xc: Mayor Swartley
Don Seifert, CD Director

Johnson County Sun, April 1, 1987

Lenexa may demand in-home sprinklers

Lenexa — Most family homes don't come complete with automatic sprinkler systems, but some homeowners here will be required to install them if a controversial revision to the city's building code becomes law.

The requirement would apply almost exclusively to residences west of Kansas Highway 7 in the newly-annexed area where water pressure is insufficient to fight a large structure fire, city officials said.

The proposal points up a gap between city promises during annexation proceedings and the reality of conditions in the rural area.

"The rural water district (No. 1) is incapable of meeting the standard," said Mayor Rich Becker. "We promised those people first class fire service, but the water supply is not such that we can guarantee them first class fire service. We cannot do it with the current status of the water supply," he said.

The revision, recommended by Fire Chief Kenneth Hobbs, would require automatic sprinklers in homes and small apartment buildings unless the residences are located within 300 feet of a

See Page 2

Sprinklers

From Page 1

fire hydrant that supplies a minimum water flow of 1,000 gallons per minute.

Another section of the code requires sprinklers in 4,000-square-foot buildings or buildings with six or more apartments regardless of hydrant conditions.

Hobbs said homeowners who installed sprinkler systems would probably pay lower premiums for fire insurance and could make up the cost of their investment in three to five years. Approved systems cost about $1 per square foot of protected area, he said.

The Annexation Transition Task Force will study the measure and make recommendations before the City Council votes on including it in city code. The date of that vote has not been scheduled.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

March 30, 1987

ATTORNEY GENERAL OPINION NO. 87- 57

The Honorable Frank D. Gaines
State Senator, Sixteenth District
State Capitol, Room 140-N
Topeka, Kansas 66612

Re: Constitution of the State of Kansas--Corporations--Cities' Powers of Home Rule; Bonds for Motor Sports Raceway Park

Synopsis: A charter ordinance of the City of Topeka, enacted pursuant to the home rule amendment of the Kansas Constitution, Art. 12, §5, properly authorizes the city to issue its general obligation bonds (subject, in this case, to voter approval) to acquire land for and develop recreation facilities within or without the city. A proposed motor sports raceway park would appear to be such a "recreational facility." The authority to acquire property for municipal purposes generally implies the authority to lease property for such purposes. Cited herein: Kan. Const., Art. 12, Sec. 5; K.S.A. 12-1301; 12-1302; 13-1024a.

* * *

Dear Senator Gaines:

As State Senator for the Sixteenth District you seek our opinion on two questions related to a proposed general obligation bond issue of the City of Topeka to finance the design and construction of a motor sports raceway park at Forbes Field. Your first question asks whether the City of Topeka has legal authority, "by statute or valid ordinance, to

(ATTACHMENT V) LOCAL GO 4/8/87

V

issue general obligation bonds to construct the . . . racetrack?"

The City proposes to issue the bonds and develop the racetrack pursuant to Topeka Charter Ordinance No. 68 which provides in part that:

> "For the purpose of paying for . . . land for public parks and recreation facilities and developing the same, within or without the City, . . . the City may borrow money and issue bonds for the same. . . ."

The ordinance provides for an election on the issuance of such bonds if a sufficient petition opposing the bond issue is filed within 30 days after publication of the ordinance authorizing the bonds. Such a petition was filed in this case and on April 7, 1987 Topeka voters will cast ballots on the following question:

> "Shall the City of Topeka be authorized to issue general obligation bonds in the amount of $7,578,000, the proceeds of which would be used for the design and construction of a motor sports raceway park at Forbes Field?"

Topeka Charter Ordinance No. 68 amends Section A12-1 of the City Code which originally was enacted as Charter Ordinance No. 60. The amending charter ordinance (No. 68) added provisions for a protest petition and election but is otherwise identical to Charter Ordinance No. 60 in terms of the improvements which the city may authorize. Charter Ordinance No. 60 was enacted pursuant to the City's constitutional powers of home rule (Kan. Const., Art. 12, §5). It exempts the city from K.S.A. 13-1024a and enacts substitute and additional provisions on the same subject. K.S.A. 13-1024a applies to cities of the first class and authorizes cities to pay for various general improvements, including lands for public parks within or without the city, by the issuance of general obligation bonds. The statute, while applicable to Topeka, is not uniformly applicable to all Kansas cities and therefore, the subject matter which it addresses is subject to cities' power of home rule. This section is typically the subject of a charter ordinance in the cities to which it applies.

The Kansas Constitution at Article 12, Section 5(c)(1) provides:

> "Any city may by charter ordinance elect . . . that the whole or any part of an enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities', other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city."

The charter ordinance may provide substitute and additional provisions on the same subject matter. In Attorney General Opinion No. 80-229 Attorney General Stephan specifically stated that a city may exempt itself by charter ordinance from K.S.A. 13-1024a. Thus, we have no difficulty with the City of Topeka's utilization of home rule in this case. Charter Ordinances 60 and 68 address the same subject matter as K.S.A. 13-1024a, that is, various general improvements for a number of City purposes including parks, and provide substitute and additional provisions on the same subject. Thus, the Topeka ordinances authorizing the improvements here in question and the issuance of bonds to finance such improvements are, in our opinion, a proper exercise of the City's constitutional powers of home rule.

Charter Ordinance No. 68 authorizes the city to issue general obligation bonds to finance the acquisition of property and the development of recreational facilities either within or without the city. We do not have a description of the proposed facility nor do we know the specific manner in which the city proposes to operate the facility. Nevertheless, it would appear that a "motor sports raceway park" falls within the general purview of a "recreational facility" which may be utilized by city residents for recreational purposes. It is clear that a municipality, when properly authorized, may issue bonds for the purpose of acquiring and maintaining public parks and recreational facilities, including golf courses and stadiums. See McQuillin, Municipal Corporations, §§43.31 and 39.21 (3d Ed. 1985). As noted above, Charter Ordinance No. 68 provides sufficient authority for the issuance of the proposed bonds if approved by Topeka voters on April 7, 1987.

Your second question asks, if sufficient authority exists, "can the City build the track on land it never owns or

acquires?" This question relates to your understanding that if the bonds are issued, the proposed facility will be built on land leased but not owned by the City. You also indicate that the property in question is not within the territorial limits of the City of Topeka. To alleviate any concern raised by the latter point, we note that Charter Ordinance No. 68 authorizes the city to pay for and develop land for park and recreational purposes either "within or without the city." The acquisition and development of property outside the territorial limits of a city to be used in connection with a municipal improvement is not uncommon, especially with regard to park development. In addition to constitutional home rule powers, the Kansas legislature has provided Kansas cities at least two statutory authorizations for such acquisitions. Both K.S.A. 13-1024a and 12-1302 authorize the acquisition of property outside of a city to be developed and utilized for park purposes. The fact that bonds will be issued in connection with municipal improvements outside the territorial limits of the municipality is immaterial if the indebtedness so incurred is for the common benefit and enjoyment of the citizens of the municipality. See, McQuillin, Municipal Corporations, §§28.05, 37.11 and 39.21 (3d ed. 1971, 1981 and 1985).

Concerning the city's authority to lease the property for the racetrack we note that the home rule amendment empowers cities to determine their local affairs and government. In the absence of some limitation of home rule powers, such authority includes the ability to acquire property for city purposes and to determine the most effective method of making such acquisitions. The power to acquire property, for the promotion of public purposes, implies the authority to lease such property. Cf. McQuillin, Municipal Corporations, §§28.10 and 28.50 to 28.54 (3d ed. 1981 Revision).

In addition to the home rule powers which the City of Topeka is utilizing here, the legislature has authorized Kansas cities to lease or purchase land for park purposes in K.S.A. 12-1301. Numerous other statutes permit the acquisition of land for municipal purposes. Unless specifically limited, it is our opinion that the power to acquire such property implies the power to lease. As previously noted, the city of Topeka is utilizing home rule authority in the instance in question

and we are aware of no limitation on the exercise of such power which would prevent the city from leasing property for municipal purposes in this case.

Very truly yours,

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RTS:JLM:MFC:jm