

Approved February 3, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON FINANCIAL INSTITUTIONS AND INSURANCE

The meeting was called to order by Sen. Neil H. Arasmith at
Chairperson

9:00 a.m./~~p.m.~~ on February 2, 1988 in room 529-S of the Capitol.

All members were present except:

Senators Kerr and Harder - Excused

Committee staff present:

Bill Wolff, Legislative Research
Bill Edds, Revisor of Statutes

Conferees appearing before the committee:

Bob Alderson, Consumer Credit Commissioner
Jim Kaup, League of Kansas Municipalities

The minutes of January 27 were approved.

The meeting began with the request for the introduction of a bill by Bob Alderson of the Consumer Credit Commissioner's office. He said the bill is noncontroversial and is merely a clean-up of the UCCC.

Sen. Burke made a motion for the introduction of the bill and referral back to committee, Sen. Werts seconded, and the motion carried.

The hearing began on SB 511 relating to the investment of proceeds of bonds and temporary notes. Jim Kaup testified in support of the bill for Ernie Mosher of the League of Kansas Municipalities. (See Attachment I.)

The chairman had a question as to if there is a long enough longevity to invest the income on temporary notes. Mr. Kaup said there is a statutory limit of four years, and the temporary bonds are not an emergency measure but a routine practice. Mr. Kaup then answered questions from Sen. Karr about the Emporia case he had mentioned in his testimony. The final question came from Sen. Gannon who asked about the maximum interest rate referred to in the Attorney General's opinion. The question was answered with the help of Kathy Diehl of the State Treasurer's Office who explained there is a floating ceiling which cannot exceed the variable rate by more than two percent.

On a call for a vote on SB 511, Sen. Burke made a motion to report it favorable for passage, Sen. Gannon seconded, and the motion carried.

The meeting was adjourned.

SENATE COMMITTEE

ON

FINANCIAL INSTITUTIONS AND INSURANCE

OBSERVERS
(Please print)

DATE	NAME	ADDRESS	REPRESENTING
2/2/88	Jim Kamp	Topeka	League of Municipalities
	JOE A. Morris	TOPEKA	RLSI
	Daphy Hill	Topeka	State Treasurer
	Barry Shulinsky	Topeka	State Treasurer
	Dev Bradley	Topeka	KS Assoc Counties



League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL / 112 WEST SEVENTH ST., TOPEKA, KANSAS 66603 / AREA 913-354-9565

RE: SB 511--Municipal Investment of Temporary Note Moneys
TO: Senate Committee on Financial Institutions and Insurance
FROM: E.A. Mosher, Executive Director
DATE: February 2, 1988

The purpose of SB 511 is to clarify the authority of municipalities as to the investment of temporary note moneys. The bill was introduced by the Senate Committee on Local Government at the request of the League. Enactment of SB 511 is supported by the League's convention-adopted Statement of Municipal Policy and sponsorship of the bill was approved by the League's Governing Body.

By its written terms, K.S.A. Supp. 10-131 now appears to relate only to the investment of bond moneys--it says "bonds." However, Attorney General Opinion No. 82-122, issued June 10, 1982, concludes in a four-page opinion that a "temporary note" is a "bond" for investment purposes under K.S.A. 10-131. A copy of this opinion is attached.

Further, in an opinion filed October 30, 1986 by the Court of Appeals of Kansas (Mallon v. City of Emporia), the Court concluded that "temporary notes are encompassed within the meaning of bonds." A copy of portions of this opinion is attached.

The primary purpose of SB 511 is to make certain that local government officials--those responsible for the safe keeping and investment of public moneys--are aware that temporary note moneys are in effect bond moneys, which may be invested pursuant to K.S.A. Supp. 10-131.

The handling of temporary note investments in the same manner as bond moneys is important since the interest earnings must be used to pay the interest on bonds or notes or used for paying the cost of the project--see lines 55:58. And as noted in the Emporia case, the interest earnings on temporary notes are to be used to reduce the project costs in the case of a special assessment project. It may not be diverted to the general fund.

There are some indications that some local governments, not realizing that temporary note moneys are really bond moneys, invest temporary note moneys solely under the authority of the general investment statute--K.S.A. 12-1675 et seq. However, if they are not aware as to the restriction as to the use of note or bond investment earnings, shown in lines 55:58 in the bill, they may deposit the earnings in the general fund. Indeed, K.S.A. 12-1677, a part of the general investment law, requires interest earnings to be credited to the general fund of certain units, "except as otherwise required by state or federal law." Unless local officials understand that the basic investment authority for temporary moneys is K.S.A. Supp. 10-131, and not K.S.A. 12-1675 et seq., the interest earnings could be improperly used.

Again, our attempt is to establish, by specific statute, what is now the applicable law.

Attachment I



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

June 10, 1982

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

ATTORNEY GENERAL OPINION NO. 82-122

Michael F. Willcott
Attorney at Law
419 Shawnee Street
Leavenworth, Kansas 66048

Re: Bonds and Warrants--General Bond Law--Temporary Notes
for Improvements

Synopsis: A temporary note, issued by a municipality under the provisions of K.S.A. 1981 Supp. 10-123, constitutes a "bond" of that municipality for the purposes of K.S.A. 10-131, governing investment of the proceeds of certain bond issues. Pursuant to K.S.A. 10-131 the governing body of a municipality may make deposits of temporary note proceeds in commercial banks or trust companies located in the county or counties in which the municipality is located. Cited herein: K.S.A. 1981 Supp. 10-123, 10-131.

* * *

Dear Mr. Willcott:

As city attorney of Lansing, you have inquired of this office whether the city of Lansing may deposit temporary note proceeds in banks located outside the city of Lansing, in order to obtain the best possible interest rate on the investment. You also advise that there is only one bank located within the city limits, and it is presently used as the regular city depository.

Pertinent to your inquiry is K.S.A. 1981 Supp. 10-131, which states in part:

"The governing body of any municipality, as defined in K.S.A. 10-101 which has heretofore issued or may hereafter issue bonds for any purpose, is hereby authorized and empowered to invest any portion of the proceeds of said bonds, which is not currently needed, in investments authorized by K.S.A. 1980 Supp. 12-1675 . . . or in interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the municipality is located." (Emphasis added.)

Clearly, the above provisions of the general bond law authorize the investment of bond proceeds in commercial banks located outside the corporate limits of Lansing, but within the boundaries of Leavenworth County. However, the statute is silent as to the investment of temporary note proceeds, and the question for our determination is whether the authority provided by K.S.A. 1981 Supp. 10-131 for the investment of bond proceeds implicitly applies to the investment of proceeds of temporary notes, as well.

Temporary notes are authorized by the general bond law in K.S.A. 1981 Supp. 10-123, which states:

"If a municipality shall have theretofore duly authorized the making of an improvement which is to be paid for in whole or in part by the issuance of bonds, then the governing body of such municipality may issue temporary notes, bearing interest at a rate not to exceed the maximum rate of interest prescribed by K.S.A. 10-1009, payable semiannually, maturing not later than the due date of the first installment of such bonds, or four (4) years from the date of said notes whichever is sooner, not exceeding in the aggregate the amount of bonds which are to be issued and are then unissued, as shown by the approved estimates on file (except in the case of road bonds when the amount of said notes shall not exceed the total amount of the unissued bonds and the state and federal aid granted to said project), but any municipality may issue renewal temporary notes to pay for the cost of taking up any previously issued temporary notes as they mature when the improvement will not be completed at the maturity date of such notes or when the municipality has completed the improvements and the issuance of bonds is prevented, hindered or delayed by reason of any court order or litigation.

"Said temporary notes shall be in the form usual for such bonds, except that coupons evidencing the interest need not be attached and the entire temporary note shall be contained on one sheet of paper. Such notes shall be executed and registered as are such bonds, and shall be redeemed and canceled before or at the time permanent bonds are issued in lieu thereof, so that the amount of temporary notes and bonds issued and outstanding shall not at any time exceed the estimated cost and expense of said improvement. Said temporary notes may be issued from time to time, as required during the progress of said work, shall be negotiable and shall constitute a general obligation of the municipality issuing the same. Said temporary notes shall not be negotiable until countersigned, following registration, by the clerk of the issuing municipality, and a statement to that effect shall appear on the face of all such temporary notes. Such temporary notes may be sold in the manner provided for the sale of bonds or may be sold at private sale at not less than par and accrued interest."

Although temporary notes are separate, negotiable instruments, it is evident from the provisions of K.S.A. 1981 Supp. 10-123 that they are inextricably tied to a municipality's general obligation bonds. Such notes must be "in the form usual for bonds" (except for interest coupons), have the same maximum interest rate limitations as general obligation bonds and must be "executed and registered as are such bonds." Moreover, it is apparent that they are issued only in anticipation of receipt of the bond proceeds necessary to finance an improvement project of the municipality, and the proceeds of the notes are dedicated to the same purpose as are the proceeds of the bonds themselves.

Therefore, by considering K.S.A. 1981 Supp. 10-123 and 10-131 as statutes in pari materia, since they are both sections of the general bond law, we believe the legislature intended in K.S.A. 1981 Supp. 10-131 to authorize the investment of the proceeds of a municipality's general obligations which have been issued for an improvement project. Hence, it is appropriate to construe "bond proceeds," as used in this statute, so as to include proceeds of temporary notes issued in anticipation of the issuance of the bonds.

Our conclusion that temporary notes may be regarded as bonds for the purposes of K.S.A. 1981 Supp. 10-131 is consistent with a prior opinion of this office, which concluded that a municipality's

Michael F. Willcott
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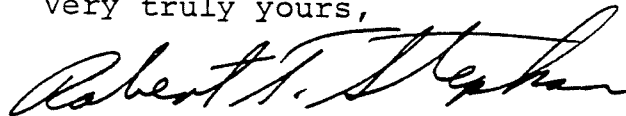
temporary note constituted a bond for the purposes of K.S.A. 1981 Supp. 9-1402. In VI Op. Att'y Gen. 76 (1973), it was stated:

"After reviewing the provisions of K.S.A. 10-123 relative to temporary notes of municipalities and considering the observations of the Court in The First State Bank v. Bone, 122 Kan. 493 (1927), we are of the opinion that a temporary note issued by a municipality under the provisions of 10-123, constitutes a 'bond' of that municipality for the purposes of 9-1402."

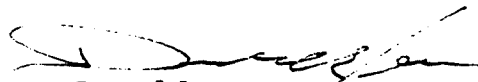
We concur in that opinion, and we find that the authorities cited in support of its rationale lend further credence to the conclusion reached herein.

In summary, it is our opinion that the guidelines established with respect to investment of proceeds of certain bond issues under K.S.A. 1981 Supp. 10-131 are equally applicable to proceeds of temporary notes issued pursuant to K.S.A. 1981 Supp. 10-123, and the governing body of a municipality may make deposits of temporary note proceeds in commercial banks or trust companies located in the county or counties in which the municipality is located.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Donald E. Jensen
Assistant Attorney General

RTS:BJS:DEJ:jm

Mallon v. City of Emporia

No. 58,701

JOHN J. MALLON and F. SOPHIA MALLON; STEPHEN M. KNECHT and ANN L. KNECHT; NORMAN W. POWERS and PHYLLIS A. POWERS; FREDERICH S. NEUER and PAUL F. NEUER; MARK I. ENSMAN; LESLIE B. ANDERSON and BETTY J. ANDERSON; ROY C. GALLUP, JR. and MARY J. GALLUP; CHESTER A. SPEARS and SYDNEY E. SPEARS, *Appellants/Cross-Appellees*, v. THE CITY OF EMPORIA, KANSAS, *Appellee/Cross-Appellant*.

SYLLABUS BY THE COURT

1. CITIES AND MUNICIPALITIES—*Improvement Project—Interest Earned on Temporary Notes Set Off against Interest Cost of Temporary Notes—Levying of Assessments.* Interest earned on temporary notes, issued for specific improvement projects pursuant to K.S.A. 12-6a14, must be set off against the interest cost of the temporary notes applicable to the specific project before levying assessments.
2. SAME—*Policy Guidelines—Enforcement.* Policy guidelines fall short of being an enactment of law and are not the equivalent of a statute.
3. SAME—*Special Assessments—Statutory Limitation on Allocation of Costs.* K.S.A. 12-6a02 limits the governing body's allocation of costs in proportion to special benefits conferred.
4. SAME—*Improvement Project—Special Assessments—Restrictions on Municipality as to Apportionment of Costs.* In levying special assessments for improvements against real property in an improvement district pursuant to K.S.A. 12-6a01 *et seq.*, a municipality is bound by the apportionment of costs adopted in its resolution authorizing the improvement.
5. SAME—*Street Improvement—Apportionment of Costs—Allocation of Interest Earned on Temporary Notes.* In an appeal from an order granting summary judgment, it is held: (1) The trial court did not err in holding the City of Emporia did not arbitrarily apportion costs for T-intersections; (2) the trial court did not err in holding the City of Emporia erroneously included a full year's interest with the first installment; and (3) the trial court erred in granting summary judgment to the City of Emporia on the issue of application of interest earned from the investment of idle temporary note proceeds and the issue concerning percentage allocation of costs.

Appeal from Lyon District Court; WILLIAM J. DICK, judge. Opinion filed October 30, 1986. Affirmed in part, reversed in part, and remanded.

Merlin C. Wheeler, of Perkins, Hollembeak & Wheeler, Chartered, of Emporia, for the appellants/cross-appellees.

Dale W. Bell, of Guy, Helbert, Bell & Smith, Chartered, of Emporia, for the appellee/cross-appellant.

Before ABBOTT, C.J., REES and DAVIS, JJ.

Mallon v. City of Emporia

unless specific provisions otherwise exist and conflict with the General Bond Law. As plaintiffs correctly point out, temporary notes are encompassed within the meaning of bonds. See *First State Bank v. Bone*, 122 Kan. 493, 252 Pac. 250 (1927). Based upon this authority, we conclude that the temporary notes, issued under the authority of 12-6a14 of the General Improvement and Assessment Law, and in which idle funds are invested, are governed by K.S.A. 10-131. Thus, the interest income must be set off against the interest expense of the temporary notes applicable to the specific project in question rather than a reduction to the interest expense for all improvement projects lumped together.

The City's failure to do so was contrary to the provisions of K.S.A. 10-131 and therefore unlawful.

b. T-Intersection

The City's written policy guidelines for constructing street improvements indicate that the cost of all intersections shall be borne by the City at large. Here, one-half of the cost of the cul-de-sac intersection was allocated to the City at large. The landowners contend that once the City adopted the written street improvement policy, it was bound to apply the cost allocation of intersections in accord with that policy. The landowners argue that failure to follow the policy constitutes an arbitrary assessment, and also argue an estoppel theory based upon the policy guidelines of the City.

The improvement project has one main subdivision road. It is a cul-de-sac, and it has a short cul-de-sac road running off of it. Thus, there are two T-intersections involved. The first intersection is located where the main subdivision road meets Lincoln Street. Lincoln Street was already in existence. The "stem" of the T ties into Lincoln Street. The expense involved is the cost of tying the main subdivision road into Lincoln Street. The second T-intersection is where the long cul-de-sac formed another T-intersection with the short cul-de-sac.

The landowners cite no cases that require the governing body to adhere to adopted policies when contravention of the policy is not in violation of the state statutes. K.S.A. 12-6a02 permits the governing body to assess all or any part of the cost of the improvement to the improvement district. And, pursuant to K.S.A. 12-6a07, the City at large may be allocated up to 95% of the cost of an improvement. "Policy guidelines" fall short of

SENATE BILL No. 511

By Committee on Local Government

1-22

0016 AN ACT concerning bonds; relating to the investment of pro-
0017 ceeds of bonds and temporary notes; amending K.S.A. 1987
0018 Supp. 10-131 and repealing the existing section.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 1987 Supp. 10-131 is hereby amended to
0021 read as follows: 10-131. The governing body of any municipality,
0022 as defined in K.S.A. 10-101, and amendments thereto, which has
0023 ~~heretofore~~ issued or may ~~hereafter~~ issue bonds *or temporary*
0024 *notes* for any purpose, is hereby authorized and empowered to
0025 invest any portion of the proceeds of such bonds, *notes* or funds
0026 held pursuant to the resolution or ordinance authorizing the
0027 issuance of such bonds *or notes*, which is not currently needed,
0028 in: (a) Investments authorized by K.S.A. 12-1675, and amend-
0029 ments thereto, in the manner prescribed therein; (b) ~~in~~ direct
0030 obligations of the United States government or any agency
0031 thereof; (c) ~~in~~ the municipality's temporary notes issued pursu-
0032 ant to K.S.A. 10-123, and amendments thereto; (d) ~~in~~ interest-
0033 bearing time deposits in commercial banks or trust companies
0034 located in the county or counties in which the municipality is
0035 located; (e) obligations of the federal national mortgage associa-
0036 tion, federal home loan banks or the federal home loan mortgage
0037 corporation; (f) repurchase agreements collateralized by securi-
0038 ties described in (b) or (e) above; (g) investment agreements with
0039 or other obligations of a financial institution the obligations of
0040 which at the time of investment are rated in either of the three
0041 highest rating categories by Moody's investors service or Stan-
0042 dard and Poor's corporation; (h) investments in shares or units of
0043 a money market fund or trust the portfolio of which is comprised
0044 entirely of securities described in (b) or (e) above; (i) receipts

0045 evidencing ownership interests in securities or portions thereof
0046 described in (b) or (e) above; (j) municipal bonds or other
0047 obligations issued by any municipality of the state of Kansas as
0048 defined in K.S.A. 10-1101, *and amendments thereto*, which are
0049 general obligations of the municipality issuing the same; or (k)
0050 bonds of any municipality of the state of Kansas as defined in
0051 K.S.A. 10-1101, *and amendments thereto*, which have been re-
0052 funded in advance of their maturity and are fully secured as to
0053 payment of principal and interest thereon by deposit in trust,
0054 under escrow agreement with a bank, of securities described in
0055 (b) or (e) above. The interest received on any such investment
0056 shall upon receipt thereof be set aside and used for the purpose
0057 of paying interest on the bonds *or notes* issued or used for paying
0058 the cost of the project for which the bonds *or notes* were issued.
0059 Sec. 2. K.S.A. 1987 Supp. 10-131 is hereby repealed.
0060 Sec. 3. This act shall take effect and be in force from and
0061 after its publication in the statute book.