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MEMORANDUM

To: Members of House Committee on Pensions and Benefits
From: Scott Abbott & Gordon Self
Date: February 5, 2015
Subject: Constitutionality of bonds to be paid out of state appropriations

SUMMARY

State-issued bonds to be paid out of state appropriations do not create a “debt” as meant by sections 6 and 7 of article 11 of the Kansas constitution. Therefore, the requirements of those sections do not apply to the bill. Bill language expressing that no debt is created promotes clarity but such language is likely not necessary for this result.

Analysis and conclusion begin on the following page.

ANALYSIS

The question presented is whether state-issued bonds to be paid out of state appropriations create a “debt” as meant by sections 6 and 7 of article 11 of the Kansas constitution and trigger the requirements set forth therein. In short, such bonds do not create a debt as the term is used in sections 6 and 7 of article 11 of the Kansas constitution, especially when the authorizing statute and/or bonds contain language prohibiting the creation of any such debt.

Sections 6 and 7 of article 11 of the Kansas constitution provide as follows:

For the purpose of defraying extraordinary expenses and making public improvements, the state may contract public debts; but such debts shall never, in the aggregate, exceed one million dollars, except as hereinafter provided. Every such debt shall be authorized by law for some purpose specified therein, and the vote of a majority of all the members elected to each house, to be taken by the yeas and nays, shall be necessary to the passage of such law; and every such law shall provide for levying an annual tax sufficient to pay the annual interest of such debt, and the principal thereof, when it shall become due; and shall specifically appropriate the proceeds of such taxes to the payment of such principal and interest; and such appropriation shall not be repealed nor the taxes postponed or diminished, until the interest and principal of such debt shall have been wholly paid.

No debt shall be contracted by the state except as herein provided, unless the proposed law for creating such debt shall first be submitted to a direct vote of the electors of the state at some general election; and if such proposed law shall be ratified by a majority of all the votes cast at such general election, then it shall be the duty of the legislature next after such election to enact such law and create such debt, subject to all the provisions and restrictions provided in the preceding section of this article.

The Kansas Supreme Court has interpreted these provisions to apply only to such debts that are paid by a general property tax. See State ex rel. Fatzer v. Bd. of Regents of State of Kan., 167 Kan. 587, 591 (1949). In Bd. of Regents, the Court examined bonds issued by the Kansas Board of Regents for the purpose of constructing student dormitories. Pursuant to the authorizing legislation, those bonds were to be paid out of revenue generated from the constructed dormitories. The Court was satisfied that no debt was created for the purposes of applying sections 6 and 7 of article 11 of the Kansas Constitution for two primary reasons: First, the terms of the authorizing legislation, and the endorsements on the bonds themselves, expressly stated that the bonds were not an obligation of the state. See id. at 590-91. Second, the bonds were to be paid from revenue generated by the dormitories rather than from a general property tax. Id. at 591.

First, the challenged legislation provided as follows: “Revenue bonds issued hereunder shall not be an indebtedness of the state of Kansas, or of the board of regents, or of the individual members of said board, and shall not constitute an indebtedness within the meaning of any

constitutional or statutory limitation upon the incurring of indebtedness.” See id. at 590. The bonds issued pursuant to this act also contained similar provisions. See id. The Court held that such language did not create a debt and, in fact, prohibited the state from incurring a debt for purposes of sections 6 and 7 of article 11 of the Kansas constitution. Id. at 590-91.

Second, the Court held that the term “debt” as used in sections 6 and 7 of article 11 of the Kansas constitution applied only to debts paid by a general property tax, not those paid by funds raised by other means. Id. at 591. Therefore, even if the bonds constituted a debt in a general sense, they did not create a debt for the purposes of requirements set forth in sections 6 and 7 of article 11 of the Kansas constitution. See id.

The Court also examined similar issues in a challenge to bonds issued by the Kansas Armory Board. See State ex rel. Fatzer v. Armory Bd., 174 Kan. 369 (1953). There, the Kansas Armory Board was authorized by statute to issue bonds for the purposes of constructing an armory building within the state. These bonds were paid from rent charged to the state of Kansas. The authorizing statute and bonds also contained limiting language, stating that the bonds could not become obligations of the state.

The Court again held that the limiting language prohibited the creation of a debt. Id. at 379. Further, the Court provided clarity on the scope of these constitutional provisions. Referring to these provisions, the Court stated: “. . . the framers of our Constitution were . . . not dealing with the question of obligations to be paid only by special tax, such as on motor vehicles or motor fuels, or from funds raised in some manner other than by a general property tax.” Id. at 379 (citing State ex rel. Boynton v. Kansas State Highway Comm'n, 138 Kan. 913 (1934) (referring to the Wyandotte Constitutional Convention)). In Armory Bd., as in Bd. of Regents, the challenged bonds did not pledge the faith and credit of the state. See id. at 380.

In both Armory Bd. and Bd. of Regents, the Court held that the challenged bonds did not create a debt. The Court held in both cases that state-issued bonds to be repaid directly by the state, rather than by a general property tax, did not trigger the requirements of sections 6 and 7 of article 11 of the Kansas constitution. The Court reached this conclusion in each case independent of considering the limiting language contained in the legislation and bonds. See Armory Bd., 174 Kan. at 380; State ex rel. Fatzer v. Bd. of Regents of State of Kan., 167 Kan. 587, 591 (1949). Additionally, in both cases, the Court held that the legislature’s use of language

prohibiting the creation of the debt made clear to all parties that the bonds did not constitute a debt and did not pledge the faith and credit of the state. Armory Bd., 174 Kan. at 379-380; Bd. of Regents, 167 Kan. 587, 590-91 (1949).

CONCLUSION

The provisions of sections 6 and 7 of article 11 of the Kansas constitution are not triggered because no debt is created where bonds are paid by state appropriations of funds. Those constitutional provisions apply only to debts paid from a general property tax, not debts paid from any other sources. The Kansas Supreme Court has held that bonds repaid from such sources as special taxes, like those on motor vehicles or motor fuels, and payments directly from the state, such as for rent paid on buildings, do not constitute a debt as the term is used in sections 6 and 7. Although including language in the statutes and/or bonds prohibiting the creation of a debt promotes clarity for the courts, such language does not appear to be necessary to avoid the application of sections 6 and 7.