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STATE OF NEBRASKA
OFFICIAL
MAR 20 1992
DEPT. OF JUSTICE

DATE: March 19, 1992

SUBJECT: Construction of a New Home for the Aged or Infirm Under Neb. Rev. Stat. §§ 23-343 and 23-343.07

REQUESTED BY: Paul Wood
Red Willow County Attorney

WRITTEN BY: Don Stenberg, Attorney General
Jan E. Rempe, Assistant Attorney General

You have requested our opinion on several questions regarding construction of a new home for the aged or infirm in Red Willow County. Your March 3, 1992, letter states that the county opened a home for the aged or infirm in 1963, but the demand for occupancy in the home has exceeded the home's capacity and facilities. Because there is not room on the current site to expand the existing home, the trustees of the home have requested that the county commissioners place a bond issue on the ballot for the May primary election. Your letter indicates that if the bond issue is approved, a new home for the aged or infirm will be constructed across the street from the existing home. You also state that the trustees of the home want to convert the existing home into retirement apartments and use the profits derived therefrom to help retire the debt for construction of the new home.

Your letter poses four groups of questions about the above situation. We have set out each of your questions below and have attempted to answer each group of questions individually. However, because the Attorney General is authorized by statute to advise county attorneys in all public revenue and criminal matters, we have only responded to those questions relating to public revenue. Neb. Rev. Stat. § 84-205(2) (Supp. 1991) (Attorney General's powers and duties).

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**QUESTION (1): Under chapter 23, article 3 may the county construct a brand new structure while there is an existing structure, and if so, would the bonds to be issued for the new structure be revenue bonds or general obligation bonds?**

Neb. Rev. Stat. § 23-343 (Reissue 1987) allows county boards in Nebraska counties having 3,600 people or more, or an actual valuation of all taxable real and personal property (excluding intangible property) of $28,600,000 or more, to issue bonds for the construction or acquisition of various medical facilities such as homes for the aged or infirm and county community hospitals. Section 23-343 requires the question of bond issuance to be submitted to the voters of the county and be approved by a majority of those voters.

Neb. Rev. Stat. § 23-343.07(1) (Supp. 1991) authorizes county boards which have established facilities under § 23-343 to issue bonds to "defray the cost of improvements or additions thereto and equipment." Section 23-343.07(3) states that when bonds have been issued under either § 23-343.07 or § 23-343, "the county board shall cause to be levied and collected annually a tax upon all of the taxable property of such county sufficient to pay the interest and principal of the bonds as the same become due and payable."

In Armstrong v. Board of Supervisors, 153 Neb. 858, 46 N.W.2d 602 (1951), the county, after obtaining voter approval, issued and sold bonds in order to fund acquisition of a county community hospital. After the hospital was purchased, it was discovered that the county needed larger hospital facilities and that it was infeasible to add onto the existing hospital. To combat the expansion problem, the board of hospital trustees and many county residents sought to construct a new hospital on a different site and to sell the existing hospital. The Nebraska Supreme Court considered whether the county could, if approved by its voters, issue and sell bonds to fund construction of the new hospital, or whether the county was limited to making additions or improvements to the existing county hospital.

Relying on the clear and unambiguous language in Neb. Rev. Stat. §§ 23-343 and 23-343.07 (Supp. 1949), the court found "no limitation that any county may have only one county community hospital." Armstrong, supra, at 863, 46 N.W.2d at 605. The court further stated:

> The fact that the county board of a county and the voters thereof have once complied with the statute [§ 23-343] and thereby acquired, selected a site for, equipped, and is operating such a hospital is no bar or obstacle to the county again taking advantage of the statute and acquiring, equipping, and operating another county

> community hospital on a different site by authority of this legislation. This statute [§ 23-343] does not limit the number of hospitals a county may acquire or construct and equip and operate.

Since the statutory language quoted and interpreted in Armstrong is substantially similar in relevant part to the current version of § 23-343 and § 23-343.07, we believe that from the standpoint of these statutes only, a county meeting the population and tax valuation requirements of § 23-343 could construct a new home for the aged or infirm on a site different from the location of an existing home for the aged or infirm.

The second part of your question asks whether bonds issued for the new structure would be classified as revenue bonds or general obligation bonds. Revenue bonds are payable entirely from the revenues of the public utility, structure, or enterprise that the bonds were issued to finance. State ex rel. Consumers Public Power Dist. v. Boettcher, 138 Neb. 22, 291 N.W. 709 (1940); Schureman v. State Highway Commission, 377 Mich. 609, 141 N.W.2d 62 (1966); 15 E. McQuillin, The Law of Municipal Corporations § 43.131 (3d ed. 1985); O. Reynolds, Jr., Handbook of Local Government Law § 104 (1982). In contrast, general obligation bonds are payable from the general revenues of the locality, such as tax revenues. E. McQuillin, supra at §§ 43.130-43.131; O. Reynolds, supra.

Because § 23-343.07(3) makes bonds issued pursuant to either § 23-343 or § 23-343.07 entirely payable from county tax revenues, as opposed to revenues from the medical facility itself, we conclude that bonds issued to finance a new home for the aged or infirm would be general obligation bonds.

**QUESTION (2): Is this proposed new structure an addition or improvement contemplated under 23-343.07 for which bonds may be issued?**

As stated above, § 23-343.07 allows county boards which have established medical facilities under § 23-343 to issue bonds to defray the costs of "improvements or additions thereto."

"Improvement" may be defined as an addition to property which costs labor or capital; is intended to enhance the property's value, beauty, or utility, or to adapt it for new or further purposes; and is more than a mere repair or replacement. Black's Law Dictionary 682 (5th ed. 1979). See Kloster-Madsen, Inc. v. Tafi's, Inc., 303 Minn. 59, 226 N.W.2d 603 (Minn. 1975); Webster's Third New International Dictionary 1138 (1981).

"Addition," in reference to buildings, ordinarily refers to a structure that is physically attached to or connected with the

existing building. Agnew v. Sun Ins. Office, 167 Wis. 456, 167 N.W. 829 (1918). The word "addition" implies "physical contact, something added to another. . . . Extension; increase; augmentation." Black's Law Dictionary, supra at 35.

Because the meanings of "improvement" and "addition" involve enhancement or extension of already-existing buildings, we conclude that a new home for the aged or infirm, built on property across the street from the existing home and not physically connected therewith, would not be an "addition" or "improvement" within the meaning of § 23-343.07. See Opin. Att'y Gen. #135 at 3 (Sept. 1, 1983).

**QUESTION (3): If a new structure were built, could the old structure be rented as apartments, be operated by the county, and could the revenue derived therefrom be used to retire the debt for the new building housing the new nursing home?**

Whether the county has the power and authority to operate the former nursing home as an apartment building is a matter on which the county attorney should render advice to the county.

Assuming the county did convert the former nursing home into apartments, you ask whether the revenue derived from apartment rental could be used to retire the debt for the new nursing home. As explained above, § 23-343.07(3) designates tax revenue as the source by which the interest and principal of bonds issued under § 23-343 shall be paid. "The source of payment of bonds should be determined from the applicable laws . . . . Unless forbidden by the constitution, the means of payment of bonds is within the state's legislative power." E. McQuillin, supra, § 43.128 at 835.

In light of the legislature's power to determine that tax revenue is the method by which bonds issued for the establishment of medical facilities under § 23-343 should be paid, revenue generated from renting the former nursing home as apartments could not be used to retire the debt on the new building.

**QUESTION (4): The board of trustees states that they would only rent these apartments to people who could pay. Would this discriminate against indigent county residents and those on medicare or medicaid? Can the county refuse to so rent the apartments to anyone? Can the county operate such a rental complex at all?**

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e above questions, focusing on discrimination issues instead
ic revenue matters, are ones best addressed by you as the
's attorney.

Sincerely,

DON STENBERG
Attorney General

Jan E. Rempe

Jan E. Rempe
Assistant Attorney General

-01-14.92

PPROVED:

Attorney General