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January 18, 2017

ATTORNEY GENERAL OPINION NO. 2017-3

Antonio J. Soave, Secretary
Kansas Department of Commerce
1000 SW Jackson St., Suite 100
Topeka, KS 66612-1354

Re: Cities and Municipalities—Buildings, Structures and Grounds;
Sales Tax and Revenue Bond Districts—Definitions; Museum
Facility

Synopsis: A building or structure constructed so that it abuts an existing building or that incorporates structural components of a previously existing building or structure may be deemed as “separate” and “newly-constructed” under K.S.A. 12-17,162(p) and may be viewed as a “museum facility.” Cited herein: K.S.A. 2016 Supp. 12-17,160; 12-17,162; 12-17,164; 12-17,165; 12-17,166; 12-17,169.

* * *

Dear Mr. Secretary:

As Secretary for the Kansas Department of Commerce, you request our opinion on two questions regarding whether a building, in order to meet the definition of “museum facility” under the STAR Bonds Financing Act, must be completely freestanding and wholly of new construction. First, you ask whether the Legislature intended the word “separate” in K.S.A. 2016 Supp. 12-17,162(p) to mean that a “museum facility” must be a freestanding building or structure physically distinct from any other building or structure or whether a “museum facility” may be a building or structure that shares common walls with an adjacent building or structure. Second, you ask whether the Legislature intended the phrase “newly-constructed” in K.S.A. 2016 Supp. 12-17,162(p) to mean that each and every component of a “museum facility” be of new construction or whether a

“museum facility” may incorporate into its design and construction certain structural components, such as a facade or common wall, of an existing structure.

In 2007, the Kansas Legislature enacted the STAR Bonds Financing Act.¹

The purpose of [the Act is] to promote, stimulate and develop the general and economic welfare of the state of Kansas and its communities and to assist in the development and redevelopment of eligible areas within and without a city thereby promoting the general welfare of the citizens of this state, by authorizing cities and counties to acquire certain property and to issue sales tax and revenue (STAR) bonds for the financing of STAR bond projects. . .

.²

A redevelopment project is pursued under the Act by a city or county through a two-step process that involves establishment of a redevelopment district within an eligible area³ and adoption of a STAR bond project plan.⁴ “Any such project plan may be implemented in separate development stages.”⁵

Once the STAR bond project district has been established and the STAR bond project plan adopted, a city or county may “issue special obligation bonds in one or more series to finance the undertaking of any STAR bond project in accordance with the provisions of th[e Act].”⁶ To be eligible for financing through issuance of special obligation bonds, the STAR bond project must first be approved by the secretary of commerce.⁷

The secretary, upon approving the project, may approve such financing in an amount not to exceed 50% of the total costs including all project costs and any other costs related to the project. The proceeds of such STAR bond financing may only be used to pay for incurred project costs.⁸

“‘Project costs’ means those costs necessary to implement a STAR bond project plan, including costs incurred for: . . . (17) [a] museum facility. . . .”⁹ A “museum facility” is:

¹ K.S.A. 2016 Supp. 12-17,160 *et seq.*

² K.S.A. 2016 Supp. 12-17, 160.

³ K.S.A. 2016 Supp. 12-17,165.

⁴ K.S.A. 2016 Supp. 12-17,166.

⁵ K.S.A. 2016 Supp. 12-17,166(a).

⁶ K.S.A. 2016 Supp. 12-17,169(a)(1).

⁷ K.S.A. 2016 Supp. 12-17,164(b); *see* K.S.A. 2016 Supp. 12-17,162(bb).

⁸ K.S.A. 2016 Supp. 12-17,164(b).

⁹ K.S.A. 2016 Supp. 12-17,162(r).

[A] *separate newly-constructed museum building* and facilities directly related and necessary to the operation thereof, including gift shops and restaurant facilities, but excluding hotels, motels, restaurants and retail facilities not directly related to or necessary to the operation of such facility. The museum facility shall be owned by the state, a city, county, other political subdivision of the state or a non-profit corporation, shall be managed by the state, a city, county, other political subdivision of the state or a non-profit corporation and may not be leased to any developer and *shall not be located within any retail or commercial building*.¹⁰

In determining whether a building, in order to meet the definition of “museum facility” under the STAR Bonds Financing Act, must be completely freestanding and wholly of new construction, we turn to the rules of statutory construction.

[T]he fundamental rule to which all other rules are subordinate is that the intent of the legislature governs if that intent can be ascertained. When language is plain and unambiguous, there is no need to resort to statutory construction. An appellate court merely interprets the language as it appears; it is not free to speculate and cannot read into the statute language not readily found there.

Statutory language is our paramount consideration because the best and only safe rule for ascertaining the intention of the makers of any written law is to abide by the language they have used. But even when various statutory provisions are unambiguous, we may still construe them in *pari materia* with a view of reconciling and bringing the provisions into workable harmony.¹¹

Separate

The term “separate” is not defined in the Act, so we ascertain its meaning from its ordinary definition.¹² “Separate” is commonly understood to mean “to set or keep apart: . . . to block off,”¹³ or “[f]orming or viewed as a unit apart or by itself: 1.1 [n]ot joined or touching physically: 1.2 [d]ifferent; distinct.”¹⁴ We note that applying the appropriate definition is qualified by the Legislature’s recognition that a “museum facility” may exist within another building, provided that building is neither a retail building nor a commercial building. Given that understanding, we determine that a museum facility need not be physically separated by air on

¹⁰ K.S.A. 2016 Supp. 12-17,162(p) (emphasis added).

¹¹ *Neighbor v. Westar Energy, Inc.*, 301 Kan. 916, 918-19 (2015) (internal quotation marks and citations omitted). See also *Ullery v. Othick*, 304 Kan. 409 (2016).

¹² “[The] first step in interpreting a statute is to try to ascertain legislative intent through the statutory language enacted, giving common words their ordinary meanings.” *In re LaFarge Midwest/Martin Tractor Co., Inc.*, 293 Kan. 1039, 1045 (2012).

¹³ <https://www.merriam-webster.com/dictionary/separate>; accessed on December 31, 2016.

¹⁴ <https://en.oxforddictionaries.com/definition/separate>; accessed on December 31, 2016.

all sides to be deemed “separate” under K.S.A. 2016 Supp. 12-17,162(p). Rather, the requirement is met when a museum facility is housed in a museum building that is distinct and surrounded by clearly identifiable and substantial boundaries. This is consistent with the widely held view that a downtown business district consists of separate buildings even though the buildings are connected by common walls. Thus, we conclude that a museum building that shares a common wall with another building or structure may still be viewed as “separate” under K.S.A. 2016 Supp. 12-17,162(p).

Newly-Constructed

Again, the term “newly-constructed” is not defined in the Act so we turn to the common definition to ascertain its meaning.¹⁵ “Newly” is defined as “anew, afresh,”¹⁶ with “anew” defined as “in a new or different form.”¹⁷ The provision implies that something new is created. We believe that the “newly-constructed” requirement is intended to be viewed as an overall requirement, that the museum building when viewed overall is newly constructed. It does not require that each and every facet of the museum building be new. This again recognizes that a “newly-constructed museum building” may be located in a building that is not a retail or commercial facility. There is no requirement that the non-retail or non-commercial building in which the museum building is constructed be newly constructed. Returning to the analogy of a downtown business district, a structure may be gutted so that only a facade or side walls remain. A building that is constructed in the vacant area behind the facade or between existing buildings would ordinarily be viewed as “newly constructed,” despite its incorporation of a previously existing facade or common walls. Thus, we conclude that a museum building that incorporates certain structural components of an existing structure may be considered “newly constructed” under K.S.A. 12-17,162(p) and may be viewed as a “museum facility.”

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/Richard D. Smith

Richard D. Smith
Assistant Attorney General

DS:AA:RDS:sb

¹⁵ *In re LaFarge Midwest/Martin Tractor Co., Inc.*, 293 Kan. at 1045.

¹⁶ <https://www.merriam-webster.com/dictionary/newly>; accessed on January 3, 2017.

¹⁷ <https://www.merriam-webster.com/dictionary/anew>; accessed on January 3, 2017.