

October 16, 1964



Honorable Lawrence A. Schneider  
Advisor to the Commission  
Division of Commerce and  
Industrial Development  
Eighth Floor, Jefferson Building  
Jefferson City, Missouri 65102

Dear Mr. Schneider:

This is in answer to your recent letter in which you ask whether a valid contract may be entered into between a municipality and a private corporation for sale of an industrial development project purchased or constructed by such municipality from the proceeds of the sale of general obligation bonds issued under the provisions of the Industrial Development Act of Missouri, Section 71.791 to 71.850, RSMo, Cum. Supp., 1963.

Section 71.850, Cum. Supp. 1963, gives specific authority for a municipality to sell the property, buildings or plants acquired from the proceeds of general obligation bonds to private persons or corporations for manufacturing or industrial development purchases upon approval by the Division of Commerce and Industrial Development. Such section provides as follows:

"Property acquired may be sold.--  
Any municipality may sell or otherwise dispose of the property, or buildings or plants acquired with the proceeds from the sale of general

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obligation bonds issued under sections 71.790 to 71.850, to private persons or corporations for manufacturing or industrial development purposes upon approval by the division of commerce and industrial development. The terms and method of the sale or other disposal shall be established by the division so as to reasonably protect and promote the economic well-being and the industrial development of the municipality."

In the case of State ex rel. City of El Dorado Springs v. Holman, 363 S.W. 2d 552, the Supreme Court of Missouri in speaking of plants acquired by a municipality under the provisions of Section 23a of Article VI of the Constitution of Missouri, which provides that certain cities, towns and villages when authorized by law may be indebted for and purchase or construct plants to be used by private persons or corporations for industrial development purposes said, l.c. 559:

" \* \* \* Those financed by general obligation bonds under § 23(a) are clearly made subject to being 'leased or otherwise disposed of pursuant to law,' \* \* \*"

The court in such case in discussing Section 19 of H.C.S.H.B.'s 41 and 370 of the 71st General Assembly (Laws of Missouri, 1961, p. 189, Section 71.850, Cum. Supp. 1961), which provided for sale of property, buildings or plants constructed from the proceeds of the sale of general obligation bonds and revenue bonds said, l.c. 559:

"One of the several attacks upon the constitutional validity of the enabling act is directed against what is now § 71.850, which provides as follows: 'Any municipality may sell or otherwise dispose of the property, or buildings or plants acquired under sections 71.790 to 71.850 upon approval by the

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division of commerce and industrial development. The terms and method of the sale or other disposal shall be established by the division.'

"It is charged that this section of the statute is 'invalid, unconstitutional and void because such section provides for "sale" of plants while the Constitution provides only for leasing or other disposition similar to leasing.' We have just noted that § 23(a), Article VI--the section here directly involved--provides that industrial development properties may be 'leased or otherwise disposed of pursuant to law.' This language clearly comprehends and sanctions a sale (being a disposition otherwise than by leasing) if and when made 'pursuant to law.' \* \* \*"

Section 71.850, Cum. Supp. 1961, ruled on by the court in the Holman case was amended by House Bill No. 94, 72nd General Assembly, and as pointed out above, now provides that only plants acquired from the proceeds of the sale of general obligation bonds may be sold by the municipality and may be sold only for manufacturing or industrial development purposes. However, the ruling of the Supreme Court in such case is a direct holding that plants acquired from the proceeds of the sale of general obligation bonds may be sold by a municipality to private persons or corporations for manufacturing or industrial development purposes when the terms and method of the sale is approved by the Division of Commerce and Industrial Development.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

CBB/fh