

August 31, 1966

Opinion No. 323  
Answered By Letter  
(Ashby)

Honorable Henry C. Maddox, Director  
Division of Commerce and Industrial Development  
Eighth Floor - Jefferson Building  
Jefferson City, Missouri 65101



Dear Mr. Maddox:

This letter is written to respond to your inquiry whether industrial bonds may be voted for the construction and equipping of a skilled nursing home.

We assume, according to the additional information you subsequently furnished this office that the nursing home in question has the conventional staff such as medical attendants to care for the occupants; kitchen personnel to cook; maintenance personnel to clean; etc. The nursing home would be organized so as to come within the definition found in Section 198.011, RSMo Supp. So considered, we believe that we might find there such items as normal kitchen utensils, appropriate laundry equipment, perhaps some limited medical equipment but little that might be considered as "industrial equipment."

We have discussed what constitutes an industrial plant in our Opinion No. 179, dated March 29, 1966, addressed to you wherein we said:

"Your question is whether Industrial Linens, Inc., is an 'industrial plant', within the meaning of Section 71.790 and thus eligible to receive the benefits provided by Sections

71.790 through 71.850. These sections were enacted in 1961 pursuant to Article VI, Sections 23(a) and 27, of the Missouri Constitution, which provisions were adopted in 1960. Section 27 provides in part:

'Any city or incorporated town or village in this state, by vote of four-sevenths of the qualified electors thereof voting thereon, may issue and sell its negotiable interest bearing revenue bonds for the purpose of paying all or part of the cost of purchasing, constructing, extending or improving any of the following: \* \* \*

(2) plants to be leased or otherwise disposed of pursuant to law to private persons or corporations for manufacturing and industrial development purposes, including the real estate, buildings, fixtures and machinery; \* \* \*.'

"The type of 'plant' for which funds may be acquired is defined in Section 71.790 as:

'(2) "Facility", an industrial plant purchased, constructed, extended or improved pursuant to sections 71.790 to 71.850, including the real estate, buildings, fixtures and machinery;'

'(5) "Project for industrial development" or "project", the purchase, construction, extension and improvement of industrial plants, including the real estate either within or without the limits of such municipalities, buildings, fixtures, and machinery; except that any project of a municipality having fewer than eight hundred inhabitants shall be located wholly within the limits of the municipality.'

"It is difficult to assign a specific and precise meaning to the phrase 'industrial plant.' The enabling constitutional provision speaks of 'manufacturing and industrial development purposes, including the real estate, buildings, fixtures and machinery.' The broad wording of this provision indicates a purpose to aid

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and promote manufacturing and industrial development through the State. Since the phraseology includes the words 'manufacturing' and 'industrial' we must conclude that 'industrial' is not included within the meaning of 'manufacturing', and 'industrial plant' must mean something other than a place where goods are manufactured. State ex rel. Kansas City Power & Light Co. v. Smith, Mo. Banc., 111 SW2d 513.

"In the Smith case, supra, the court considered the meaning of the phrase 'industrial establishment' and stated, l.c. 515:

\* \* \* the ordinarily accepted meaning of the phrase "industrial establishment" denotes a place of business "which employs much labor and capital and is a distinct branch of trade; as, the sugar industry." Webster's New International Dictionary. \* \* \*

"The term 'industrial plant' was given a very flexible definition by the Pennsylvania court in North Side Laundry Co. v. Board of Property Assessment, 79 A2d 419, in which it stated, l.c. 421:

\* \* \* The law can do no better than to define an industrial plant as that type of establishment which the ordinary man thinks of as such. Certainly a commercial laundry comes within that definition. \* \* \*

"See also, United Laundries, Inc. v. Board of Property Assessment, 58 A2d 833. In Messenger Publishing Co. v. Board of Property Assessment, 132 A2d 768, using this definition, the court also held that a building and its fixtures in which newspapers were printed were also an 'industrial plant.'

"The phrase as used in Sections 71.790 through 71.850 should be given a reasonable construction

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so as to give effect to the intent of the legislature. *United Airlines, Inc., v. State Tax Commission*, 377 SW2d 444. The definition used in the three Pennsylvania cases is in harmony with that used in the Smith case and the commonly accepted meaning of the words as well as the spirit and purpose of the statute in question. In our opinion to determine whether an establishment is an 'industrial plant' as used in Sections 71.790 through 71.850, the Division should determine if it is a business which employs much capital and labor, is a distinct branch of trade and is an establishment which the ordinary man would consider to be an 'industrial plant.' The question then is, whether using this criteria, *Industrial Linens, Inc.*, is an 'industrial plant.'"

We conclude the proposed nursing home, when considered in the light of our comments found in our Opinion No. 179 supra, would not be a "manufacturing or industrial plant" as the term is commonly understood. Therefore, industrial bonds (whether general obligations or revenue bonds) could not be issued under Section 71.790 through 71.850, RSMo Supp., to erect and equip a skilled nursing home.

Yours very truly,

NORMAN H. ANDERSON  
Attorney General