

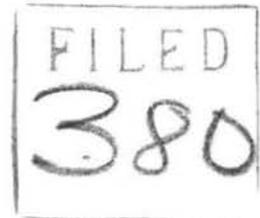
BONDS:
INDUSTRIAL DEVELOPMENT:
COMPETITIVE BIDS:
APPROVAL OF INDUSTRIAL
PROJECTS BY DIVISION
OF COMMERCE AND INDUS-
TRIAL DEVELOPMENT:

A city of the 4th class under a lease agreement pursuant to industrial development revenue bond issues under Chapter 100, RSMo Cum. Supp. 1967, need not follow the procedure of competitive bidding for the construction of the proposed facility thereunder, and that under Section 100.200, any purchase options entered into in compliance with

the statutes and approved by the Division of Commerce and Industrial Development need not be further approved at the time of their actual exercise.

OPINION NO. 380

November 14, 1968



Mr. Ray V. Jeffrey, Director
Industrial Development
Division of Commerce and
Industrial Development
Jefferson Building
Jefferson City, Missouri

Dear Mr. Jeffrey:

This is in response to your inquiry regarding industrial development revenue bonds, which you posed as follows:

"On August 23, 1968, New Madrid, a City of the Fourth Class, voted by the requisite majority an Industrial Development Revenue Bond issue under Chapter 100, RSMo Cum. Supp. 1967, under the terms of the lease agreement for the facility to be negotiated with Noranda Aluminum, Inc., a Delaware Corporation. The peculiar engineering involved in the construction of this primary aluminum reduction plant necessitates the use of an engineering company, in this case Kaiser Aluminum Engineering Department.

Two legal questions have arisen in the course of our involvement with this project, which we have the statutory and administrative responsibility of approving.

First, must the municipality let out bids for the construction of this facility under present section 100.170, RSMo, since only Industrial Development Revenue Bonds will be issued?

Mr. Ray V. Jeffrey

Secondly, under section 100.200, enacted pursuant to amended Article VI, Section 27, Missouri Constitution, where the lease agreement between the city and the company provides for options by the company to buy all or portions of the real estate involved in the industrial project and owned by the city, and which project has been approved by our Division including such option terms, must the Division of Commerce subsequently approve or reapprove at the time the option to purchase is exercised?"

We believe your first question is settled by the case of Wring vs. City of Jefferson, (Mo. Sup. en banc, 1967), 413 S.W. 2d 292. There, the city and Interco proposed an agreement providing that proceeds of revenue bonds pursuant to the provisions of Sections 71.790 to 71.850, RSMo Cum. Supp. 1965 (now Sections 100.010 through 100.190, RSMo Cum. Supp. 1967), would be used to pay for constructing a plant by the city which would then be leased to the company, Interco. An injunction was granted by the lower court but the Supreme Court reversed and held that a city of the 3rd class could carry out the project. Since the project was financed by revenue bonds solely, the court held that the statute requiring competitive bidding (71.843; now 100.170) did not apply. Since you have advised us that the project of the fourth class city of New Madrid, which qualifies as a "municipality" under Section 100.010, likewise only involves industrial development revenue bonds under Chapter 100, it is clear that competitive bidding will not be required of the proposed facility.

Your second question concerns present Section 100.200 which reads as follows:

"Any municipality may sell or otherwise dispose of the property or buildings or plants, acquired with the proceeds from the sale of revenue bonds issued under sections 100.100 to 100.190, to private persons or corporations for manufacturing or industrial development purposes upon approval by the division of commerce and industrial development or its successor agency. 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, but in no case shall the property

Mr. Ray V. Jeffrey

or buildings or plants be sold for an amount less than one which shall be sufficient to retire all outstanding revenue bonds which were sold for the purchase or construction of the property or buildings or plants."

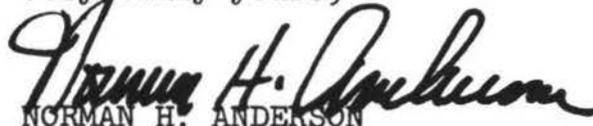
This new section is based on amended Section 27 of Article VI, Constitution of Missouri, allowing revenue bonds to be adopted by a four-sevenths vote. Under the statute the city is empowered to dispose of the property within terms established by your Division. We see nothing in the statute to prohibit your Division establishing such terms at the time of the original agreement between the city and the company involved so long as the statute is complied with at that time, and the procedures which are thus established are adhered to at the time when any such option is exercised.

CONCLUSION

It is, therefore, the opinion of this office that a city of the fourth class under a lease agreement pursuant to industrial development revenue bond issues under Chapter 100, RSMo Cum. Supp. 1967, need not follow the procedure of competitive bidding for the construction of the proposed facility thereunder; and that under Section 100.200, any purchase options entered into in compliance with the statutes and approved by the Division of Commerce and Industrial Development need not be further approved at the time of their actual exercise.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, William L. Culver.

Very truly yours,


NORMAN H. ANDERSON
Attorney General