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Question Submitted by: The Honorable Bill Widener, Oklahoma House of Representatives

1982 OK AG 81

Decided: 03/23/1982

Oklahoma Attorney General

Cite as: 1982 OK AG 81, __ __

¶10 The Attorney General has received your request for an official opinion wherein you ask, in effect, the following questions:

1. **May the governing body of a city or town, acting as the trustees of a public trust under 60 O.S. 176 et seq. (1980), authorize the trust to issue revenue bonds to finance the construction of a motel and restaurant project, in view of 60 O.S. 178.4 (1976)?**
2. **Is a motel and restaurant a retail outlet contemplated by 60 O.S. 178.4 (1976), as the type of establishment that may be operated in conjunction with and on the same premises as an industrial facility and thus eligible for public trust financing?**
3. **May the lessees of a public trust financed hotel and restaurant project receive an exemption from ad valorem taxation during the first ten (10) years of the life of the project?**
4. **Would the answers to Questions 1 and 3 be different if the project were authorized by the trustees of a public trust of which a county is beneficiary?**
5. **Under the Open Meeting Act, 25 O.S. 301 et seq. (1977), is the purpose of a notice of meeting to inform the public of an item of business to be considered at a meeting of a public body?**
6. **What is the function of an "agenda" under the Open Meeting Act, and what must an "agenda" contain in order to be sufficient?**

I.

¶11 The answers to your questions 1, 2 and 4 turn on whether a motel and restaurant is a "retail outlet," as those terms are used in 60 O.S. 178.4 (1976), as follows:

"Trusts created under the provisions of 60 O.S. 176 through 60 O.S. 180.55 hereof or any amendments or extensions thereof shall not include any trust purpose, function nor activity: in any wholesale outlet, unless said wholesale outlet is located on the same premises with and is a direct part of the industry; nor shall it include a retail outlet unless said retail outlet is operated in conjunction with and on the same premises as the industrial, manufacturing, cultural, recreational, parking, transportation or airport facility; nor shall it include a residential enterprise or function except as provided in Section 13 hereof."

¶12 This statute is a plain prohibition against using public trusts to finance retail outlets, other than those operated in conjunction with and on the same premises as industrial, manufacturing, cultural, recreational, parking, transportation or airport facilities. The threshold inquiry goes to the meaning of "retail outlet" in this statute. It is a settled rule of statutory

construction that words used in a statute are given the same meaning as that attributed to them in ordinary and usual parlance, unless a contrary definition is set forth by the Legislature. *Riffe Petroleum Co. v. Great Nat. Corp., Inc.*, Okl., 614 P.2d 576 (1980). Numerous decisions support the definition of "retail" as the selling of commodities or goods in small quantities to ultimate consumers. *Schultz v. Adair's Cafeterias, Inc.*, 420 F.2d 390 (10th Cir. 1969); *Codesco, Inc. v. Collector of Revenue*, La.App., 365 So.2d 577, 579 (1978); *Commonwealth v. Wytheville Knitting Mills Emp. Welfare Ass'n*, 195 Va. 663, 79 S.E.2d 621, 624 (1954). Food service establishments have been found to be "retail and service establishments" for purposes of the federal Fair Labor Standards Act. *Hodgson v. Prophet Co.*, 472 F.2d 196, 205 (10th Cir. 1973); *Schultz v. Adair's Cafeterias, Inc.*, supra.

¶3 The term "outlet" is defined by Webster as:

"A market for a commodity . . . an agency (as a store or dealer) through which a product is marketed."

¶4 It is clear that a restaurant engaged in the business of selling meals to the general public is a "retail outlet," as those terms are normally understood. We also think that a motel is a "retail outlet." Motels customarily sell lodging, food, entertainment and sundry goods to the general public. See *Lackman v. Department of Labor and Industries*, 78 Wash.2d 212, 471 P.2d 82, 84 (1970). We conclude that a motel and restaurant is a "retail outlet" within the meaning of 60 O.S. 178.4, supra.

¶5 The answer to your first question is, therefore, that the governing body of a city or town, acting as trustees of a public trust under 60 O.S. 176 et seq. (1980), is prohibited by 60 O.S. 178.4 (1976), from authorizing the trust to issue revenue bonds to finance the construction of a motel and restaurant project, except as noted below.

II.

¶6 Your second question asks whether a motel and restaurant is the type of retail outlet contemplated by 60 O.S. 178.4, supra, as the type of establishment that may be operated in conjunction with and on the same premises as an industrial facility and thus be eligible for public trust financing. The obvious reason for the exception in 60 O.S. 178.4 to which your question alludes is not to foreclose industrial, manufacturing, cultural, recreational, parking, transportation or airport projects from trust financing merely because one or more retail outlets will be operated *incidentally* from the same premises, such as a gift shop at an airport. Therefore, the answer to your second question is that a motel and restaurant *may be* the type of retail outlet contemplated by 60 O.S. 178.4 (1976), as an establishment that may be operated in conjunction with and on the same premises as an industrial facility and be eligible for public trust financing; however, such is ultimately a question of fact dependent upon whether the motel and restaurant is to be operated incidentally from the same premises, as an adjunct to the industrial facility, or independently therefrom. Either is a question of fact. If the former, it is eligible for trust financing; if the latter, it is not.

III.

¶7 Your third question asks whether the lessees of a public trust financed hotel and restaurant project may receive an exemption from ad valorem taxation during the first ten (10) years of the life of the project. This question was answered negatively in 11 Okl. Op.A.G. 251, A.G. Opin. No. 79-168; see also *State ex rel. Cartwright v. Dunbar*, Okl., 618 P.2d 900 (1980).

IV.

¶8 Your fourth question inquires whether the answers to questions 1 and 3 would be different were the beneficiary of the trust a county, rather than a city. Counties and cities were said in *Terry v. Edgin*, Okl., 618 P.2d 228, 234 (1979), to occupy virtually "identical positions under our statutory scheme." This statement from the Court's opinion was for purposes of noting the many common statutory characteristics of counties and cities, notably that both are bodies politic and corporate, empowered to sue and be sued, and that each engages in both governmental and proprietary functions at the local level. The answers to questions 1 and 3 would be no different if the beneficiary of the trust were a county instead of a city.

V.

¶9 Your fifth and sixth questions are posed under the State's Open Meeting Act, 25 O.S. 301 et seq. (1977). You inquire as to the purpose of a notice of meeting and as to the function of an agenda, both of which are specific requirements under the Open Meeting Act. The purpose of the notice of meeting requirement is explained in 25 O.S. 311(1) (1977). It is to show:

"... the date, time and place of the regularly scheduled meetings of such public bodies"

¶10 Such notice is required for special meetings, as well, by 311(9) and must set forth thereon:

"... the date, time, place and agenda for said meeting"

¶11 The essential difference between the notice for regularly scheduled meetings and special meetings appears to be that the agenda for the special meeting must be incorporated into the notice of meeting, while the agenda for a regularly scheduled meeting is independent of the notice. Since regularly scheduled meetings must be set more than a year in advance to meet the filing requirements of 25 O.S. 311(1), obviously it would be impossible for notices of such meetings to contain an agenda for each meeting; but because special meetings are supposed to be called only as an extraordinary measure and for limited purposes 311(11), the notice and agenda conveniently may be required to be contained in the same document.

¶12 The function of the agenda required by the Open Meeting Act [25 O.S. 311(9)] is to provide the public with a factual explanation of matters to be taken up at a meeting of a public body. *In the Matter of the Appeal of the Order Declaring Annexation Dated June 28, 1978*, Okl.App., 637 P.2d 1270; *Hillary v. State*, Okl.Cr., 630 P.2d 791 (1981); A.G. Opin. No. 81-141.

¶13 It is, therefore, the official opinion of the Attorney General that:

1. The governing body of a city or town, acting as trustees of a public trust under 60 O.S. 176 et seq. (1980), is prohibited by 60 O.S. 178.4 (1976), from authorizing the trust to issue revenue bonds to finance the construction of a motel and restaurant project, unless the project is incidental to and will be operated as an adjunct of an industrial, manufacturing, cultural, recreational, parking, transportation or airport facility, which is a question of fact.
2. The lessees of a public trust financed hotel and motel project may not receive an exemption from ad valorem taxation for any length of time.
3. The foregoing questions would be answered the same whether the beneficiary of the trust were a city or a county.
4. Under the Open Meeting Act, 25 O.S. 301 et seq. (1977), the purpose of the notice required by 25 O.S. 311(9) of the Act is to provide the public with advance notification of the date, place and time for all regularly scheduled meetings of a public body; and the purpose of the notice required for special meetings is the same, but the special meeting notice must also contain an agenda for the meeting.
5. The function of an agenda for a meeting of a public body is to provide the public with a factual explanation of matters to be taken up at a meeting of the public body.

JAN ERIC CARTWRIGHT
 ATTORNEY GENERAL OF OKLAHOMA
 FLOYD W. TAYLOR
 ASSISTANT ATTORNEY GENERAL

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