



KANSAS BOARD OF REGENTS

December 14, 2010

Senator Dwayne Umbarger, Chair & Representative Jo Ann Pottorff, Vice Chair
Joint Committee on State Building Construction
Statehouse, Room 144-S
Topeka, KS 66612

Dear Chairman Umbarger and Vice Chair Pottorff:

As you may recall, during the Joint Building Committee's November 10 meeting, Eric King, the Board's Director of Facilities, brought to you a question regarding the usage of deferred maintenance tax credits for academic-focused student union projects. This letter is a follow-up to that initial discussion.

At its June meeting, the Board of Regents received an inquiry about the possibility of using K.S.A. 2009 Supp. 79-32,261 tax credits to entice donors to contribute to renovation projects such as the Memorial Student Union at Emporia State University (ESU) and the Rhatigan Student Center at Wichita State University (WSU). The issue raised was whether the legislation that originally authorized tax credits for certain contributions to state universities was intended to exclude projects involving auxiliary buildings that are not entirely for classroom or other primarily academic use.

Following a preliminary review of the statute by the Board's legal staff and consultation with the Department of Revenue, there appears to be nothing that would preclude a taxpayer from seeking and obtaining a tax credit for contributions to a deferred maintenance project on a student union or recreation facility. Subsection (a) of K.S.A. 2009 Supp. 79-32,261 provides that any taxpayer who contributes to a "postsecondary educational institution located in Kansas for deferred maintenance" shall be allowed a tax credit. The term "postsecondary educational institution" is defined in paragraph (d)(3) to include the six state universities, and the term "deferred maintenance" is defined as any maintenance, repair, reconstruction or rehabilitation of a building located at a postsecondary educational institution which has been deferred. Nothing can be found in this statute that further limits the type of project for which the tax credits may be allowed.

However, the Board is sensitive to the fact that there was considerable legislative discussion surrounding the long-term infrastructure maintenance program, and indeed statutory provisions were enacted for that program, to prohibit use of the funds generated under those provisions (K.S.A. 2009 Supp. 76-7,101 et seq.) for maintenance and repair of "any building used as an athletic facility that does not directly support the delivery of academic pursuits" or "the residence of the president or chancellor of a state educational institution." *See also*, K.S.A. 2009 Supp. 76-7,117 (applicable to Washburn University, the community colleges and technical colleges). During the 2007 legislative session, the Board developed a "mission critical" list of campus deferred maintenance projects. Auxiliary buildings such as student unions, athletic facilities, chapels, president's houses, etc. were not included in that list. Not wanting to promote or approve use of the tax credits in a way that might seem inconsistent with legislative intent, we thought

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it best to preserve complete transparency by taking this issue to the Building Committee for discussion and consideration.

As requested by Senator Umbarger, we contacted the Revisor's Office to assist in determining whether the issue warrants further examination. The Revisor's Office reviewed K.S.A. 2009 Supp. 79-32,261 and concurs that it does not contain any limitation on the type of building which may be considered for the tax credit.

The Building Committee discussed this issue during last month's meeting and requested the Revisor's Office draft a bill, for consideration and further discussion at this month's meeting, to clarify the types of buildings tax credits could be used for. We recently received a draft copy. If the Committee ultimately chooses to move forward with a bill, we would ask that Section 2 on Page 4 of the draft be edited as follows:

(2) "deferred maintenance" means the maintenance, repair, reconstruction or rehabilitation of a building located at a technical college or a postsecondary educational institution which has been deferred, any utility systems relating to such building, any life-safety upgrades to such building and any improvements necessary to be made to such building in order to comply with the requirements of the Americans with disabilities act or other federal or state law. ~~Such building shall include, but not be limited to, a student union building or an athletic facility;~~ Notwithstanding the provisions of K.S.A. 76-7,102, and amendments thereto, or other law to the contrary, deferred maintenance projects eligible for tax credits under this section may include the maintenance, repair, reconstruction or rehabilitation of the portions of a student union building that are used primarily for academic purposes;

However, at this point in time, we would ask the Building Committee to consider the following question: Is new legislation on this matter necessary, or would an affirmative/official statement from the Committee supporting the use of tax credits "for deferred maintenance work in portions of student union buildings used primarily for academic or academic support purposes" be sufficient?

Ultimately, it is the Board's intent, only if the Building Committee concurs, to approve the ESU and WSU requests for tax credits for deferred maintenance work in portions of the buildings used primarily for academic or academic support purposes. The Board believes the usage tax credits would be acceptable in this case, due to the academic focus of the two projects. These projects are currently underway, and donations are currently being sought, so time is something of the essence.

Thank you for your consideration of this request and for your continued support of higher education in Kansas.

Sincerely,



Dr. Andy Tompkins
President & CEO