



STATE OF KANSAS

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VERN MILLER
Attorney General

March 26, 1974

Opinion No. 74-100

Honorable Fred W. Rosenau
Representative, Thirty-Ninth District
3050 South 65th Street
Kansas City, Kansas 66106

Dear Representative Rosenau:

You inquire concerning the authority of the Kansas City, Kansas, Board of Public Utilities to contribute funds of the Board to the Kansas City, Kansas, Chamber of Commerce.

The expenditure in question was authorized pursuant to Resolution No. 24209, adopted July 3, 1973, by the Board of Commissioners of the City of Kansas City, Kansas. The Board took note of the 1972 Annual Report of the Board of Public Utilities which noted, according to the resolution,

"a very definite need for a continuing program of industrial attraction for new industry and retaining and sustaining existing industry in our community thereby strengthening the fundamental economic base of our area thus assisting the community growth and prosperity".

It was thereupon resolved that

"the Board of Public Utilities . . . be asked to immediately set up a program to attract new industry and to retain and sustain existing industry in our community for the common good, and we hereby pledge the City's fullest cooperation within legal limitations.

"That all concerned groups including the Wyandotte County Commissioners, The Kansas City, Kansas/Wyandotte County Port Authority, The Kansas City, Kansas Board of Education, The

Hon. Fred W. Rosenau
March 26, 1974
Page Two

Kansas Junior College and the Kansas City, Kansas Area Chamber of Commerce be urged to seek such action from the Board of Public Utilities, and offer their fullest cooperation for this vital community project."

Pursuant to this resolution, the Board of Public Utilities (hereinafter the BPU) and the Chamber entered into an agreement, whereby the latter

"agrees to provide the services of attracting, retaining, and sustaining industrial development in Kansas City, Kansas through the establishment of an Economic Development Division within the Chamber organization."

The agreement contemplates that the Board shall be a majority subscriber to the services, paying not less than fifty percent of the costs thereof, during the first three years. The approved budget of the Economic Development Division of the Chamber for the first year is stated to be \$218,300.

Justification for the agreement is offered in the opening paragraphs of the agreement, wherein the Board

"recognizes the need for a continuing program for attraction of new industry and retaining and sustaining existing industry in the City of Kansas City, Kansas in order to strengthen the economic base in the Board's service area and to assist in community growth and prosperity, and

"[that] such growth and prosperity would contribute to the economic progress of the Board of Public Utilities and enable the Board to better meet the needs of all its water and electric consumers with reliable service and reasonable rates"

The statutory charge of the Board is set out at K.S.A. 13-1220, to

"manage, operate, maintain and control the water plant and electric-light plant of such city, and shall make all such rules and regulations as are necessary for the safe, economical and efficient operation and management of such water plants and electric-light plants. Said board . . . may also

improve, extend or enlarge the water plants and electric-light plants as hereinafter provided, and furnish a supply of water, light, heat and power for domestic, industrial and municipal purposes."

Under K.S.A. 13-1223 it is "charged with the duty of producing and supplying the city and its inhabitants with water and electric energy for domestic and industrial purposes and for public use in the city, and may sell and dispose of any surplus outside of the city." For this purpose, it enjoys the powers enumerated in that section, and "such other powers as may be necessary for the proper discharge of its duties."

We fully recognize and appreciate the importance of industrial and general economic development to the progress of every area of the state. The Legislature has made many provisions to assist such development. However, nothing in the statutory basis provided by K.S.A. 13-1220 et seq. suggests that the Board of Public Utilities has any statutory responsibility for economic and industrial development. Its primary obligation and duty "of producing and supplying the city and its inhabitants with water and electric energy for domestic and industrial purposes" appears remotely, if at all, related to its undertaking to fund projects for the attraction of industry.

The Board may, consistent with its present statutory responsibilities, engage in advertising and promotional campaigns designed to encourage sales. The Board might very well benefit from the attraction to the area of large industrial users of electricity, for example. Indeed, every other governmental entity in the metropolitan area might also benefit from expanded industrial growth. However, the Board's statutory authority does not extend to every program from which the Board might deem its operations to derive some collateral benefit, however remote. Indeed, the contract recites, as justification for the Board's role, little more than its recognition of the

"need for a continuing program of attraction of new industry and retaining and sustaining existing industry in the City of Kansas City, Kansas in order to strengthen the economic base in the Board's service area and to assist in community growth and prosperity."

The Board has no statutory power or responsibility to engage specifically in general industrial and economic development programs for the City of Kansas City, Kansas.

Hon. Fred W. Rosenau
March 26, 1974
Page Four

If the governing body of the city wishes to require the Board to assume such a role, and to devote its funds to this purpose, it may authorize such participation by charter ordinance. The City may by charter ordinance alter the statutory provisions which control the Board's operations. The City might by such a charter ordinance empower the Board to assume responsibilities in the area of industrial development, and to spend Board funds for such projects. However, no information which we presently have indicates that the City has done so. Unless and until it does so, there exists no legal basis for the contract entered into with the Chamber, and no basis to support the expenditure of Board funds for industrial and economic development activities undertaken in its behalf by the Chamber.

Yours very truly,



VERN MILLER
Attorney General

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