



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

February 20, 1975

Opinion No. 75-73

The Honorable John Crofoot
State Senator
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Dear Senator Crofoot:

You inquire concerning 1975 Senate Bill 164, which proposes to amend K.S.A. 75-3739. In particular, you point out that thereunder, state agencies are permitted to make small purchases of less than five hundred dollars on the open market, pursuant to paragraph four thereof, which states thus:

"All purchases or sales estimated to be approximately two thousand dollars (\$2,000) or less may be made either upon competitive bids or in the open market, in the discretion of the director of purchases but, so far as practicable, shall be based on at least three competitive bids and recorded as provided in K.S.A. 75-3750, except that authorization may be given to any state agency to make emergency purchases or small purchases of less than five hundred dollars (\$500) on the open market."

You inquire whether you would be in violation of any state statutes by accepting such orders for your company. You indicate that you have previously sold the state merchandise, but that it has always been on bids. Most generally, you indicate, the purchases which the state would make from your company would be less than five hundred dollars.

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K.S.A. 75-4304(a) commences thus:

"No public officer or employee shall in his capacity as such officer or employee make or participate in the making of a contract with any person or business by which he is employed or in whose business he has a substantial interest"

This prohibition does not apply to contracts let after competitive bidding has been advertised for by published notice. K.S.A. 75-4304(b). Presumably, although, as a representative of your company, you may be a party in its behalf to a contract with a state agency for the sale of goods or services, you would not also be a party to the contract in behalf of the state agency itself. So long as you are not a party to the contract in both capacities, as a private businessman and also as a state senator or in any other official capacity, K.S.A. 75-4304 is inapplicable to a purchase by a state agency from your company, whether the contract is let after competitive bidding or otherwise.

In addition K.S.A. 46-132 provides in pertinent part that

"Neither shall any member of the legislature, within one (1) year after the expiration of his term, be interested in, either directly or indirectly, any contract with the state, which contract is authorized by any law enacted during the term for which he shall have been elected."

I enclose a copy of an opinion by Attorney General Vern Miller to Senator Tom Van Sickle concerning this statute, with which we concur.

This prohibition has been supplemented by a provision in the 1974 governmental ethics act, found at K.S.A. 46-233(b) which states thus:

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"No individual shall, while a legislator or within one (1) year after the expiration of a term as legislator, be interested pecuniarily, either directly or indirectly, in any contract with the state, which contract is funded in whole or in part by any appropriation or is authorized by any law passed during such term, except that the prohibition of this subsection (b) shall not apply to any contract interest in relation to which a disclosure statement is filed as provided by section 25 [46-239]."

Under subsection (d) of this section, the quoted prohibition does not apply to contracts let after competitive bidding has been advertised for by published notice, or contracts for property or services for which the price or rate is fixed by law. Where neither of these circumstances apply, you remain free to enter into contracts with state agencies for the sale of goods and services in an amount under \$500, for which bids are not received, so long as the appropriate disclosure statement is filed as provided in K.S.A. 46-239, notwithstanding the contract is funded by an appropriation passed during your term.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Lynn Hellebust, Executive Director
Governmental Ethics Commission
Room 715, Mills Building
109 West Ninth
Topeka, Kansas 66612



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Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

January 31, 1972

Honorable Tom R. Van Sickle
State Senator
District Seven
Senate Chamber
Topeka, Kansas

Dear Senator Van Sickle:

K.S.A. 46-132 states in pertinent part as follows:

"Neither shall any member of the legislature, within one (1) year after the expiration of his term, be interested in, either directly or indirectly, any contract with the state, which contract is authorized by any law enacted during the term for which he shall have been elected."

You inquire whether an insurance agency in which you have a direct interest may submit a sealed bid upon a contract of insurance insuring state properties. You state that the insurance contract has not been "authorized by any law enacted during the term for which" you have been elected, although the appropriation of money for the purpose of the insurance contract is necessarily an annual appropriation.

In our opinion, K.S.A. 46-132 does not prohibit the proposed course of action, so long as the statutory authority for the insurance contract in question was not enacted during your service in the legislature, which you state to be the case. In our opinion, a law authorizing an appropriation is not itself a law authorizing a contract or creating contractual authority and, accordingly, your proposed course of action is not within the prohibition of K.S.A. 46-132.

Yours very truly,

VERN MILLER
Attorney General

JRM:sbs