



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

April 23, 1975

Opinion No. 75- 178

Mr. Daniel A. Young
Douglas County Counselor
Post Office Box 585
Lawrence, Kansas 66044

Dear Mr. Young:

As county counselor, you inquire concerning the authority of the county to provide and certify the assurances contained in form HUD-7015.12, that the county may lawfully engage in the rehabilitation of substandard rural housing, under the Housing and Community Development Act of 1974. As you point out, there is no direct statutory reference to such activities which would either permit or prohibit them. We concur fully with your suggestion that adoption of a resolution under K.S.A. 19-101a(b) would provide the necessary authority. That section provides in pertinent part thus:

"If no statutory authority exists for such local legislation other than that set forth in subsection (A) of this section [i.e., the power to transact all county business and perform such powers of local legislation and administration as is deemed appropriate] and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper."

Adoption of an appropriate resolution would remove any question of lack of authority to provide the needed assurances, in our judgment.

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In paragraph 9 of those same assurances, as well in Section I, E-4 of the proposed agreement for services with Oblinger-Smith, the certifying officer "[c]onsents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of such act apply pursuant to this Part, and "[i]s authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official."

Jurisdiction of the federal courts may not, to my knowledge, be conferred by consent of the parties. The purpose of this particular consent is, so far as appears, to permit the certifying officer to be designated a responsible federal official within the meaning of that term in the National Environmental Policy Act of 1969, in order that pertinent claims and controversies arising under that act in connection with this program may be litigated in the federal courts. Once again, there being no express statutory authority for or against such consent, it is another instance in which the adoption of an appropriate resolution under K.S.A. 19-101a(b) would provide the sole authority necessary, in my judgment.

If further questions should arise concerning this matter, please feel free to call upon us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj