



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

April 25, 1975

Opinion No. 75-184

The Honorable John F. Vermillion
State Senator
1424 North 8th Street
Independence, Kansas 67301

Dear Senator Vermillion:

You inquire whether 1975 House Bill 2606 requires that, after April 1, 1976, the Kansas Turnpike Study must cause to be made an additional and further study, other than those already made, of the kind therein statutorily described prior to construction of the proposed Southeast Kansas Turnpike project.

Section 1 of this bill amends K.S.A. 1974 Supp. 68-2094 to provide in pertinent part thus:

"In order to provide for the construction of modern express highways commencing near the city of Winfield, Kansas, at a point of intersection with the modern express highway authorized to be constructed under the provisions of K.S.A. 68-2070 to 68-2092, inclusive and any acts amendatory thereof . . . the authority is hereby authorized and empowered to construct . . . any highway project (as hereinbefore defined), and to issue any highway revenue bonds of the authority, payable solely from revenues and any payments to the authority from the state highway fund or state freeway fund provided to be made pursuant to the provisions of this act . . . to finance the project. No highway project shall be undertaken or any highway revenue bonds issued therefor until April 1, 1976, and no highway project shall be undertaken unless and until such project and the proposed locations therefore have been thoroughly studied with respect to traffic,

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engineering, cost and financing, nor unless such study shows And provided further, On and after April 1, 1976, once the authority has determined that such study, or the study as amended and supplemented, shows that the provisions of this section are met, the project or projects shall be undertaken" [Under-scored language added by amendment.]

This provision was first enacted as ch. 269, § 2, L. 1973. Section 18 of that enactment, now found at K.S.A. 1974 Supp. 68-20,110, states thus:

"The authority is hereby authorized and directed to make such surveys and studies and to update any survey or studies already made of any highway project as may be necessary to effect the financing authorized by this act at the earliest practicable time, and for this purpose to employ such consulting engineers, traffic engineers, legal and financial experts and such other employees and agents as it may deem necessary. To effect the purpose of this act, the state highway commission shall make available to the authority all data in its possession which may be useful to the authority in making such surveys and studies and the commission may furnish such assistance in making investigations and in preparing designs for any highway project as may be agreed upon between the commission and the authority, the cost of such surveys and expenses incurred by the commission to be paid by the authority."

This provision for studies was supported in 1973 by a specific authorization for the expenditure of not to exceed \$100,000 from the highway general fund. See ch. 23, L. 1973. Pursuant to these legislative enactments, you advise that the Authority contracted under date of May 1, 1973, that Coverdale and Colpitts would do a traffic and revenue study at a cost of \$25,000. The Authority also contracted that Knoerle, Bender, Stone & Associates would provide an engineering cost and feasibility report at a cost of \$75,000. Coverdale & Colpitts submitted its final report to

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the Authority in October, 1973, and was thereafter paid the full amount due. You advise that at approximately the same time, Knoerle, Bender, Stone and Associates billed and was paid the balance of its fee, with the result that in late 1973 or early 1974, the Authority exhausted the \$100,000 which was authorized by ch. 23, L. 1973, payment being made by the State Highway Commission upon invoices which had been submitted to and approved by the Authority.

As a result of 1974 amendments, found at chs. 275 and 276, L. 1974, the state freeway fund was added to the state highway fund as a source of funds for making annual bond and bond-related deficiency payments relating to the highway in question. Thereafter, you advise the Authority took the position that these amendments substantially changed the type of bonds to be issued in connection with the project, and, accordingly, traffic and revenue performance requirements of the project, with the result that the studies then completed were inadequate and did not meet the statutory requirements necessary to authorize approval of the project. Accordingly, the Authority entered into a contract dated June 13, 1974, that Coverdale and Colpitts would conduct a further traffic and revenue study for an additional sum of \$4,500. This study was completed, and the Authority paid for it by drawing upon its general operating funds. On June 27, 1974, the Authority approved a resolution concerning the project, and made the findings and determinations statutorily required for the project.

The question now arises whether, in light of 1975 H.B. 2606, a new and further study is required after April 1, 1976, to authorize approval of the project. The sole changes made in provision amended by the bill are those underscored above. The traditional rule of statutory construction applicable in such instances is that found at K.S.A. 77-201, First, which provides in pertinent part thus:

"The provisions of any statute, so far as they are the same as those of any prior statute, shall be construed as a continuation of such provisions, and not as a new enactment."

In Pinkston v. Rice Motor Company, 180 Kan. 295, 303 P.2d 197 (1956), the court spoke of this provision thus:

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"This statute and our decisions compel the application in this case of the rule that ordinarily language of an earlier statute, which is preserved in an amendment, is deemed to speak as of the time of the original enactment, and not of the later one. The rule, however, is subject to the express reservation that it is not to be followed when such condition would be inconsistent with the manifest intention of the legislature or repugnant to the context of the statute." 180 Kan. at 307.

In City of Emporia v. Norton, 16 Kan. 236 (1876), Justice Brewer stated the following perceptive guide to application of this statutory rule of construction:

"We think therefore that this may be stated as a general rule, that where the legislature enacts a law which is the same in terms as a prior statute, if such prior statute has wholly accomplished its purpose, and spent its force, the latter law must be held, notwithstanding the rule of construction quoted, to be a new enactment, and not merely a continuation of the former." 16 Kan. at 241-242.


K.S.A. 1974 Supp. 68-2094 is not a statute, nor is the enactment of which it is a part, a law "which has wholly accomplished its purpose, and spent its force" Clearly, nothing in the amendment of that section suggests it is a renewal, by reenactment, of a statute which has accomplished its purpose. Indeed, the highway is not yet built, nor begun, nor has it been abandoned under the old act so as to require reenactment of a new law. Moreover, K.S.A. 1974 Supp. 68-2094 was enacted as part of a substantial enactment, the other provisions of which were unchanged by the amendments to this provision, and which provisions are an integral part of the statutory authority needed to undertake the project, if and when that decision is made. Clearly, this section must be read to speak as of the time of original enactment of the act of which it is a part, unless there is a compelling reason

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to construe it otherwise. The sole effect of the amendment, on its face, is to prohibit undertaking the project and issuance of bonds therefor until April 1, 1976. It is certainly not manifestly inconsistent with any purpose of the legislature which is apparent from the face of 1975 H.B. 2606 to construe those parts unchanged as speaking from the date of their original enactment, and to construe the amendments thereto, essentially the prohibition of the project until a fixed date in the future, as operating prospectively. Moreover, it has not come to our attention that accompanying this bill, was there a specific legislative authorization for the expenditure of funds for a study such as accompanied its original enactment in 1973.

For these reasons, it is our opinion that no further or additional study is statutorily required to be made prior to or after April 1, 1976, to authorize the Authority to approve the project in question.

Yours very truly,


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