



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 9, 1975

Opinion No. 75- 207

Mr. James W. Bibb
Department of Administration
State Capitol Building-1st Floor
Topeka, Kansas 66612

Dear Mr. Bibb:

You inquire concerning the legality and propriety of the action taken by the chairman of the Kansas Wheat Commission in withholding his approval of certain expenditures by the Kansas Wheat Centennial Committee which are from funds the Legislature appropriated to that committee for the asserted reason, that the proposed expenditures are not statutorily authorized. The reasons cited for this conclusion in the language of the commission chairman, are as follows:

"(1) The Kansas Wheat Commission is following the Kansas Wheat Act, Subsections 1, 2, and 7 of K.S.A. 1973 Supp. 2-2606. Projects for the expenditures of Wheat Centennial Committee funds, samples enclosed, do not follow the Kansas Wheat Act in its promotion of wheat and wheat products.

(2) Many of these projects are dealing strictly with ethnic groups that we feel cannot be justified in the promotion of wheat. The Kansas Wheat Commission is receiving considerable criticism from various parts of the state. The Kansas Wheat Act is supported by all Kansas wheat farmers, and it is the duty of the Kansas Wheat Commission to justify the expenditure of the wheat levy in its promotion of Kansas wheat."

At section 7 of Chapter 12 of the 1974 Session Laws, the Legislature amended the appropriation statute to the Kansas Wheat Commission to

read in pertinent part as follows:

"(a) There is appropriated for the above agency from the following special revenue fund all moneys now or hereafter lawfully credited to and available in such funds, except that expenditures shall not exceed the following:

Kansas wheat commission fund \$688,302

* * *

And provided further, That not more than \$175,000 shall be expended under contract between the Kansas wheat commission and the Kansas committee on turkey red wheat centennial, which contract shall provide for conduct by said committee of publicity and education concerning wheat and wheat products as provided by subsections (1), (2), and (7) of K.S.A. 1973 Supp. 2-2606 of the Kansas wheat act"

Relative to this inquiry, K.S.A. 2-2606(1), (2) and (7) outlines the proper scope and purpose for all Wheat Committee expenditures:

"In the administration of this act the commission shall have the following duties, authorities and powers:

- (1) To conduct a campaign of development, education and publicity;
- (2) to find new markets for wheat and wheat products;

* * *

(7) to cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state, or by national law, engaged in work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of development, education and publicity; . . ."

The authority of the chairman of the Wheat Commission to approve or disapprove Wheat Committee expenditures is derived from K.S.A. 2-2609 which states in pertinent part:

* * *

"The state controller is hereby authorized to draw his warrants upon the treasurer of the state for

Mr. Bibb
Page Three
May 9, 1975

said purposes and against said Kansas Wheat Commission fund upon duly itemized vouchers executed as provided by law, filed in his office, and approved by the administrator or the chairman of the commission."

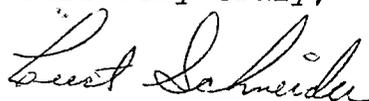
The chairman's power of approval is not unlimited. The committee is legislatively entrusted with the responsibility for the planning and preparation of activities related to the Wheat Centennial. The only statutory restrictions placed upon the committee is that the activities be within the broad criteria specified in K.S.A. 1973 Supp. 2-2606 (1), (2) and (7). In other words, the chairman is not given the authority to plan the turkey red wheat centennial festivities. He is not allowed to substitute his own judgment for what is a proper activity for that of the committee's except in those instances where the expenditure is in no way arguably within the sphere of subsections (1), (2) and (7) or is otherwise improper.

It is the opinion of this office that approval has been improperly withheld in reference to the proposed expenditures by the committee. An extensive examination of the proposal submitted with this opinion request has led to the conclusion that all the activities outlined in that proposal clearly come within the broad categories of development, publicity and education concerning wheat and wheat products. Both publicity and education potentially cover a multitude of factors and events which would directly or indirectly relate to wheat and wheat products. As to the chairman's second criticism of the committee's proposals, it is beyond argument that the historical events and facts of the particular commodity are inextricably a part of the educational process relative to that commodity. Certain ethnic groups, notably the Mennonites, Swedes and early Catholics were instrumental in bringing turkey red wheat to the plains of Kansas. Programs and activities designed to emphasize the role these groups played in these events clearly educate the public as to the historical founding and development of the particular primary industry of this state which has had the additional effect of bringing Kansas to the forefront of the wheat producing states. Furthermore, neither in the contract between the Kansas Wheat Commission and the Turkey Hard Red Winter Wheat Centennial Committee, nor in the language of the relative statutes are the criteria specified in subsections (1), (2) and (7) of K.S.A. 1973 Supp. 2-2606 limited or otherwise restricted. Accordingly, any activity or proposal which is designed to emphasize the past, present or future, of wheat or wheat products and are otherwise arguably within the sphere of subsection (1), (2), and (7) are proper and appropriate expenditures by the committee.

Mr. Bibb
Page Four
May 9, 1975

It is the duty of the chairman to approve the expenditure of all funds obligated by the committee which are in fact lawful expenditures. The committee acted pursuant to a contract with the commission, and the committee is legally privileged to exercise its independent judgment, within the scope of the statutory charter, to formulate and conduct education and publicity campaigns concerning wheat, the industry and its history, and wheat products. The committee clearly has done so. The commission may disagree with aspects of that campaign, and apparently has done so, concerning emphasis on historical contributions to the development of wheat in this state by immigrant and religious minorities. These contributions are part and parcel of the story of wheat in this state. As stated above, neither the commission nor the chairman thereof is entitled to substitute its judgment for that of the Centennial Committee concerning appropriate facets of the story of wheat to be emphasized in educational and publicity campaigns conducted by the committee. The programs we have considered are clearly within the contractual authority of the commission, and the statutory authority recited therein, and are lawful obligations.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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cc: Mr. Harley J. Stucky, Co-Chairman, Kansas Wheat Centennial
Mr. Glen O. Strnad, Chairman, Kansas Wheat Commission
Mr. Bob Arnold, Secretary-Treasurer, Kansas Wheat Centennial