



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 14, 1975

Opinion No. 75- 220

Mr. Max Bickford
Executive Officer
Kansas Board of Regents
Suite 1416, Merchants National
Bank Tower
Topeka, Kansas 66612

Dear Mr. Bickford:

K.S.A. 76-308 provides for a permanent university fund thus:

"The permanent university fund shall at no time be diminished for any purpose whatsoever; and whenever any gift, devise or bequest shall be granted to the university, the principal amount or proceeds thereof shall be made a part of the permanent university fund, unless otherwise expressly directed by the donor"

K.S.A. 76-156a, enacted in 1969, authorizes the Kansas endowment association "to act as the investing agent for any endowment or bequest to the university of Kansas." What appears to be substantially redundant authority was enacted in 1974, appearing as K.S.A. 1974 Supp. 76-718a:

"The Kansas endowment association is hereby authorized to act as the investing agent for the permanent university fund referred to in K.S.A. 76-308, as amended. . . ."

The section goes on to specify permissible investments for such monies.

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You advise that the Board of Regents is in the process of considering a management proposal which has been submitted to the Board by the Endowment Association. The proposal provides, inter alia, that the

"Association shall be entitled to receive an amount of moneys necessary for payment of administrative overhead in connection with such agency account, which shall be _____ per cent of such income, and which shall be retained out of such earnings by the Kansas University Endowment Association."

The question has been raised whether it is within the authority of the Board to contract to pay the Association for the management of the Permanent University Fund.

The Kansas University Endowment Association is not, far as our research discloses, a creature of statute or otherwise an instrumentality of the state. However, for reasons which are not clear, both in 1969 and in 1974, the Legislature enacted provisions which purport to confer authority on the Association, to act as the investing agent for the endowment of and bequests to the University of Kansas, as though the authority of the Association depended upon legislative grant. The authority of the Board of Regents does, of course, but the authority of the Association derives from its organic documents, and not from any statutory charter, so far as we can discover.

The permanent university fund comprises gifts, devises and bequests to the University of Kansas. K.S.A. 1974 Supp. 76-712 states thus:

"The universities and colleges of this state are state agencies and state institutions and shall be controlled by, and operated and managed under the supervision of the board of regents. For such control, operation, management or supervision, the board of regents may make contracts and adopt orders, policies or rules and regulations and do or perform such

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other acts as are authorized by law or are appropriate for such purposes."

This statute, independently of K.S.A. 76-308 and 1974 Supp. 76-718a, provides, in our judgment, adequate authority for the Board to enter into such contracts as are deemed appropriate by the Board respecting the management and investment of the assets of the permanent university fund. While the latter statutes purport to give the Association authority to act as the investing agent, the existence of this authority, permissive in its terms, would not preclude the Board, in the exercise of its independent statutory authority, from entering into an agreement with the Association for the management and investment of the permanent university fund which provides for payment of compensation therefor. The fact that the Association is authorized to act as the investing agent does not preclude its accepting compensation for doing so.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

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