



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 11, 1975

ATTORNEY GENERAL OPINION NO. 75- 282

The Honorable Joan Finney
State Treasurer
535 Kansas Avenue
Topeka, Kansas 66603

Re: State Moneys--Pooled Money Investment Board--
Contract Authority

Synopsis: The Pooled Money Investment Board is without authority to negate contracts lawfully entered into by other state agencies relative to state funds coming under Board's jurisdiction prior to the final performance date for such contracts.

* * *

Dear Mrs. Finney:

You advise that some state agencies and boards have contractually committed the state to certain obligations involving several state funds. The investment of these state funds fall under the jurisdiction of the Pooled Money Investment Board on July 1, 1975, pursuant to the provisions of 1975 Senate Bill 54. Essentially the question presented is whether these contracts are binding on the Pooled Money Investment Board even though the Board per se was not privy to the actual contracts.

1975 Senate Bill 54 operates essentially to transfer investing authority for monies in such funds for example as the real estate recovery fund, freeway construction fund and the debt service reserve fund (for Board of Health sewage disposal bonds). And, although this authority became effective July 1, 1975, it cannot operate to abridge the earlier contracts lawfully entered into insofar as the prior investing authorities were authorized to commit the state contractually for that period extending beyond the termination of their own authority for investing their respective accounts. To permit the Board to negate these contracts patently contravenes the provisions of Article 1, § 10 of the United States Constitution which in pertinent part provides:

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"No State shall . . . pass any Bill of Attainder, *ex post facto* Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.." [Latter emphasis supplied.]

The Kansas Supreme Court has long recognized this prohibition. In an early case somewhat in point, *State ex rel. Speer v. Barker*, 4 Kan. 327, 96 Am. Dec. 175 (1868), Chief Justice Kingman writing for the Court concluded:

"Though the legislature may modify and repeal acts of former legislatures, and cannot abridge succeeding legislative action, yet where a contract is made under authority of law, the right of property arising from the contract cannot be divested by subsequent legislative action, (Syl. ¶ 1)

* * *

"Again, . . . when absolute rights of property have been acquired and vested by authority of law, no subsequent legislative action can divest this right. (*Fletcher v. Peck*, 6 Cranch, 87.) So where a contract is made under the authority of law itself, but from the contract to which it pertains as an incident, and the law making power cannot divest the rights thus acquired, originating, not in the law itself, but in acts done under the law, and which attach as incidents, not to the law, but to contracts made under it." p. 331.

See also, *State ex rel., v. Paulsen*, 204 Kan. 857, 465 P.2d 982 (1970); *Schiffelbein v. Sisters of Charity of Leavenworth*, 190 Kan. 278, 374 P.2d 42 (1962); and *Watkins v. Glenn*, 55 Kan. 417, 40 P. 316 (1895).

Necessarily, therefore, we may not interpret 1975 Senate Bill 54 to permit impairment of property rights acquired via the contracts in question. That we initially conclude such authority

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is constitutionally impermissible is not to say that the language of the act manifests a legislative intent to convey such power to the Pooled Money Investment Board. We find no evidence of such intent either express or implied. Those portions of the bill here concerned were drafted singularly to shift the investment authority of certain funds from one state agency to another; no grant of extra-constitutional power appears. Thus it is the opinion of this office that where state funds have been invested lawfully by contract for a period ending at a time after the Board becomes accountable for their investment such contracts must be allowed to run their full course before other commitments for investment can be undertaken.

Yours very truly,



CURT T. SCHNEIDER
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