



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

September 3, 1975

ATTORNEY GENERAL OPINION NO. 75-350

Mr. John W. Strahan
Acting Chief Attorney
Kansas Department of Transportation
State Office Building
Topeka, Kansas 66612

Attn: Mr. Elmer Hoge

Re: Transportation--Department of Transportation--
Powers and Duties

Synopsis: The powers of the State Highway Commission as a body corporate with powers to sue and be sued passed, under ch. 426, L. 1975, to the Secretary of Transportation, as administrative head of the Department of Transportation, and not to the Department of Transportation itself. Accordingly, the proper designation of the contracting party in contracts entered into under ch. 426, §§ 52 and 53, is, at present, O.D. Turner, Secretary of Transportation of the State of Kansas.

* * *

Dear Mr. Strahan:

You inquire, first, whether the status of the State Highway Commission as a body corporate with power to sue and be sued passed under ch. 426, L. 1975, to either the State Department of Transportation or to the Secretary of Transportation, and secondly, concerning the designation of the contracting party in contracts entered into, i.e., whether the proper designation is that of the Department of Transportation by O. D. Turner, Secretary of Transportation, or that of O. D. Turner, Secretary of Transportation.

There seems to be some continuing misapprehension as to the status of the Department of Transportation created by ch. 426,

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L. 1975, and the relationship of the Secretary of Transportation to that department. Section 1 of ch. 426, L. 1975, commences thus:

"In order to coordinate the planning, development and operation of the various modes and systems of transportation within this state, there is hereby established a department of transportation, which shall be administered under the direction and supervision of the secretary of transportation."

Section 4 of that enactment states thus:

"(a) On August 15, 1975, the state highway commission created by K.S.A. 1974 Supp. 74-2001 and the office of director of highways established by K.S.A. 74-2004 shall be and are hereby abolished, and on said date, except as otherwise provided in this act, all of the powers, duties and functions of the state highway commission and the director of highways shall be and are hereby transferred to and conferred and imposed upon the secretary of transportation. Except as otherwise provided in this act, the secretary of transportation shall be the successor in every way to the powers, duties and functions of the state highway commission and director of highways, respectively, in which the same were vested prior to August 15, 1975. The secretary of transportation shall be a continuation of the state highway commission and director of highways, respectively, and every act performed under the authority of the secretary of transportation shall be deemed to have the same force and effect as if performed by the state highway commission or director of highways, respectively, in which such functions were vested prior to August 15, 1975.

(b) Except as otherwise specifically provided in this act or in subsection (d) of K.S.A. 1974 Supp. 75-5111, on and after August 15, 1975, whenever the state highway commission, or words of like effect, is

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referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of transportation, and whenever any such reference or designation concerns the power and authority of the state highway commission to acquire or dispose of land or any interest in land the secretary of transportation shall succeed to such power and authority.

(c) On and after August 15, 1975, whenever the director of highways, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the secretary of transportation.

(d) All rules or regulations and all orders or directives of the director of highways or state highway commission, respectively, in existence on August 15, 1975, shall continue to be effective and shall be deemed to be the rules or regulations and orders or directives of the secretary of transportation, until revised, amended, repealed or nullified pursuant to law."

In sections 52 and 53, the power to enter into certain contractual relationships is passed from the State Highway Commission to the Secretary of Transportation.

Unlike the State Highway Commission, which under K.S.A. 74-2001 was a "body corporate with powers to sue and be sued," the new Department of Transportation is not such an entity. It is an administrative entity only. The powers formerly vested in the State Highway Commission described above have passed to the Secretary of Transportation. Thus, contracts entered into under the authority of sections 52 and 53 should be signed by O. D. Turner, Secretary of Transportation of the State of Kansas.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj