



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 19, 1975

ATTORNEY GENERAL OPINION NO. 75- 466

Robert R. Raines
Secretary of Corrections
Department of Corrections
KPL Tower Building
818 Kansas Avenue, Suite 500
Topeka, Kansas 66612

RE: Corrections, Department of -- Correctional Industries
Account

SYNOPSIS: K.S.A. 1974 Supp. 75-5281 authorizes the Secretary of Corrections to enter into installment contracts for the purchase and acquisition of equipment, tools, supplies and materials for manufacturing activities of the correctional system, obligations incurred thereunder to be payable solely from the "correctional industries account," but does not permit the Secretary to borrow money from any source to finance such purchases and acquisitions. Moneys in the "correctional industries account" are not in the state treasury, and may be expended without appropriation of such moneys, although any expenditure must be subject to any duly enacted expenditure legislation imposed by the legislature. Once an aggregate amount of \$500,000 has been expended from the "correctional industries account," further expenditures therefrom must be specifically approved by the governor.

* * *

Dear Secretary Raines:

K.S.A. 1974 Supp. 75-5281 states thus:

"The secretary is empowered to enter into contracts and agreements with any person, firm or corporation upon a self-liquidating basis respecting the acquisition and purchase of

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equipment, tools, supplies and materials for manufacturing, to the end that the same may be paid for over a period of not exceeding ten (10) years, and the aggregate amount of such purchases or acquisitions not to exceed five hundred thousand dollars (\$500,000) unless specifically approved by the governor, such amounts to be payable solely out of the revenues derived from the goods produced by the correctional system.

Nothing in this section shall be so construed or interpreted as to authorize or permit the incurring of a state debt of any kind or nature as contemplated by the constitution of this state in relation to such debt."

You inquire, first, whether this provision authorizes you as Secretary of Corrections to borrow cash money for the acquisition and purchase of such items, the loan to be repaid from proceeds derived from the sale of goods produced by the correctional system. In my opinion, it does not. The statute does authorize you to enter into contracts for the acquisition and purchase of equipment, tools, supplies and material for manufacturing, the obligation incurred thereby to be payable solely from the revenues derived solely from the sale of goods produced by the correctional system. It does not empower you to obtain financing from any other source, including bank loans or any other form of credit financing, for the acquisition and purchase of such items. In response to your second question, however, it is my opinion that it is within your authority under this statute to enter into installment contracts to purchase material in an amount not to exceed \$500,000, such installments to be paid over a ten year period from proceeds from the sale of goods produced.

You ask whether entering into such an installment conflicts with the second paragraph of the provision quoted above. The constitutional prohibition against the state contracting public debt in Article 11, Section 6 of the Kansas Constitution has been interpreted by the Kansas Supreme Court to prohibit only those debts which are payable by a general property tax. In *State ex rel. Fatzer v. Board of Regents*, 167 Kan. 587, 207 P.2d 373 (1949), the court stated thus:

"Debts, within the contemplation of constitutional provisions, are debts to be paid by a general property tax and not from funds to be raised in some other manner." 167 Kan. at 591.

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Obligations incurred under an installment contract entered into under K.S.A. 1974 Supp. 75-5281 would be payable solely from proceeds from the sale of manufactured products by the correctional system, and not from any general property tax. Thus, any debt incurred thereunder would not be one prohibited by Kansas constitutional provisions, as those provisions have been interpreted by the Kansas Supreme Court.

You ask whether the authority granted in this section conflicts with appropriation statutes providing for legislative control. Article 2, Section 24 of the Kansas Constitution provides that "[n]o money shall be drawn from the treasury except in pursuance of a specific appropriation made by law." K.S.A. 1974 Supp. 75-5282(a) provides in pertinent part thus:

"All moneys collected by the secretary from the sale or disposition of articles and products manufactured shall be forthwith deposited with the state treasurer into a special revolving account designated 'correctional industries account,' and such moneys so collected and deposited shall be used solely for the purchase of manufacturing supplies, equipment and machinery, and for the repair and maintenance of equipment and machinery . . ."

Although such moneys are directed to be deposited with the state treasurer, the statute does not direct that the moneys shall be deposited into the state treasury. The Kansas Supreme Court has held that moneys which are not deposited in the state treasury are not subject to the appropriation requirement of Article 2, Section 24. See *State ex rel. Boynton v. Kansas State Highway Commission*, 139 Kan. 391, 32 P.2d 493 (1934). There being no constitutional or statutory requirement that these moneys be deposited in the state treasury, the statute must be construed as it reads, *i.e.*, that the moneys in question are to be transmitted to the state treasurer to hold as custodian thereof, to be expended for the permissible purposes upon your authority as Secretary of Corrections. Thus, it is not necessary that moneys in the "correctional industries account" be appropriated prior to their expenditure. The Legislature may, of course, provide and enact expenditure limitations applicable to expenditures from the fund, and it may amend the statute to require that the moneys be deposited in the state treasury, thus requiring appropriation thereof prior to expenditure. K.S.A. 1974 Supp. 75-5281

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provides that the "aggregate amount of such purchases or acquisitions [are] not to exceed five hundred thousand dollars (\$500,000) unless specifically by the governor. . . ."

This limitation is not restricted to \$500,000 per annum, but \$500,000 in the aggregate. Once expenditures from the "correctional industries account" exceed \$500,000, as accounted from and after July 1, 1974, the effective date of this provision, all expenditures from the fund must be specifically approved by the governor.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:en