



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

April 5, 1976

ATTORNEY GENERAL OPINION NO. 76- 121

Mr. Edward G. Bruske  
Secretary  
Kansas Department of Economic Development  
6th Floor - 503 Kansas  
Topeka, Kansas 66603

Re: Public Improvements--Internal Improvements--Arkansas  
City Flood Control Project and Kansas State Fair Lake  
Talbot Project

Synopsis: The state may expend monies for the Arkansas City Flood  
Control Project and the Kansas State Fair Lake Talbot  
Project notwithstanding the provisions of Article 11,  
§ 9 of the Kansas Constitution.

\* \* \*

Dear Mr. Bruske:

You have requested the opinion of this office regarding the use of state funds for the payment of certain costs incurred in the construction of two projects: the Arkansas City Flood Control Project and the Kansas State Fair Lake Talbot Project. Essentially you ask whether the prohibition against state participation in internal improvements will prohibit the use of state moneys for these particular projects.

Article 11, § 9 of the Kansas Constitution provides:

"The state shall never be a party in carrying on any work of internal improvement except that: (1) It may adopt, construct,

Mr. Edward G. Bruske  
Page Two  
April 5, 1976

reconstruct and maintain a state system of highways, but no general obligation bonds issued by the state for such highways; (2) it may be a party to flood control works and works for the conservation or development of water resources."

We have examined the material forwarded to this office relative to the flood control project to be located in Arkansas City, and we find no reason why this specific flood control work should not fall within the second delineated exception to the constitutional prohibition, *supra*.

You advise that the Kansas State Board of State Fair Managers desires to construct a facility which would "facilitate local, regional, state and national scouting groups for camp-outs, jamborees or stopovers, during the Off Season, and be used as a Scout exhibition center at Fair time." It would also provide camping, and parking space and supporting facilities for recreational vehicle organizations and outdoor enthusiasts. The project would thus consist basically of constructing an exhibition building and the development and landscaping of the grounds surrounding the new structure and Lake Talbott.

As we pointed out in our opinion no. 75-315 addressed to Mr. James H. DeCoursey, Jr. the fundamental criteria in determining what is an internal improvement within the purview of Article 11, § 9, *supra*, pivots on whether the proposed construction will amount to a *public* improvement as opposed to an *internal* improvement. In that opinion we stated:

"'Public improvement' describes basically, improvements to property owned and used by the state in the discharge of its duties and responsibilities as a sovereign corporation, and is restricted to state buildings and improvements associated therewith. . . . Projects undertaken for the improvement of the state's own property generally may be deemed to be a public improvement."

A careful analysis of the information supplied regarding the scout building project leads this office to the conclusion that the construction insofar as it furthers the objective for conducting the annual state fair as expressed in K.S.A. 2-201 *et seq.* clearly amounts to an improvement to property owned and used by the state

Mr. Edward G. Bruske  
Page Three  
April 5, 1976

in the discharge of its duties and responsibilities as a sovereign. To this extent then it is the opinion of this office that the Kansas State Fair Lake Talbott Project is a public improvement and does not therefore prevent the state from expending funds in behalf thereof notwithstanding the provisions of Article 11, § 9 of the Kansas Constitution.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER  
Attorney General

CTS:JPS:kj