



STATE OF KANSAS

## Office of the Attorney General

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Curt T. Schneider  
Attorney General

July 29, 1976

ATTORNEY GENERAL OPINION NO. 76-236

Mr. Lamar Weaver, Jr.  
Director  
Kansas Energy Office  
503 Kansas  
Topeka, Kansas 66603

Re: Kansas Energy Office--Powers and Duties of Director--  
Appeal Procedures

Synopsis: Anyone aggrieved by the state energy office's set-aside assignment order has no recourse but to appeal directly to a Kansas district court inasmuch as Kansas statutes do not provide for an administrative appeal process as required in 10 C.F.R. § 202.219(a).

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Dear Mr. Weaver:

You have requested an opinion from this office as to the status of the appeals procedure informally adopted by the Kansas Energy Office. You advise that prior to Governor Bennett's taking office a "Board of Review" had been established to implement your office's appeal procedures. However, since the change in administration no such Board has been appointed. Thus you ask what procedures are to be followed in meeting federal requirements as set out, *infra*. 10 C.F.R. § 205.219(a) (Mandatory Petroleum Allocation Program) provides in part:

"(a) Set-aside. Any person aggrieved by a state set-aside assignment order issued by the State Office may file an appeal with the State Office in accordance with the procedures established by such office. The appeal

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shall be filed within 15 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal."

K.S.A. 1975 Supp. 74-6804 provides in pertinent part thusly:

"In addition to other powers and duties provided in this act, the director of the Kansas energy office shall:

(a) Serve as the special coordinator and administrator for federal mandatory fuel allocation programs in this state and for other programs of the federal energy administration and similar federal agencies relating to the allocation, supply or consumption of energy resources in this state including cooperation in the implementation of any emergency energy rationing program which may be effected by the federal government."

We also note that the agency's power to promulgate rules and regulations is specifically limited to establishing

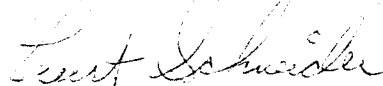
". . . a system of priorities for the allocation of available energy resources, other than agricultural fertilizers, and the curtailment of the consumption of such energy resources during any energy emergency as proclaimed by the governor pursuant to K.S.A. 1975 Supp. 74-6806." K.S.A. 1975 Supp. 74-6807.

What is clearly not provided by the enabling legislation (Chapter 394, Laws of 1975) is authority for any other agency or office to pass on the propriety of allocations made by the Kansas energy office. The statute empowering the director to administer fuel allocation programs carries no proviso for further review by a state officer or board. This coupled with the limited scope of the authority to promulgate rules and regulations leads me to the conclusion that while the legislature may have intended to properly empower the director to administer the federal and state energy programs it did not provide for an appeal procedure sufficient to meet the requirements of federal law.

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Accordingly, it is the opinion of this office that anyone aggrieved by a state energy office's set-aside assignment order has no alternative recourse but to appeal directly to a Kansas district court. To the extent that the State's legislation does not comply with the requirements as specifically provided in 10 C.F.R. § 205.219(a) the Kansas act is deficient and should be properly amended at the earliest opportunity.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JPS:kj