



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 23, 1976

ATTORNEY GENERAL OPINION NO. 76- 263

Mr. Richard Plummer
Controller
Department of Transportation
State Office Building
Topeka, Kansas 66612

Re: Roads and Bridges--State Highway Bonds--Annual Audit
Requirements

Synopsis: The Department of Transportation must provide for an annual audit of the State Freeway Fund and the Sinking Fund notwithstanding the actions of other state agencies.

* * *

Dear Mr. Plummer:

You requested during our telephone conversation this date our opinion whether the Department of Transportation or the Pooled Money Investment Board (PMIB) is responsible for providing an audit of the State Freeway Fund¹ and the Sinking Fund.²

1. The term "State Freeway Fund" is defined as that fund created by K.S.A. 1971 Supp. 79-3425. See State Highway Commission Bond Resolution adopted May 23, 1972.

2. The term "Sinking Fund" is defined as the State of Kansas Highway Bonds Interest and Sinking Fund, a special fund created and designated by the provisions of Section 401 of this Resolution. *Id.*

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Your attention is directed to the provisions of Section 502 of the State Highway Commission Bond Resolution which in pertinent part provides:

"The Commission further *covenants* that promptly after the close of each fiscal year it will cause an audit of the books and accounts of the Commission with respect to the State Freeway Fund and the Sinking Fund for the preceding fiscal year to be made by an independent firm of certified public accountants of recognized ability and standing to be chosen by the Commission. . . ."
[Emphasis added.]

We also note the provisions of Section 2(h), Chapter 297, Laws of 1976.

"(h) The pooled money investment board shall provide for an examination of the investment program annually. The examination shall include an evaluation of current investment policies and practices and of specific investments of the funds in relation to the standards and objectives set forth in subsection (a) and other criteria as may be appropriate, and recommendations relating to the investment policies and practices and to specific investments of the funds as are considered necessary or desirable."

There appears to be some misunderstanding as to who has the primary responsibility for performing an annual audit on the two funds in question. At the outset we think it necessary to point out that the annual investment program examination by the PMIB does not in itself require an audit *per se* unless the Board chooses to use that tool to assist it with its statutory duties. On the other hand, the Department of Transportation by virtue of the bond covenants, as delineated in the bond resolution, unquestionably has a contractual duty to provide an audit of the two funds in question as above quoted. This responsibility is wholly independent of any other act by the PMIB or any other state agency.

Accordingly, it is the opinion of this office that the Bond Resolution obligates the Department of Transportation to have an annual audit

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performed on the State Freeway Fund and Sinking Fund. This obligation cannot be met by the actions of other state agencies inasmuch as the duty arises between the purchaser of the bonds and the Department itself.

Yours very truly,



CURT T. SCHNEIDER
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