



STATE OF KANSAS

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Attorney General

January 21, 1977

ATTORNEY GENERAL OPINION NO. 77-21

The Honorable Joe Warren
State Senator
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Governor's Residence Advisory Commission--Gifts--
Acceptance

Synopsis: The Governor's Residence Advisory Commission may not delegate its power to accept gifts on behalf of the State of Kansas for use in connection with the governor's official residence to its chairperson or any of its members comprising less than a majority thereof.

* * *

Dear Senator Warren:

You inquire whether the Governor's Residence Advisory Commission, created by the 1976 legislature, may delegate to its chairperson, the Director of Architectural Services, the authority to accept gifts to the State of Kansas for use in the governor's official residence.

The Director of Architectural Services is vested with the power to accept certain gifts under K.S.A. 75-3608, which provides in pertinent part thus:

"In addition to the powers heretofore conferred by law on the state office building commission under the provisions of chapter 36 of chapter 75 of the Kansas Statutes Annotated,

and by this section, which have not been executed by said commission, the state architect shall have:

* * *

(9) Without limitation of the foregoing, the power to accept grants or gifts from any person, firm, association or corporation, the federal government or any of its agencies and to enter into contracts or other transactions with any federal agency in connection therewith."

This power was originally vested solely in the State Office Building Commission, which was created in 1953, ch. 395, L. 1953, and later devolved upon the State Executive Council as a result of the decision of the Kansas Supreme Court in State ex rel. Anderson v. State Office Building Commission, 185 Kan. 563, 345 P.2d 674 (1959). It has more recently passed to the Director of Architectural Services pursuant to K.S.A. 1976 Supp. 75-1202b.

By the title of ch. 395, L. 1953, this power was necessarily restricted, both by the title of the act and the context of the grant, to gifts and grants in connection with the State Office Building. In each successive reenactment, the substantive powers of the original State Office Building Commission have been continued, and it is not at all clear that the power to accept gifts was extended, as that power passed from the Commission to the Executive Council to the State Architect to the Director of Architectural Services, beyond its original scope to include gifts and grants other than in connection with the State Office Building.

However, it is unnecessary to resolve that question for the purposes of your present inquiry, for clearly, the Governor's Residence Advisory Commission has broad and independent authority to accept gifts.

Section 4 of ch. 333, L. 1976, provides thus:

"The governor's residence advisory commission shall have the power to accept on behalf of the state any gift or donation made for the purpose of furnishing, improving or beautifying the governor's residence or its grounds or appurtenances."

The Honorable Joe Warren
Page Three
January 21, 1977

The Commission was created by the 1976 legislature as a result of certain seemingly extravagant and costly recommendations for improvements of the mansion which were offered shortly after Governor Bennett occupied the premises. Apparently of the view that the governor was unable or unwilling to be responsible in the future for further proposals to repair, remodel or improve his own official quarters, the legislature created a seven-member body to act in his stead, and to disassociate the governor from future political responsibility and accountability for the expenditure of public funds to maintain and improve the official residence. Now, in turn, the Commission itself wishes to delegate its own responsibility for the acceptance of gifts and donations which do not exceed a specified value, to the chairperson of the Commission. K.S.A 77-201 states in pertinent part thus:

"In the construction of the statutes of this state the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute:

* * *

Fourth. Words giving a joint authority to three or more public officers or other persons shall be construed as given [sic] such authority to a majority of them, unless it be otherwise expressed in the act giving the authority."

The power to accept gifts and donations which is granted by ch. 333, § 4, L. 1976, is vested in the entire membership of the Governor's Residence Advisory Commission. The joint authority so granted must, under K.S.A. 77-201, Fourth, be exercised by a majority of the entire Commission. I find no basis upon which to except the Governor's Residence Advisory Commission from this requirement, and I find no authority for the Commission to delegate its own powers to any one of its members or to its chairperson. Under K.S.A. 1976 Supp. 75-129, the chairperson of the Commission is not a member thereof, and has no vote in its deliberations, although he must call and preside over its meetings. The Commission could not, consistent with K.S.A. 77-201, delegate its powers to one of its members or to any number thereof less than a majority. Nor could the Commission delegate this power to any other person not a member of that body, including the

The Honorable Joe Warren
Page Four
January 21, 1977

governor himself, unless designated a member pursuant to K.S.A. 1976 Supp. 75-129(g). Thus, in my opinion, in order for the Commission to effect a valid acceptance of any gift or donation on behalf of the state for the purpose of furnishing, improving or beautifying the governor's residence or its grounds and appurtenances, in the exercise of its powers pursuant to K.S.A. 1976 Supp. 75-131, the Commission must act by a majority vote of its membership, and not by action which it has delegated to any of its members or to its chairperson.

Yours very truly,



CURT T. SCHNEIDER
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CTS:JRM:kj

cc: Mr. Louis Krueger
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