



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 28, 1977

ATTORNEY GENERAL OPINION NO. 77- 364

Mr. W. Keith Weltmer
Secretary of Administration
Department of Administration
2nd Floor - State Capitol
Topeka, Kansas 66612

Re: Colleges and Universities--Appropriations--Arbitration

Synopsis: An arbitration award made to a construction company arising out of its contract with the State of Kansas for construction work on the liberal arts building at Wichita State University may be satisfied out of funds which are reappropriated to the liberal arts building account by the proviso to ch. 21, § 7(a), L. 1977.

* * *

Dear Secretary Weltmer:

You advise that on September 29, 1977, an arbitration award of \$65,967.44 was made to the B. B. Andersen Company of Topeka, Kansas, arising out of a contract between that company and the State of Kansas, or agency thereof, for construction of a new liberal arts facility at Wichita State University, and that interest is payable on this award at the rate of 8 per cent per annum.

Since that award, the question has been raised whether the obligation may be satisfied from unexpended funds previously appropriated for the project. In particular, you advise that it is your understanding that some funds remain unexpended from funds reappropriated by the 1977 legislature for the liberal arts building. See ch. 21, § 7(a), L. 1977.

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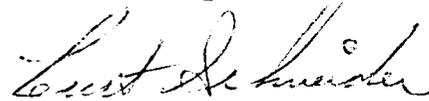
The reappropriated funds are to be used, by the terms of the language of the appropriation act, for the "[l]iberal arts building," which includes, presumptively, obligations incurred in the construction and completion of the facility. The arbitration award represents an obligation incurred under the state's construction contract with the B. B. Andersen Company of Topeka, Kansas, for precisely that purpose. Thus, in my judgment, any unexpended monies remaining in the reappropriated fund and not otherwise lawfully encumbered are lawfully available to satisfy the arbitration award described above.

Secondly, you ask whether the procedure prescribed at K.S.A. 1976 Supp. 75-5411 must be followed in order to authorize the payment in question. Subsection (d) thereof states thus:

"No change order or change in plans involving costs of twenty-five thousand dollars (\$25,000) or more, and no change in the proposed use of any new or remodeled building shall be authorized or approved by the director of architectural services without having first advised and consulted with the state architectural services advisory committee."

In my judgment, there is no occasion here to resort to the state architectural services advisory committee for approval of any change order or change in plans as a prerequisite to pay this claim. The obligation results, so far as is concerned here, from an arbitration award. Nothing in the contract, I believe, requires approval of that advisory committee prior to submission of any claim to arbitration. Payment of the award from appropriated and available funds entails no question which the advisory committee is authorized to decide by K.S.A. 1976 Supp. 75-5411.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj