



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

March 31, 1978

ATTORNEY GENERAL OPINION NO. 78-136

Mr. Bernard V. Borst
Senior Assistant City Attorney
City Hall - Thirteenth Floor
455 North Main Street
Wichita, Kansas 67202

Re: Cities--Park Board--Procurement

Synopsis: A board of park commissioners which is subject to K.S.A. 13-1331 may not adopt a minority set-aside procurement program for contracts for improvements which are subject to that statute. Likewise, a board of park commissioners may not adopt a minority set-aside program for contracts for procurement which are subject to competitive bidding ordinances of the city which do not permit such programs. As to procurement of the board of park commissioners which is not governed by state statute or city ordinance, the board may adopt minority set-aside programs.

* * *

Dear Mr. Borst:

At the direction of the Board of Park Commissioners of the City of Wichita, Kansas, you request my opinion concerning certain minority set-aside provisions which that Board proposes to adopt as a part of its capital improvement and purchasing procedures policy.

In October, 1977, as you point out, this office issued Opinion No. 77-349, concerning the question whether the City of Wichita could lawfully undertake to award contracts under a bidding process restricted to minority bidding only, stating in pertinent part thus:

Mr. Bernard V. Borst
Page Two
March 31, 1978

"The proposed procurement procedure is clearly a matter of local concern, i.e., a matter of 'local affairs and government,' concerning which the city is authorized to deal directly in the exercise of the legislative and administrative authority granted to it directly by Article 12, Section 5 of the Kansas Constitution. The procedure is within the constitutional authority of the city under this provision and does not violate any applicable state laws."

As you point out, the board of park commissioners is a body created by ordinance, expressly authorized by K.S.A. 13-1346. Its powers are described at K.S.A. 13-1348 thus:

". . . such board of park commissioners shall be vested with all powers, authority and control heretofore vested in the governing body . . . so far as the same relates to parks, parkways, boulevards, municipal airports, playgrounds, and shade trees, and such board of park commissioners shall have every power, authority and control over the parks, parkways, boulevards, municipal airports, playgrounds and shade trees, as is or may hereafter be vested in a board of park commissioners, . . . except that all bonds required or authorized by law to be issued relating to parks. . . and all taxes levied for the maintenance and improvement thereof, shall be issued and levied by the governing body."

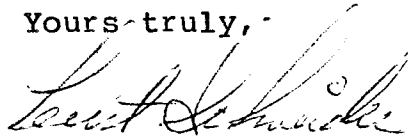
You inquire whether the board of park commissioners may adopt a minority set-aside procurement policy, such as that described in Opinion No. 77-349, as a matter of administrative policy or whether, in view of the language quoted above from that opinion, any legislative or administrative action toward that end must be taken by the city governing body.

K.S.A. 13-1331 requires that all contracts let for any improvement shall be based upon competitive bids. This statutory competitive bidding process precludes restriction thereof to only minority

Mr. Bernard V. Borst
Page Three
March 31, 1978

prospective bidders only, for bids must be entertained from any party which submits a bid complying with the specifications for the work proposed to be done. The board of park commissioners has no authority to alter this statutory requirement. Only the city governing body, in the exercise of its constitutional legislative powers, may alter this requirement by charter ordinance. So far as concerns all procurement by the board of park commissioners which is not governed by state statute or city ordinance, the board is free to adopt a minority set-aside program, for as to this limited class of procurement, its administrative powers involve no departure from the legislative requirements imposed by the legislature or by the city commission. As to all procurement by the board of park commissioners which is not governed by state statute, but which is governed by city ordinance, the board is likewise bound to comply with those procurement ordinances of the city.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj