



STATE OF KANSAS

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September 12, 1978

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ATTORNEY GENERAL OPINION NO. 78- 289

Mr. Jack A. Lemen
Executive Director
Public Television Board
Suite 508 - 503 Kansas Avenue
Topeka, Kansas 66603

Re: Public Television--Grants--Expenditures

Synopsis: The Kansas Public Television Board may not reallocate to the Smoky Hills Public Television Corporation any portion of the sum of \$170,000 which was granted by the Kansas Public Television Board on June 15, 1978, to Fort Hays State University for public television purposes. That grant was authorized, and the funds encumbered therefor, during the 1978 fiscal year, and that year having closed, the funds may not be committed to any other purpose, for any release of the encumbrance would cause the affected funds to lapse and pass to the state general fund, requiring a new appropriation thereof. The legislature has not authorized the Kansas Public Television Board to provide grants to nonprofit private foundations for the purpose of constructing a building for public television purposes.

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Dear Mr. Lemen:

You advise that on June 15, 1978, the Kansas Public Television Board authorized a grant of \$170,000 to Fort Hays State University. The grant document authorizes the money

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"as state financial assistance to assist in the initial costs of capital construction and equipment for which federal funds are not available for a building or part thereof to be used for public television purposes, with not more than \$5,000.00 of such grant being available to Fort Hays State University for planning . . . and the balance of such grant being contingent upon review and approval by the . . . Board of final plans for the facility"

Since that time, and on August 16, 1978, the Smoky Hills Public Television Board has requested the state Board to be designated as a recipient of all or at least a portion of the grant previously awarded to the University. In particular, the Smoky Hills board has requested that a portion of those moneys be allotted to it for planning, and to permit it to assess the alternatives regarding the construction of a structure to house the station.

Accordingly, you inquire, first, whether the Kansas Public Television Board may now change the grant recipient to name Smoky Hills Public Television Corporation as the grantee of all or a portion of the funds previously awarded, for the purpose of designing and building a public television in Hays, Kansas.

The monies in question, I understand, were granted out of funds appropriated and available for expenditure during the 1978 fiscal year. That fiscal year closed on June 30, 1978. The money has been encumbered, however, and remains available for disbursement during the 1979 fiscal year on the basis of the grant which was made prior to June 30, 1978, and the resulting encumbrance. The 1978 fiscal year having closed, that money remains available for expenditure only in accordance with the grant which obligated the funds during the 1978 fiscal year, i.e., to Fort Hays State University. In order to divert any portion of the grant money to the Smoky Hills board, it is necessary first to release the existing encumbrance of the desired funds. Upon release of the encumbrance, the appropriation of the portion of the grant affected thereby automatically lapses, by operation of law, and is no longer available to be reencumbered for allocation to the Smoky Hills board. Thus, in my judgment, the Kansas Public Television Board may not reallocate any portion of the moneys heretofore granted to Fort Hays State University to the Smoky Hills Public Television Corporation.

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Secondly, you inquire whether the Kansas Public Television Board may provide grants to nonprofit private foundations for the purpose of constructing a building for public television purposes. K.S.A. 75-4910 authorizes the Board to grant state financial assistance to two parties, first, to "any qualified educational agency or institution," for any of the purposes outlined in subsection (a)(1) through (3) thereof, and to any "qualified public television station" for any of the purposes outlined in subsection (b)(1) through (3) thereof. Grants may be made to qualified education agencies and institutions to provide for the local share of the cost of capital construction. Grants for such purposes may not be made to public television stations, however. In view of the legislature's action to restrict grants to only qualified educational agencies or institutions, and to public television stations, I find no authority for grants to nonprofit private foundations for the costs of capital construction of public television facilities.

Thirdly, you inquire concerning the proviso found at ch. 28, § 26, L. 1978, an appropriation act. Concerning Fort Hays State University, the proviso states thus:

"No expenditure of moneys appropriated by section 2(a) of Senate Bill No. 936, as enacted by the legislature during the 1978 regular session, from the state general fund in the remodeling and additions to library basement for media center, including equipment, account, shall be made for the construction or remodeling of facilities or for acquisition of equipment for purposes of public television broadcasting."

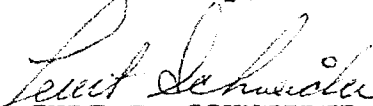
The referenced appropriation, at § 2(a), of ch. 21, L. 1978, totals \$375,000. None of the money from that appropriation may be expended for the prohibited purpose. However, the proviso does not restrict the University's use of moneys derived from other sources, including a grant from the Board, for architectural services to choose a site for a public television facility, either on the campus or elsewhere. At the same time, the University may not be used merely as a conduit for or alter ego of the Smoky Hills board, and may not contract for architectural services for and on behalf of the latter board utilizing any moneys which are not granted to it specifically for that purpose.

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In short, I know of no way the Kansas Public Television Board may transfer the funds in question to the Smoky Hills Public Television Board at this time, from funds encumbered from fiscal 1978.

Despite the clear public support for public television in all areas of the state, it is apparent that the legislative constraints upon the use of public funds for a station in the Hays area seriously hamper progress to establish a station there. For example, in addition to forbidding use of appropriations to Fort Hays State for additions to the media center for the use of facilities which might readily and with great efficiency be used jointly by a public television facility, the 1978 legislature also imposed a limitation of \$60,000 upon any grant to a public television station to be located in Hays, Kansas, for operating support. This proliferation of restrictions can only frustrate and delay the completion of a station there, despite the obvious public support for the project. At present, the Board can only await and hope for a more progressive and supportive attitude by the 1979 legislature in order to assist the Smoky Hills Board in its efforts.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj