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October 2, 1978

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ATTORNEY GENERAL OPINION NO. 78-313

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

Re: Engineering Services--Negotiating Committee--Secretary
of Administration

Synopsis: Under K.S.A. 75-5801 *et seq.*, as amended by ch. 337,
§§ 30-34, L. 1978, the Secretary of Administration re-
mains a member of the negotiating committee which is
empowered to select a qualified engineering firm and
negotiate contracts for engineering services with such
firm.

* * *

Dear Secretary Weltmer:

You request my opinion concerning the responsibility of the Secretary of Administration in the negotiation of contracts for engineering services pursuant to K.S.A. 75-5801 *et seq.*, as amended by ch. 337, §§ 30-34, L. 1978.

This act was first passed in 1977, providing for a "negotiating committee" empowered to negotiate and enter into contracts for engineering services under certain circumstances. The definition of "negotiating committee" as enacted in 1977 was left unchanged by the 1978 amendments, as states thus:

"'Negotiating committee' means a committee designated to negotiate as provided in this act, and consisting of (1) the agency

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head of the state agency for which the proposed project is planned, or a person designated by such agency head, (2) the secretary of administration, and a person designated by said secretary, and (3) the chief administrative officer of the state institution for which the proposed project is planned, or when the proposed project is not planned for a state institution, the agency head shall designate a second person in lieu of the chief administrative officer of a state institution." K.S.A. 75-5802(d).

K.S.A. 75-5804(a), as amended, specifies when a negotiating committee shall be convened:

"Whenever it becomes necessary in the judgment of the agency head of a state agency for which a project is proposed and, in any case where the total cost of such a proposed project is expected to exceed one hundred thousand dollars (\$100,000), the agency head shall convene a negotiating committee."

K.S.A. 75-5806, as first enacted, directs the negotiating committee to "conduct discussions with each of the firms so listed regarding the proposed project" and to "select a single firm . . . to provide engineering services in accordance with this act." This language remains intact in the 1978 amendments. Likewise, K.S.A. 75-5807, both as enacted and as amended, directs the negotiating committee to "negotiate a contract for each proposed project with the selected firm for the necessary engineering services."

The 1978 legislature amended the act to interpose the newly created state building advisory commission into the selection process. The language in § 32(b) of ch. 337, L. 1978, in particular, prompts your inquiry. This new language provides that when engineering services are to be obtained for a project under circumstances which require that a negotiating committee be convened, the agency head shall notify the state building advisory commission, and request a list of firms qualified to provide those services for the proposed project. That commission shall then prepare a list

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of not less than three nor more than five qualified firms, and submit that list to the negotiating committee. The section concludes with the following language:

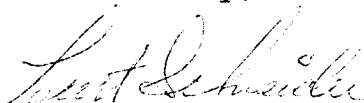
"The secretary of administration shall meet with each negotiating committee convened for such projects and shall advise each such negotiating committee but shall have no vote in the selection process or other matter upon which the committee may vote."

The obvious question arises, is or is not the Secretary a member of the negotiating committee, and, if he is a member, what is his role there. There is a clear conflict between the quoted sentence and the balance of the entire act as amended. As the definition of the negotiating committee was reenacted in this same bill, the Secretary is fully a member thereof, and its statutory duty to select an engineering firm and negotiate and enter into a contract with the firm so selected for a given project remains intact. As a member of the committee, it is equally the duty of the Secretary as it is the duty of its other members to participate in its statutory deliberations and proceedings. It is a commonplace rule of statutory construction that when a more recent enactment conflicts with an earlier act dealing with the same subject matter, the later act will be deemed to be controlling, as the latest expression of the legislative will. The sentence quoted above is hardly a clear expression of legislative will, however; at most, it betrays legislative confusion. The direction that the Secretary shall meet with and advise a committee of which he is already a statutory member is patently redundant. It appears to be based upon an erroneous assumption, i.e., that the Secretary is not in fact a member of the negotiating committee. This poses a delicate problem of statutory construction. Had the legislation been mindful that the Secretary was in fact a member of the negotiating committee, it would not have troubled to direct that he meet with and advise that body. The overriding purpose of statutory construction is supposed to be to divine legislative intent. Where that intent, as here, that the Secretary shall meet with and advise the committee but not vote thereon, is based upon a transparently false assumption, that he is not a member of that body, in my judgment that falsely conceived language should be disregarded. Certainly, it should not be permitted to control over other clear and direct language, even though the latter be merely reenacted rather than new language, which unequivocally constitutes him a member of the committee with unqualified powers to participate in its actions.

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In my judgment, the Secretary remains a duly constituted member of the Committee, as that body is composed under K.S.A. 75-5802(c), as amended. The quoted last sentence of K.S.A. 75-5804, as amended, based upon the obvious assumption, erroneous as it happens, that the Secretary was not a member of that body, does not support the view that the former statute, K.S.A. 75-5802(c), is impliedly repealed *pro tanto*, to conform with the erroneous assumption underlying the later language. The Secretary should continue, in my judgment, to participate in the actions of the negotiating committee, either personally or through his designee, as a fully empowered member thereof.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj