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October 6, 1978

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ATTORNEY GENERAL OPINION NO. 78-320

Mr. G. T. Van Bebber  
Chairman  
State Corporation Commission  
4th Floor - State Office Building  
Topeka, Kansas 66612

Re: Mines and Mining--Internal Improvements--Appropriations

Synopsis: Reclamation of abandoned mined land pursuant to the federal Surface Mining Control and Reclamation Act of 1977 constitutes works of internal improvement to which the state may not be a party under Article 11, § 9 of the Kansas Constitution. So long as funds for such projects do not pass through the state treasury and are in no way subject to the legislative appropriation process, and are disbursed directly by federal agencies to contractors and other persons entitled thereto, the state is not a "party" to such works, and the Kansas Mined-Land Conservation and Reclamation Board may participate in administering such projects in cooperation with the U.S. Department of the Interior.

\* \* \*

Dear Mr. Van Bebber:

In Opinion No. 78-220, we considered the application of Article 11, § 9 of the Kansas Constitution to participation by the State of Kansas through the Mined-Land Conservation and Reclamation Board to projects for the reclamation of so-called "abandoned" mined land conducted pursuant to the federal Surface Mining Control and Reclamation Act of 1977.

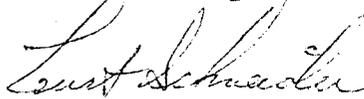
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With exceptions which are not in my judgment relevant here, Article 11, § 9 provides that the "state shall never be a party in carrying on any work of internal improvement . . . ." In Opinion No. 78-220, we concluded that the projects proposed involving reclamation of abandoned mined land would constitute internal improvements, within the meaning of this constitutional provision, to which the state may not constitutionally be a party. Thus, we concluded that if funds were disbursed from the state treasury for such projects, even though the funds derived from federal grants made specifically for that purpose, the state would thereby be a "party" to such projects.

You indicate that you have been advised by representatives of the U.S. Department of the Interior that although the Kansas Mined-Land Conservation and Reclamation Board is contemplated to be the supervisory agency for review of abandoned land projects, our state participation would not include the disbursement of moneys for such projects. I understand that the Kansas Board may be involved in recommending abandoned mined sites for such projects, and in reviewing and certifying the work on such projects when they are authorized and approved by the Department of the Interior. However, these projects would be funded entirely by federal moneys, which would remain in a federal depository until paid to the contractor or other party entitled thereto. The Kansas Board would, it is contemplated, certify to federal representatives that project work has been completed, and on the basis of that certification, federal officials would disburse the funds therefore directly from a federal depository. None of the moneys involved would be disbursed to the state of Kansas for further disbursement, and the federal funds involved would not pass through the state treasury.

In my judgment, the state is a "party" to an internal improvement when funds which are used therefor pass through the state treasury and are appropriated therefor by the state legislature. The history of this constitutional prohibition has been discussed at length by the Kansas Supreme Court. See, e.g., *State ex rel. Boynton v. Atherton*, 139 Kan. 209, 30 P.2d 291 (1934). The state becomes a party when it appropriates funds for such a project, regardless of the source of the funds, be it federal grants or state taxation. Under the circumstances you describe, as summarized above, no funds for the proposed projects pass through the state treasury or are subject to the legislative appropriation, and for this reason, in my opinion, the state, through the Mined-Land Board, may participate in the reclamation of abandoned mined land on the basis described above.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General