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October 24, 1978

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ATTORNEY GENERAL OPINION NO. 78- 343

Mr. Ronald D. Smith
Research Assistant
Legislative Research Department
5th Floor - State Capitol
Topeka, Kansas 66612

Re: Legislature--Kansas Agricultural Grain Marketing Com-
mittee--Subpoena Power

Synopsis: A multistate compact entered into for the purpose of conducting a continuing study of agricultural grain marketing practices and procedures in order to develop and recommend proposed state legislation to be enacted by participating and other interested states to address problems and issues disclosed in such marketing could include a grant of subpoena power to the compact agency, which subpoenas could be enforced in the courts of the participating states for the production of information pertinent to the investigations and studies for which the compact was entered into.

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Dear Mr. Smith:

The 1978 Legislature created a Kansas Committee on Agricultural Grain Marketing, and charged it with the duty

"to contact and meet with representatives of other major agricultural grain producing states of the United States for the purpose of conducting a comprehensive and continuing

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study and investigation of agricultural grain marketing practices, procedures and controls and their relationship to and effect upon the agricultural economies of the participating states and making recommendations for the correction of weaknesses or solutions to problems in the present system or the development of alternatives thereto." Ch. 20, § 1, L. 1978

You advise that one of the recommended courses of action under consideration is the creation of an interstate compact for the purpose of making continuing studies and investigations of agricultural grain marketing practices and procedures. The Committee inquires whether, if such a compact were established, the compact agency could be granted authority for the issuance of subpoenas, and if such authority may be granted, if there are any areas or purposes for which the participating states could not delegate such subpoena authority.

I find little authority dealing specifically with this question. A recent decision of the United States Supreme Court, in *United States Steel Corporation v. Multistate Tax Commission*, ___ U.S. ___ 46 L.W. 4115 (February 21, 1978) may provide some instructive guidance, however. In that case, the Court upheld the Multistate Tax Compact, which had been entered into by 21 states at the time that case was begun in 1972. The Compact was a result of a Supreme Court decision, *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450 (1959), in which the Court held that net income from the interstate operations of a foreign corporation could be subjected to state taxation, provided that the levy was nondiscriminatory and fairly apportioned to local activities that provided a sufficient basis for the exercise of the taxing power. A number of states, in response to that decision, recognized that traditional state tax administration was inefficient and inadequate to fairly assess and enforce state tax liability under this decision, and entered into the Multistate Tax Compact, which states four purposes:

"(1) facilitating proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes; (2) promoting uniformity and compatibility in state tax systems; (3) facilitating taxpayer convenience and compliance

in the filing of tax returns and in other phases of tax administration; and (4) avoiding duplicative taxation."

A Multistate Tax Commission was thereafter established consisting of the tax administrators from all member states. Kansas is a member of this Compact, and has adopted it thereof by statute. K.S.A. 79-4301. Article VIII of the Compact provides that the Commission may conduct audits for states requesting it, and in aid of such audits, may seek the issuance of compulsory process. Paragraphs 3 and 4 state thus:

"The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: *Provided*, That such state has adopted this article.

(4) The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the part or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this article."

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Although the question of compulsory process was not specifically at issue in that case, the Court upheld the Compact, the powers of the Commission, the compact agency, stating in pertinent part thus:

"Article VIII of the Compact authorizes the Commission to require the attendance of persons and the production of documents in connection with its audits. The Commission, however, has no power to punish failures to comply. It must resort to the courts for compulsory process, as would any auditing agent employed by the individual States. The only novel feature of the Commission's 'enforcement powers' is the provision in Art. VIII permitting the Commission to resort to the courts of any State adopting that Article. Adoption of the Article, then, amounts to nothing more than reciprocal legislation for providing mutual assistance to the auditors of the member States. Reciprocal legislation making the courts of one State available for the better administration of justice in another has been upheld by this Court as a method 'to accomplish fruitful and unprohibited ends.'"

If a multistate compact were entered into with the purposes stated as quoted above from ch. 201, § 1, L. 1978, its purposes would essentially be the gathering of information for the purpose of recommending legislative measures which might be taken by participating and other interested states to correct weaknesses or problems in the existing agricultural grain marketing system. A subpoena is, of course, a valid and lawful tool for the gathering of information by legislative bodies in the course of studies as to the need for legislation concerning a given subject, and the kind of legislation which might be needed. Any state wishing to consider the need for and desirability of proposed legislation to reduce or resolve problems in that state due to practices and procedures in agricultural grain marketing may find only limited information available within its borders and, of course, its subpoena may reach no further. A major producing state may have no major marketing centers located within its borders. Obviously, agricultural grain produced in Kansas is sold on both a national

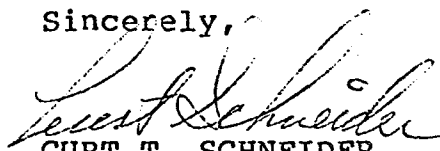
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and international market, and many major marketing centers are located in other states. Likewise, other major producing states may find themselves without adequate access to marketing information because of the inability to enforce compulsory process beyond their respective boundaries.

Such states have common concerns and interests in exploring and assembling information regarding grain marketing practices which affect the producers within their respective boundaries. A pooling of the interested states' resources for the purpose of more effectively studying national grain marketing, appears to be an entirely permissible and legitimate objective. States which choose to join together might, by reciprocal legislation, agree to make the courts of each member state available to enforce process which was issued by a body created by a multistate compact to which such states were parties.

Clearly, the idea of an interstate or multistate compact for the study of agricultural grain marketing practices is, at this point, just that. The precise purposes and powers of such a body have not, apparently, been refined to any helpful specificity. It is important to emphasize, however, that as proposed to date, the purposes of such a compact, and any resulting organization to administer it, would be to study, investigate, and to gather information about agricultural grain marketing practices for the purpose of considering the need for and desirability of legislation which might lay within the member states' own powers to address problems and issues discovered in the course of such a study. I find no legal or constitutional reason why interested states may not band together, pool their resources for such purposes, and lend the power of their respective courts to enforce process issued by any body or agency created to conduct the business of the resulting multistate compact. You ask if there might be any areas or purposes for which the participating states could not vest subpoena authority in such a body. So long as the stated purpose of such a compact was to conduct a continuing study and investigation of grain marketing practices for the purpose of studying and considering possible state legislation to address problems and objectional practices occurring within the respective states, and process is limited to that purpose, I see no apparent need at this time for restrictions or qualifications upon the stated process power of such a body.

Sincerely,



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Attorney General

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