



STATE OF KANSAS

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December 10, 1980

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ATTORNEY GENERAL OPINION NO. 80- 259

Mr. Joseph W. Snell
Executive Director
Kansas State Historical Society
120 West Tenth
Topeka, Kansas 66612

Re: Constitution of the State of Kansas--Finance and
Taxation--Internal Improvements

Synopsis: Moneys received by the State of Kansas may be appropriated and expended for any public purpose authorized by federal law without violating the constitutional ban on state participation in works of internal improvement. A two-thirds vote of the legislature is not required for such appropriation or expenditure unless funds generated by the State of Kansas, through taxes or other means, are contributed to the project for which the federal funds are to be used. Cited herein: K.S.A. 75-2715, 75-3734, K.S.A. 1979 Supp. 75-4201, Kan. Const., Art. 11, §9.

* * *

Dear Mr. Snell:

On behalf of the State Historical Society you inquire as to the circumstances under which the Society may expend moneys appropriated by the legislature for historic preservation purposes, where such funds are derived exclusively from the federal government. Your

Mr. Joseph W. Snell
Page Two
December 10, 1980

inquiry arises from the terms of Article 11, Section 9 of the Constitution of the State of Kansas, as recently amended by popular vote to read as follows:

"The state shall never be a party in carrying on any work of internal improvement except that:
(1) It may adopt, construct, reconstruct and maintain a state system of highways, but no general property tax shall ever be laid nor general obligation bonds issued by the state for such highways; (2) it may be a party to flood control works and works for the conservation or development of water resources; (3) it may, whenever any work of internal improvement not authorized by (1) or (2) is once authorized by a separate bill passed by the affirmative vote of not less than two-thirds of all members then elected (or appointed) and qualified to each house, expend or distribute funds received from the federal government therefor and may participate with the federal government therein by contributing any state funds appropriated in accordance with law for such purpose in any amount not exceeding the amount received from the federal government for such improvement, but no general property tax shall ever be laid nor general obligation bonds be issued by the state therefor; and (4) it may expend funds received from the federal government for any public purpose in accordance with the federal law authorizing the same."

Prior to the 1980 amendment of this constitutional provision, this office opined that the Society was not permitted to make disbursements of historic preservation grants for commercial properties, because such disbursements made the State of Kansas a party to a contract for works of internal improvement in contravention of Article 11, Section 9 as it then provided. Kansas Attorney General Opinion No. 79-27.

Even though the source of such preservation grants was and continues to be the federal government, the laws of Kansas require such federal funds to be received into the state treasury pursuant to K.S.A. 75-3734 and treated as other state moneys under K.S.A. 1979 Supp. 75-4201 et seq. "No limit" appropriation of such funds are made annually to the State Historical Society as the state agency charged with the administration of the historic preservation program in Kansas. K.S.A. 75-2715 et seq.

Mr. Joseph W. Snell
Page Three
December 10, 1980

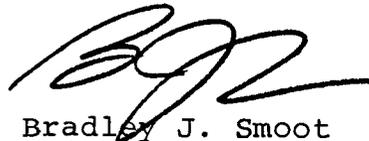
Accordingly, where the source of the funds for disbursement to governmental subdivisions or private parties for historic preservation projects that would constitute a work of internal improvement are derived exclusively from "federal funds," the provisions of the final phrase of the constitutional article are applicable. That is, "[t]he state shall never be a party in carrying on any work of internal improvement except that: . . . (4) it may expend funds received from the federal government for any public purpose in accordance with the federal law authorizing the same."

Unless the state proposes to participate in the work of internal improvement "by contributing any state funds," the two-thirds vote of the legislature required by the third phrase of the amended Article is inapplicable. Thus, federal funds received by the State of Kansas may be appropriated and expended for any public purpose authorized by federal law without violating the constitutional ban on state participation in works of internal improvement. A two-thirds vote of the legislature is not required for such appropriation or expenditure unless funds generated by the State of Kansas, through taxes or other means, are contributed to the project for which the federal funds are to be used.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:phf