



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

February 11, 1981

ATTORNEY GENERAL OPINION NO. 81- 41

John E. Lang
Pottawatomie County Counselor
County Courthouse
Westmoreland, Kansas 66549

Re: Cities and Municipalities - Interlocal Cooperation -
Agreement Between County and Watershed District for
Water Project

Synopsis: While one governmental entity may not gratuitously contribute public funds to another such entity, the two may jointly undertake a project which is to the benefit of both by means of an interlocal agreement pursuant to K.S.A. 12-2901 et seq. Cited herein: K.S.A. 1980 Supp. 12-2904, K.S.A. 12-2905, 12-2907, 19-212.

*

*

*

Dear Mr. Lang:

As Counselor for the Board of Commissioners for Pottawatomie County, you request our opinion as to the legality of an expenditure which is currently being contemplated by the Commission. Specifically, you state that the county wishes to cooperate in the construction of a water retention dam, and desires to know whether it may contribute funds to the project.

Mr. John E. Lang
Page Two
February 11, 1981

The development in question has been proposed by the Rock Creek Watershed District No. 45 and would be built in Pottawatomie County. The district board has determined that they alone do not have the necessary funds required for the project (approximately \$310,000), and have accordingly approached the county. The latter favors the project, both because of its flood control and water storage aspects, and because the dam would obviate the replacement of a county bridge which is currently scheduled at a cost of \$26,000. As the portion which the county would contribute would be between \$20,000 and \$30,000, the economics of the project clearly favor the county.

Initially we would note that, in the absence of statutory authority, public officials may not give away public funds. Jt. Consolidated School District No. 2 v. Johnson, 163 Kan. 202, 208 (1947). Nowhere at K.S.A. 19-212 do we find such a power enumerated as being among those given to county commissioners, nor in those statutes which follow it. However, pursuant to the Interlocal Cooperation Act, K.S.A. 12-2901 et seq., agreements can be made which would permit the County to accomplish its goal.

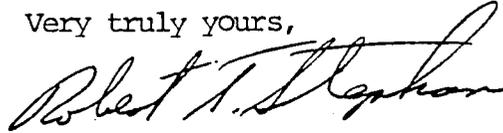
K.S.A. 1980 Supp. 12-2904(a) provides specific authority for a "public agency" such as the county, to enter into a joint agreement with the watershed district for a public improvement and flood control project such as the one proposed here. While in some cases a separate legal or administrative entity can be set up to exercise powers given it by the participating units of government, under K.S.A. 1980 Supp. 12-2904(d) one of the public agencies can be made responsible. This would seem most feasible here, where the watershed district, apart from contributing the lion's share of the funds, has the expertise necessary in the construction of the dam itself. Once this is done, the county could appropriate the necessary funds and turn them over to the district, pursuant to K.S.A. 12-2907, and as the joint agreement may provide. We also call to your attention the provisions of K.S.A. 1980 Supp. 12-2904(f) (approval of the attorney general required) and K.S.A. 12-2905 (filing of agreement with register of deeds and secretary of state). In addition, funds provided by the county pursuant to such an agreement must be budgeted and expended in accordance with Kansas law, particularly, the Budget Law, K.S.A. 79-2925 et seq.

In conclusion, while one governmental entity may not gratuitously contribute public funds to another such entity, the two may jointly

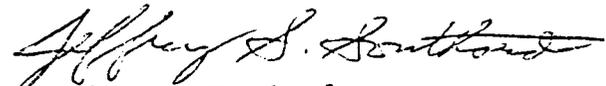
Mr. John E. Lang
Page Three
February 11, 1981

undertake a project which is to the benefit of both by means of an interlocal agreement pursuant to K.S.A. 12-2901 et seq.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:may