



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 16, 1981

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

ATTORNEY GENERAL OPINION NO. 81- 281

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

Re: State Departments; Public Officers, Employees--
State Historical Society--Authority to Lease
State Land

Synopsis: Absent statutory authority the Kansas State
Historical Society may not lease state-owned
land to a county historical society. Cited herein:
K.S.A. 75-2701, K.S.A. 1980 Supp. 76-2007a to g,
inclusive.

* * *

Dear Mr. Snell:

You request the opinion of this office regarding the authority of the Kansas State Historical Society to lease a portion of a state-owned historical site to a county historical society. The Kansas State Historical Society is authorized by and operates pursuant to K.S.A. 75-2701 et seq. Although K.S.A. 75-2701 directs the Society to "administer" its properties "in the public interest," no statute expressly provides general authority to the Society to lease state-owned land.

It is firmly established in Kansas that governmental entities such as the Kansas State Historical Society may only exercise those powers expressly conferred by law or which are necessary to effectuate express powers. This rule is stated in Murray v. State Board of Regents, 194 Kan. 686, 689, 690 (1965), as follows:

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"Governmental agencies are creatures of the legislature, and can exercise only such powers as are expressly conferred by law and those necessary to make effective the powers expressly conferred. (State, ex rel., v. City of Kansas City, 181 Kan. 870, 317 P.2d 806; State, ex rel., v. City of Overland Park, 192 Kan. 654, 391 P.2d 128)."

The position of past Kansas Attorney Generals in regard to the lease of state-owned lands was expressed by Attorney General Robert Londerholm in a letter to George P. Nellans, dated August 12, 1966, discussing the lease of Norton State Sanatorium land for a public golf course. Attorney General Londerholm stated:

"It has been the consistent position of this office that boards and agencies of the state must be authorized by statute to enter into leases or sale of state owned land. Examples of such legislation may be found in K.S.A. 75-3323, 76-437(a), 76-329(a), etc."

More recently, this conclusion was again applied in a letter to Ed Rangsdorf of the Kansas State Historical Society dated February 6, 1975, from Attorney General Schneider's office. This letter states as follows:

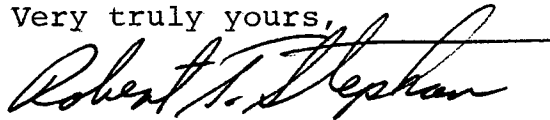
"Our examination of Article 27, Kansas Statutes Annotated leads us to the conclusion that the Historical Society has no statutory authority to enter into lease agreements affecting state lands entrusted to its jurisdiction and supervision. Therefore, the Society will need specific authority from the legislature to enter into a lease with the City of Hays as advised per our phone conversation this date."

A subsequent opinion of this office, Attorney General Opinion No. 80-193, indicates that, on prior occasions, the legislature has specifically authorized the lease of state-owned property under the custody and control of the State Historical Society. (See, e.g., K.S.A. 1980 Supp. 76-2007a to 76-2007c, inclusive, and K.S.A. 1980 Supp. 76-2007d to 76-2007g, inclusive.) In each such instance, however, the authority granted by the legislature has been limited to specifically described property.

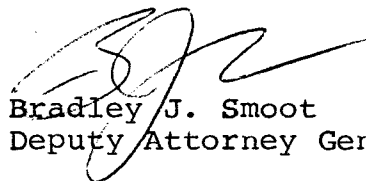
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In light of prior legislative history and the previous pronouncements of this office, we can find no basis for assuming an implicit legislative intent that the Historical Society be vested with authority to lease state-owned property under its custody and control. In our judgement, the existence of such implied power is not necessary to effectuate the powers expressly conferred by the legislature. It is thus our opinion that if the Kansas State Historical Society wishes to enter into further lease agreements, it must gain authority from the legislature to do so.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle:jm