



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 148

Stanley H. Stauffer
Chairman of the Board
Metropolitan Topeka Airport Authority
Forbes A.F.B. Building 303, Suite 1
P. O. Box 19053
Topeka, Kansas 66619

Re: Federal Jurisdiction--Surplus Property of Federal
Agencies--Surplus Property and Airport Authority,
Certain Cities and Counties; Powers

Synopsis: The Metropolitan Topeka Airport Authority may award
contracts by any method which is reasonable and
which will safeguard the public interest. Cited
herein: K.S.A. 27-327, 27-330, 27-331.

* * *

Dear Mr. Stauffer:

As chairman of the board of directors of the Metropolitan Topeka
Airport Authority, you request our opinion as to the procedure
which must be followed in the award of contracts by said authority.
Specifically, you pose the following question:

"Are there any Kansas statutes or other laws
which presently require the MTAA to implement
a competitive bidding procedure in the event
it desires to enter into a contract, the
nature of which relates to:

- "a. The construction or repair of MTAA
facilities, located on real estate.

- "b. The employment of a professional for the purpose of rendering professional services.
- "c. The purchase and/or replacement of equipment and/or supplies."

The Metropolitan Topeka Airport Authority was created pursuant to the provisions of K.S.A. 27-327 et seq., and the authority is a political and taxing subdivision separate and distinct from any other municipality. K.S.A. 27-330(a). K.S.A. 27-331 prescribes the powers of the M.T.A.A., and provides as follows:

"Upon the adoption of the provisions of this act in any county, the authority thereby created shall have the power:

. . . .

"(c) To receive, purchase, lease, obtain option upon, acquire by contract or grant, or otherwise acquire, and to own, maintain, operate, improve, and to sell, transfer, assign, mortgage, or otherwise dispose of property and to contract with the United States or any of its agencies, the state of Kansas, any political subdivision thereof or any other person with respect to the terms on which the authority may agree to purchase or receive property, including, but not limited to, provisions for the purchase of property over a period of years, for payment of the purchase price or installments thereof in the manner and to the extent required, and for pledge of all revenues and income received from the sale or operation of said property after providing for administration, maintenance and operation costs, to payment of the principal of the purchase price and interest thereon or of any bond issued by the authority therefor;

"(d) To enter into contracts to carry out the purposes of the authority and to execute contracts and other instruments necessary or convenient to the exercise of any of the powers of the authority;

. . . .

"(f) To select, appoint, employ, discharge or remove such officers, agents, counsel and employees as may be required to carry out and effect the powers and purposes of the authority and to determine their qualifications, duties and compensation."

As is apparent from the powers enumerated in the above-quoted statutory excerpt, the M.T.A.A. has the authority to construct and repair facilities, employ persons to render professional services, and to purchase or replace equipment and supplies. However, we are unaware of any statute which prescribes a method which must be followed by the authority in awarding contracts relating to M.T.A.A. business. In considering a similar situation, where there was a lack of statutory guidance as to the procedure for letting a contract, the Kansas Supreme Court stated as follows:

"It is not necessary that the statute should expressly provide for a public letting, or prescribe the manner for contracting for an improvement. The authority to the city to have the work done carries with it the discretion to have it done in any way in which it is practicable and convenient, and in acting under such authorization the city is entitled to contract and bind itself and to all the rights and remedies of private parties. (2 Dillon on Municipal Corporations, 5th Ed., Section 815.) In such a case the protection of the public is the first consideration, and probably no method employed better safeguards the public interest than a public letting after due advertisement." Middleton v. City of Emporia, 106 Kan. 107, 110 (1920).

The following statement, appearing at 72 C.J.S. Supp. Public Contracts §6, is also pertinent in considering the contractual procedures which should be followed by the M.T.A.A.:

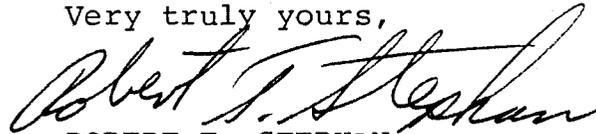
"[I]n the absence of any legislative requirements regarding the method of awarding public contracts, public officers may exercise a reasonable discretion, and a contract may be made by any practicable method that will safeguard the public interests. When such discretion is exercised, the authority has the right to be wrong, although not unfairly or arbitrarily wrong. So long as the method chosen by the authority is reasonable, a court may not substitute its judgment for that of the authority, nor may it define or limit the standards the authority should have used as guide; and the court may interfere only when it is shown that the officer charged with the duty of making the decision acted corruptly, or in bad faith or so unreasonably or arbitrarily as to be guilty

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of palpable abuse of discretion. The fact that a governmental agency may decide how to procure its needs does not mean that, having chosen a course, it may pursue such course with the abandon of a private consumer." (Footnotes omitted.)

In accordance with the above-quoted authorities, it is our opinion that the Metropolitan Topeka Airport Authority may award contracts (within the realm of its contractual authority) by any method which is reasonable and which will safeguard the public interest.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm