



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 51

Mr. Lynn Burris, Jr., Director  
Kansas State Park and Resources  
Authority  
503 Kansas Avenue  
P.O. Box 977  
Topeka, Kansas 66601

RE: State Boards, Commissions and Authorities -- State  
Park and Resources Authority -- Contracts with  
Federal Government

Synopsis: The State Park and Resources Authority is authorized to contract with the federal government to acquire lands by purchase, lease, agreement or otherwise at Hillsdale State Park, pursuant to K.S.A. 1982 Supp. 74-4510, but only to the extent that state moneys in support of the contract are appropriated by the legislature. State statutory and constitutional provisions preclude the Authority from obligating the state to any greater extent. Cited herein: K.S.A. 46-155, K.S.A. 1982 Supp. 74-4510, K.S.A. 75-3025, 42 U.S.C. § 1962d, P.L. 91-611, P.L. 89-72, Kan. Const., Art. 2, § 24, Art. 11, §§ 6,7.

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Dear Mr. Burris:

In your capacity as Director of the Kansas State Park and Resources Authority (Authority), you have asked for our opinion regarding the state's ability to enter into a contract which complies with the provisions of the Federal Flood Control Act. The pertinent part of the federal act is set forth in Section 221 of Public Law 91-611 (42 U.S.C. § 1962d-5b) at subsection (b), which provides: "A non-Federal interest shall be a legally constituted public body with full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform." The state of Kansas would be regarded as a "non-Federal interest" under these provisions.

Mr. Lynn Burris, Jr.  
Page Two

The proposed contract for the cost sharing of the recreation development at Hillsdale Lake between the United States and the state of Kansas contemplates state payments of principal and interest, at a fixed rate of 4.012 percent, over a 50-year period.

The federal government is authorized by the Federal Water Project Recreation Act (Public Law 89-72) to enter into contracts with non-federal public bodies for development, management and administration of recreation resources of federal water resources projects. By K.S.A. 1982 Supp. 74-4510, the Authority is given the following specific powers, rights and privileges in subsection (a):

"To acquire by purchase, lease, agreement or condemnation or to accept donations, bequests, devises or gifts of any and all lands, or real property authorized and designated by the legislature of the state of Kansas, and personal property and moneys necessary or convenient to the exercise of powers, rights and duties conferred upon it by this act. No property of any nature may be accepted or acquired by purchase, grant, lease, donations, devise or otherwise under conditions which shall pledge the credit of the state, except that (1) the authority is authorized to contract with the federal government pursuant to Public Law 89-72 in order to acquire lands by purchase, lease, agreement or otherwise at El Dorado state park and (2) the authority is authorized to contract with the federal government pursuant to Public Law 89-72 in order to acquire lands by purchase, lease, agreement or otherwise at Hillsdale state park. Title to all property acquired by the authority shall be taken in the name of the authority. The authority is further authorized to receive and accept from any federal agency any federal grants for or in aid of the construction of any park, lake, or park facility or when authorized by the legislature of the state of Kansas, to lease or otherwise acquire federally owned lands, properties or facilities under such conditions as may be imposed by the federal agency."  
(Emphasis added).

Subsection (c) of K.S.A. 1982 Supp. 74-4510 further permits the Authority

"[t]o acquire, develop, construct, extend, improve maintain, and operate any and all facilities of all kinds which in the judgment of the authority will

provide recreational or cultural facilities for the benefit of the public, or which are necessary or convenient to the exercise of the powers of the authority."

From the foregoing language it is clear that the Authority is empowered to enter into a contract with the federal government to acquire the land at Hillsdale State Park "by purchase, lease, agreement or otherwise," and to provide recreational facilities for the benefit of the public. In addition, the emphasized language in the above-quoted portion of 74-4510(a) would appear to empower the Authority to "pledge the credit of the state" in contracting under P.L. 89-72 to acquire lands at Hillsdale State Park. However, notwithstanding this apparent authority, Article 2, Section 24 of the Kansas Constitution precludes the withdrawal of moneys from the state treasury, "except in pursuance of a specific appropriation made by law." Additional controlling features of our state's fiscal policy are imposed by Article 11, Section 6, which provides that the state may contract public debts for the purpose of defraying extraordinary expenses and making public improvements, so long as such debts do not in the aggregate exceed one million dollars, and any law authorizing such debt must provide for the levying of an annual tax sufficient to pay the principal and interest thereof. Moreover, Section 7, of that article prohibits contracting any such debt without an affirmative vote in a general election. Further, we note that K.S.A. 46-155 limits items of appropriation for the purpose of completing construction of capital improvement projects for a period not exceeding three fiscal years beyond the current one. And finally, K.S.A. 75-3025 makes it unlawful for any officer or agent of the state to spend a greater sum of money than is expressly authorized by law, i.e., pursuant to appropriations made within the constraints of K.S.A. 46-155.

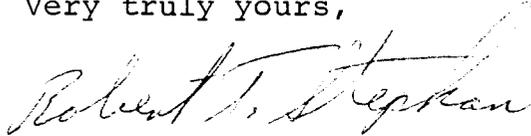
The contractual authority afforded by the above-quoted provisions of K.S.A. 1982 Supp. 74-4510, although broad, have not been excepted from the foregoing statutory and constitutional limitations, thus making it impermissible for the Authority to enter into a long-term contract obligating the state of Kansas to pay principal and interest for up to 50 years. For such a contract to fall within constitutional and statutory bounds, it must be modified to the extent that any obligation to make future payments is subject to appropriations by the legislature. However, such a modification is in apparent contradiction of the dictates of Section 221 of Public Law 91-611, which mandates that any non-federal interest have full authority to perform the terms of its agreement.

Mr. Lynn Burris, Jr.  
Page Four

Although the conflict between state and federal laws would appear to present an impediment to the contract for recreational development at Hillsdale State Park, it has not proven insurmountable in previous contracts with the federal government. In fact, a virtually identical contract was entered into involving El Dorado Lake in 1972, and included language which provides that nothing therein obligates future appropriations on the part of either party. Attorney General Opinion No. 80-45 addressed a similar issue with the State Water Resources Board, where a long-term contract with the federal government was involved, and reached the same conclusion.

Accordingly, we conclude that the Authority is authorized to enter into a contract with the federal government for the recreational development of Hillsdale Lake, but only to the extent that state moneys in support of the contract are appropriated by the legislature. State statutory and constitutional provisions preclude the Authority from obligating the state to any greater extent.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Carl M. Anderson  
Assistant Attorney General

RTS:WRA:CMA:kb