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ATTORNEY GENERAL OPINION NO. 83- 52

Steven M. Graham
Administrator
Kansas Wheat Commission
1021 North Main
Hutchinson, Kansas 67501

Re: Agriculture -- Wheat Act -- Powers of Wheat
Commission; Lobbying

Legislature -- State Governmental Ethics --
Powers of Wheat Commission; Lobbying

Synopsis: The Kansas Wheat Commission may not contract
for "lobbying" services. However, the Commission
may contract with state or national organizations
for educational services even where the educational
research or product may be of incidental benefit
in the lobbying activities of such organization.
Cited herein: K.S.A. 2-2601, 2-2606, 46-225,
46-232.

* * *

Dear Mr. Graham:

You inquire of this office regarding the authority of the
Kansas Wheat Commission to expend funds pursuant to a contract
for lobbying of the state legislature or Congress. Previously,
you orally requested our advice as to whether the Commission
might lawfully enter such a lobbying contract and we advised
that it could not. We now reduce our conclusion to writing.

In Kansas Attorney General Opinion No. 81-208, we reasoned that Kansas counties may expend public funds for "lobbying" of the Kansas legislature regarding the adoption of a proposed mineral severance tax. Our conclusion was founded on the legislative grant of "home rule" powers pursuant to K.S.A. 19-101a. In Kansas Attorney General Opinion No. 81-216, we concluded that Kansas school boards may not lobby the legislature regarding the severance tax since school boards have only those powers specifically enumerated by statute and are not endowed with home rule powers. We hereby incorporate, by reference, all court decisions and reasoning contained in both above-cited opinions.

The Kansas Wheat Commission is created and empowered to act as a state agency pursuant to the Kansas Wheat Act, K.S.A. 2-2601 et seq. The powers and duties of the Commission are enumerated in K.S.A. 2-2606, and includes in relevant part, the powers:

"(1) To conduct a campaign of development, education and publicity;

. . . .

"(5) to enter into such contracts as may be necessary or advisable for the purpose of this act;

. . . .

"(6) to cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state, or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of development, education and publicity."

Nothing in this statute, or in any other statute governing the Wheat Commission, specifically refers to the activity of "lobbying" of the state or federal government or contracting for such services. It is the general rule of law in this state that

agencies and subdivisions of this state have only those powers as are conferred upon them by statute specifically or by clear implication, and any reasonable doubt as to the existence of any power should be resolved against the existence of such power. See Kansas Attorney General Opinion No. 81-216 and cases cited therein at 3.

In order to determine if the power to conduct or contract for "lobbying" is clearly implied by the enumerated powers given the Commission, we first turn to the definition of "lobbying," as used in the state governmental ethics laws. K.S.A. 46-225 defines "lobbying" as follows:

"(a) 'Lobbying' means promoting or opposing in any manner (1) action or nonaction by the legislature on any legislative matter or (2) the adoption or non-adoption of any rule and regulation by any state agency.

"(b) 'Lobbying' also means entertaining any state officer or employee except that bona fide personal or business entertaining does not constitute 'lobbying,' or giving any gift, honorarium or payment to a state officer or employee in an aggregate value of \$100 or more within any calendar year, if at any time during such year the person supplying the entertainment, gifts, honoraria or payments has a case before the state agency in which such state officer or employee serves, or if such person is the attorney for or representative of a person having such a case.

"(c) 'Lobbying' does not include any expenditure from amounts appropriated by the legislature for official hospitality.

"(d) 'Lobbying' does not include representation of a claimant on a claim filed by the claimant under K.S.A. 46-907 and 46-912 to 46-919, inclusive, in proceedings before the joint committee on special claims against the state."

K.S.A. 46-232 specifically limits activities of employees of state agencies with regard to lobbying as follows:

"No state officer or employee shall engage in lobbying his own state agency, if he accepts compensation specifically attributable to such lobbying, other than that provided for the performance of his official duties. Nothing in this section shall prohibit a state officer or employee from lobbying without compensation other than that which he is entitled to receive for performance of his official duties."

The limitation of this section only applies to the activities of an employee in "lobbying his own agency." The second sentence of this statute makes it clear that state employees are not prohibited by this section from "lobbying" so long as it is not done for additional compensation. Presumably, state employees may lobby the legislature and state agencies, including the one by which they are employed, so long as they do not receive additional compensation. Hence, while staff of the commission may lobby the legislature, the contracting with non-employees for such lobbying services is not specifically authorized. Moreover, the payment of agency moneys for such contractual services is implicitly proscribed by the limitation on payment of additional compensation. Although state agencies are generally permitted to contract for services that might otherwise be performed by government employees, in this case, the payment of compensation specifically for the performance of lobbying activities seems contrary to the intent of the statute.

Therefore, in the absence of a statute which specifically authorizes the Kansas Wheat Commission to contract for, and expend public funds for, lobbying services, the Commission is without authority to contract with an organization where the primary purpose of the agreement is the performance of lobbying services for compensation.

You next inquire whether the Commission may contract with a lobbying organization for educational and research purposes. You explain that Commission funds would be paid for the

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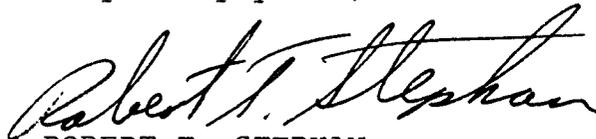
above purposes, but also would provide a research product usable by the organization in its lobbying activities.

As previously noted, the Commission is free to contract with state or national organizations to promote the educational objectives of the Kansas grain industry. That the research product or educational material prepared by the organizations (with which the Commission contracts) would incidentally aid the organizations' other activities, does not seem to us to be contrary to the intent of the authority granted by K.S.A. 2-2606. Therefore, so long as the purpose of the contract and expenditure is the promotion of the Commission's education objectives, the incidental benefit derived by the contractor does not prohibit the making of the contract.

Finally, you ask if the documents and research materials prepared by the organization performing services for the Commission under contract are public information. Unfortunately, we cannot advise regarding this inquiry without specific knowledge of the contractual arrangements made between the parties. Likewise, whether the research or educational materials are copyrighted may have legal effect upon your question. We note by way of general practical advice that the expenditure of public funds for educational purposes is wholly inconsistent with development of secret information for the benefit of private organizations or persons. We would hope to discuss in detail any contracts of the Commission which propose to restrict access to information prepared at public expense.

In summary, it is the opinion of this office that the Kansas Wheat Commission may not contract for "lobbying" services. However, the Commission may contract with state or national organizations for educational services even where the educational research or product may be of incidental benefit in the lobbying activities of such organization.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Bradley J. Smoot
Deputy Attorney General

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