



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

May 1, 1984

ATTORNEY GENERAL OPINION NO. 84- 37

Cathy L. Kruzic, Director  
Travel and Tourism Division  
Department of Economic Development  
503 Kansas Avenue  
6th Floor  
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities--  
Department of Economic Development--Contracts  
for Promotional Advertising Services

Synopsis: K.S.A. 1983 Supp. 74-5005(j) and 74-5033 provide specific authority for the Secretary of Economic Development to enter into contracts to publicize information concerning the recreational, historic and natural advantages of the state. Thus, the Secretary of the Department of Economic Development has the power to enter into contracts to allow the dissemination of tourism information, via computer terminal outlets at various locations in the state. Cited herein: K.S.A. 1983 Supp. 74-5005 and 74-5033.

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Dear Ms. Kruzic:

You recently inquired concerning the authority of the Secretary of the Department of Economic Development to enter into one of two proposed agreements for the dissemination of tourism information, via computer terminal outlets, at various locations in the state. Each of the proposed agreements calls for a service provider to

install and maintain a computer system and to derive financial benefit by selling advertising to be displayed at the locations of the computer terminal outlets. Each proposed agreement has preferential points to the other, but one major difference exists between the two proposals. This is, one calls for the state to receive a share of the proceeds derived from the sale of advertisements, while the other does not provide for such an arrangement. The latter simply provides for the state to allow the service provider to use space owned by the state in exchange for the provision of computerized tourism information by the service provider. The Secretary, however, is concerned whether the Secretary has the authority to enter into either of these proposed agreements.

We are of the opinion that the provisions of K.S.A. 1983 Supp. 74-5005(j) and 74-5033, provide more than adequate authority for the Secretary to enter into either of these proposed contracts. K.S.A. 1983 Supp. 74-5005, in relevant part, provides:

"The department [of economic development] shall be the official agency of the state for the economic development of the state through the promotion of business, commerce and industry within the state. In general, but not by way of limitation, the department shall have, exercise and perform the following powers and duties:

. . . .

"(j) to encourage and promote the traveling public to visit this state by publicizing information as to the recreational, historic and natural advantages of the state and its facilities for transient travel and to contract with organizations for the purpose of promoting tourism within the state; and the department may request other state agencies such as, but not limited to, the state water resources board, the state park and resources authority, the Kansas fish and game commission and the department of transportation, for assistance and all such agencies shall coordinate information and their respective efforts with the department to most efficiently and economically carry out the purpose and intent of this subsection. . . ."

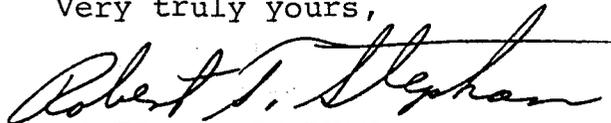
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Moreover, K.S.A. 1983 Supp. 74-5033 provides expressly that:

"The secretary of economic development is hereby authorized to negotiate and enter into contracts for promotional advertising services for the performance of the powers, duties and functions of the department of economic development under K.S.A. 74-5004 and amendments thereto. All such contracts shall be exempt from the competitive bid requirements of K.S.A. 1982 Supp. 75-3739 and any amendments thereto."

In light of these clear and unambiguous statutory grants of authority, we have no hesitancy in concluding that the Secretary of Economic Development possesses the power to enter into either of the contracts about which you have inquired.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Rodney J. Bieker  
Assistant Attorney General

RTS:BJS:RJB:jm