



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

August 7, 1985

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 85-98

Larry E. Wolgast  
Secretary, Department of Human Resources  
401 Topeka Avenue  
Topeka, Kansas 66603

Re: State Departments; Public Officers, Employees --  
Department of Administration -- Receipt of Grants  
and Moneys from Federal Agencies

Synopsis: The power of a state agency to contract with  
private industry must be conferred upon that agency  
by statute. Under current Kansas statutes the  
Employment Security Systems Institute lacks  
authority to contract with and provide training  
to persons in private industry in data processing  
and related areas. Cited herein: K.S.A. 75-3711a.

\* \* \*

Dear Mr. Wolgast:

As Secretary of the Department of Human Resources, you request our opinion concerning the ability of the Employment Security Systems Institute to contract with and provide training to private industry in data processing and related areas. ESSI, which is a division of the department, desires to offset an anticipated reduction in federal funding by offering the same training to persons in private industry that it has offered to government agencies in the past. In return, ESSI will be compensated by the private businesses.

The power to authorize state agencies to receive money from sources other than the state or federal government is a legislative power, properly delegated to the state finance council. State ex rel. v. Bennett, 222 Kan. 12, 18 (1977); State ex rel v. Bennett, 219 Kan. 285 (1976).

Concerning the receipt of money by a state agency, K.S.A. 75-3711a provides:

"(a) Any state agency not otherwise specifically authorized by law may, with the approval of the state finance council, receive grants of money and funds - appropriated under any federal act or from any other source.

"(b) Subject to the provisions of K.S.A. 75-3711b and 75-3711d, any state agency not otherwise specifically authorized by law may contract with and (1) receive or spend or transfer or (2) receive and spend or transfer moneys from other state or federal agencies, with the approval of the state finance council."

Subsection (a) of the above-quoted statute authorizes state agencies to receive and spend money from federal grants or other sources with the approval of the state finance council where such acts are not otherwise specifically authorized by law. Where such acts are specifically authorized by law, the approval of the state finance council is unnecessary. Subsection (b) of K.S.A. 75-3711a speaks only to those situations in which a state agency seeks to contract with another government agency and is therefore inapplicable to the question you raise.

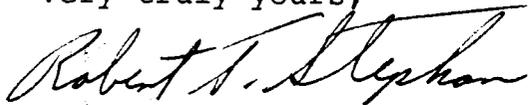
Applying K.S.A. 75-3711a(a) to the facts outlined in your letter requires us to determine whether the Department of Human Resources or ESSI is specifically authorized by law to receive money or funds from private industry. Our review of the Employment Security Law, K.S.A. 44-701 et seq., and other statutory provisions governing the Department of Human Resources has disclosed no such specific authorization. Although you advise that the legislature has authorized ESSI to spend whatever funds come into its account, such an authorization to spend funds does not evidence a specific legislative authorization for ESSI to obtain funds from private industry. Accordingly, based on the plain language of K.S.A. 75-3711a(a), ESSI must seek to obtain the approval of the state finance council before receiving money from private industry.

Whether ESSI may raise such money through contracting to deliver services to private industry is a separate issue. Generally, the state has the power to contract and may

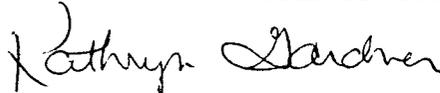
contract with an individual or another governmental entity or may delegate that power to its agencies. See 82A C.J.S., States, §155-156. A state agency is an entity created by public law "for a public purpose." Lauber v. Fireman's Relief Ass'n, 202 Kan. 565, 575 (1969). Because administrative agencies are creatures of statute and their power is dependent upon authorizing statutes, any warrant for exercise of authority claimed by an agency must come from within a statute, or be necessarily implied from the grant of an express power. Woods v. Midwest Conveyor Co. Inc., 231 Kan. 763, 770 (1982); Kelly v. Kansas City, Kansas Community College, 231 Kan. 751, 758-59 (1982). Agencies have no general or common-law power, but only such powers as have been conferred upon them by law, expressly or by clear implication. 231 Kan. at 770.

Our review of Kansas statutes has disclosed no express delegation to state agencies generally or the Department of Human Resources specifically of the power to contract with private industry. Nor do we view such power as implied, since the ability to provide services to and receive funds from private industry is not reasonably or necessarily incident to the powers expressly granted either the department or ESSI. See K.S.A. 75-5701 et seq. Raising funds through contracting with private industry will not assist the Department of Human Resources in attaining an objective or goal which bears a valid relationship to its specific powers and functions. Therefore, in our judgment, ESSI lacks authority to contract with and provide training to private industry in data processing and related areas.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Kathryn Gardner  
Assistant Attorney General