



STATE OF KANSAS

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September 18, 1985

ATTORNEY GENERAL OPINION NO. 85- 123

John B. Hipp, Director
Division of Architectural Services
625 Polk
Topeka, Kansas 66603

Re: State Departments; Public Officers, Employees --
Architectural Services -- Fees of Project Architects

Synopsis: K.S.A. 75-1263 establishes the maximum fee which can be paid to a private architect who is retained to design capital improvement projects for the state. Pursuant to subsection (c), the architect shall be paid a fee not to exceed the fee prescribed by K.S.A. 75-1263(a)(1). If the state requires additional services from the architect which result in a claim for compensation beyond the maximum prescribed by statute, the architect may submit that claim to the Joint Committee on Special Claims pursuant to K.S.A. 46-907. Cited herein: K.S.A. 46-907; 75-1263.

* * *

Dear Mr. Hipp:

As Director of the Division of Architectural Services for the State of Kansas, you request our opinion on a question concerning the maximum fees which can be paid to private architects retained to design capital improvement projects for the state.

Specifically, you state that additional services that result in a claim for compensation beyond the maximum allowed by K.S.A. 75-1263(c) often occur due to causes beyond the control of the architect. K.S.A. 75-1263(c) provides:

"(c) For purposes of computing the project architect's maximum fees the estimated cost of the project shall be that provided in the original program cost estimate for the project and shall not be reduced or increased as a result of change orders except that the project architect shall be paid a fee not to exceed the fees prescribed in subsection (a) (1) above for services rendered if change orders or alternates are initiated by the state."
(Emphasis added.)

You assert that such additional service can result in a legitimate claim. However, the state is unable to compensate the project architect for such services if payment would result in a fee in excess of the maximum specified in K.S.A. 75-1263(a) (1). Therefore, you ask what alternatives, if any, are available to compensate the project architect in cases where the fees for such additional service go beyond the maximum specified by statute.

In our opinion, the only available method of compensating such an architect for fees beyond the maximum prescribed by statute is to refer such claim to the Joint Committee on Special Claims against the state. K.S.A. 46-907 provides:

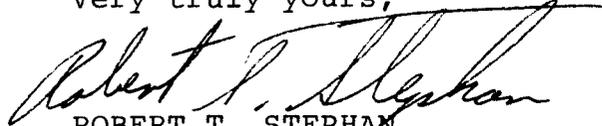
"All claims proposed to be paid from the state treasury or any special fund of the state of Kansas, which cannot be lawfully paid by the state or any agency thereof except by an appropriation of the legislature shall be submitted to the joint committee on special claims against the state before final action thereon is taken by either house of the legislature."

K.S.A. 46-907 et seq. specify procedures for processing a claim through the joint committee and may be utilized in the situation you posit. While delays in the processing of claims may be unavoidable under this system, in the absence of any method in K.S.A. 75-1250 et seq. to provide additional compensation at present it is the only option available.

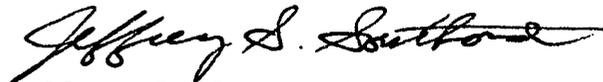
In conclusion, K.S.A. 75-1263 establishes the maximum fee which can be paid to a private architect who is retained to design capital improvement projects for the state. Pursuant to subsection (c), the architect shall be paid a fee not to

exceed the fee prescribed by K.S.A. 75-1263(a)(1). If the state requires additional services from the architect which result in a claim for compensation beyond the maximum prescribed by statute, the architect may submit that claim to the Joint Committee on Special Claims pursuant to K.S.A. 46-907.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:BJH:crw