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ATTORNEY GENERAL OPINION NO. 87- 44

Joseph Snell
Executive Director
Kansas State Historical Society
120 West Tenth
Topeka, Kansas 66612-1291

Re: State Departments; Public Officers and Employees
-- State Historical Society -- Deaccessions Policy

Synopsis: K.S.A. 75-2701(a) does not restrict the type of party with whom the Kansas State Historical Society may arrange a sale or exchange of duplicate materials or materials outside its fields of collection. Therefore, the Historical Society may deal with private citizens in making these sales or exchanges.

Since K.S.A. 75-2701(a) speaks only in terms of sale or exchange, the Historical Society is prohibited from donating items which are duplicates or are outside its fields of collection to other institutions. Cited herein: K.S.A. 75-2701; 75-2703; 75-2704.

Dear Mr. Snell:

As executive director of the Kansas State Historical Society (Society), you ask us to review a manual recently devised by the Kansas Museum of History entitled Collections Management Policy. Specifically, you ask two questions related to the museum's deaccessions policy, which we will address separately.

First, you inquire as to whether the museum's deaccession's policy would limit the Society's ability to trade or sell property in situations permitted by statute, but prohibited by the museum department's policy. You inform us that the museum will only deal with public-oriented parties, such as similar institutions and non-profit organizations, because it wishes to maintain the public's confidence that the museum will care for donated items, and that the museum will benefit the public through the donor's generosity. Citing an example where the Society would lose a beneficial resource if it could not sell or trade duplicate or inappropriate artifacts for items currently in the hands of private persons, you ask whether the museum's exchange of an artifact to the non-profit Kansas State Historical Society corporation in return for an artifact obtained by the Society from a private person would be legal.

K.S.A. 75-2701(a) provides:

"The state historical society, heretofore organized under the incorporation laws of the state, shall be the trustee of the state, and as such shall faithfully expend and apply all money received from the state to the uses and purposes directed by law, and shall hold all its present and future collections of property for the state, and shall not sell, mortgage, transfer, or dispose of in any manner or remove from its building or buildings, except for temporary purposes, any article thereof, or part of the same, without authority of law except that this shall not prevent the sale or exchange by the society of its publications, duplicate materials or materials outside its fields of collection, that it may have or obtain. (Emphasis added).

K.S.A. 75-2701(a) does not restrict the type of party with whom the Society may arrange a sale or exchange of duplicative or inappropriate materials. Therefore, we believe that state law, unlike the museum's Collections Management Policy, would allow the Society to deal with private individuals for purposes of these sales or exchanges. In our opinion, subject to the Society's approval, the museum is free to set up its own internal policy which is more restrictive than K.S.A. 75-2701(a), thus permitting the museum to deal only with public entities. However, this restrictive policy, which applies only to the museum, would not prohibit the Society

from dealing with private individuals as allowed by K.S.A. 75-2701(a).

Second, you ask whether the Society is precluded from donating items which are duplicates or are outside its fields of collection to other organizations, since K.S.A. 75-2701(a) refers only to the possibility of a sale or an exchange. The statute neither expressly prohibits nor authorizes the Society to donate such items. Therefore, it is necessary to determine legislative intent. "The fundamental rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute." Szoboslay v. Glessner, 233 Kan. 475, 477 (1983).

In our opinion, the fact that the legislature did not expressly authorize the Society to donate duplicative or inappropriate materials when it provided it with authority to sell or exchange them (K.S.A. 75-2701), suggests that the legislature did not intend for the Society to have this option. K.S.A. 75-2701 was originally part of the 1879 law which made the Society a state agency and trustee for state historical property. See L. 1879, Ch. 167 § 1-3. Although these sections have been amended several times through the years, the language with which we are concerned has remained unchanged. If the legislature had intended to give the Society the option to donate, it could have so provided through an amendment to the statute.

Another well-founded rule of statutory construction is that "in order to ascertain legislative intent, courts are not permitted to consider only an isolated part or parts of an act but are required to consider and construe together all parts thereof in *pari materia*." Szoboszlay v. Glessner, supra at 478. Attorney General Opinion No. 81-62 relied on this rule when it considered whether the language in K.S.A. 75-2701 et seq. would allow the museum to sell duplicative publications, even though K.S.A. 75-2703 only expressly provided for their exchange. Since K.S.A. 75-2701 and K.S.A. 75-2704 both refer to the museum's authority to sell or exchange duplicative and inappropriate materials, we opined that it was consistent with apparent legislative intent to infer that the museum could sell as well as exchange duplicative publications.

We do not feel similar reasoning can be used in the case at hand. Nowhere else in the act is the museum empowered to donate objects to other institutions. This fact is persuasive

when considered with the purpose for which many donations to the museum are made. When a donor gives an object to the museum, it is generally his or her desire to benefit the museum. To remain consonant with this intent, our legislature has authorized the museum to sell or trade duplicative or inappropriate materials, thus indirectly fostering the donor's intent that the museum benefit from the gift. If the museum simply gave such items away, this intent would not be realized.

A third rule of statutory construction which is applied to clear and unambiguous statutes is the maxim expressio unius est exclusio alterius (the expression of one thing is the exclusion of another). In re Petition of City of Shawnee for Annexation of Land, 236 Kan. 1, 14 (1984). We find K.S.A. 75-2701 to be clear and unambiguous. The statute prohibits the State Historical Society from disposing of in any manner or from removing from its building or buildings any property which has been entrusted to the Society, with the exception "that this shall not prevent the sale or exchange by the society of its publications, duplicate materials, or materials outside its fields of collection, that it may have or obtain." Under this rule, by expressly providing for the sale or exchange of items, the legislature has excluded the Society from having the option to donate.

In light of the aforementioned rules of statutory construction and relevant statutes, we conclude that the museum is not authorized by law to donate duplicative or inappropriate items to other institutions. Accordingly, references in the policy manual to such gift-giving powers should be deleted. See "Deaccession Procedure" 5(a) and (b), p. 17.

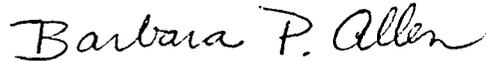
We wish to call your attention to another portion of the Collections Management Policy which we believe to be in violation of state law. The section entitled "Deaccession Procedures" states that disposal by witnessed destruction is an appropriate deaccession method for items which are hazardous, damaged beyond repair, or which have insignificant sale or exchange value. However, K.S.A. 75-2701(a) prohibits the Society from disposing of property without authority of law. In that our research has revealed no legislative authority for disposing of property in this manner, we believe this deaccession procedure should be deleted from the policy manual. To solve the problem of disposing of excess materials, we suggest that the Society either provide for the temporary loan of such items to an appropriate organization, or arrange for the sale of these items at a nominal price. (K.S.A. 75-2701; 75-2704).

In summary, K.S.A. 75-2701(a) does not restrict the type of party with whom the Kansas State Historical Society may arrange a sale or exchange of duplicate materials or materials outside its fields of collection. Therefore, the Historical Society may deal with private citizens in making these sales or exchanges.

Since K.S.A. 75-2701(a) speaks only in terms of sale or exchange, the Historical Society is prohibited from donating items which are duplicates or are outside its fields of collection to other institutions.

Very truly yours,


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