



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 52

Dale L. Pohl
Eureka City Attorney
P.O. Box 528
Eureka, Kansas 67045

Re: Constitution of the State of Kansas--
Corporations--Cities' Powers of Home Rule

Synopsis: It is our opinion that the city of Eureka may make a grant in the amount \$100,000 to the Greenwood County Fair Association, Inc., a non-profit corporation, for the purpose of assisting in the development of facilities for pari-mutuel horse and dog races in the city of Eureka, as long as economic benefits are expected to return to the city. Cited herein: Kan. Const., Art. 12, §5.

* * *

Dear Mr. Pohl:

You request our opinion as to whether the city of Eureka may grant public funds to the Greenwood County Fair Association, Inc., a nonprofit corporation, for the purpose of assisting the association in development of facilities for pari-mutuel horse and dog races in the city of Eureka. You indicate that the governing body of the city of Eureka believes that the development of these facilities would be beneficial to the economic development of the community and, therefore, is favorably considering a grant in the amount of \$100,000. We will assume that any tax levy funds included in such a grant

could properly be expended by the city for the purpose of promoting economic development.

Initially, it should be noted that we are unaware of any statute which would authorize the city of Eureka to grant funds to a non-profit corporation for the purpose described above. However, under article 12, section 5 of the Kansas Constitution, cities have power to determine their local affairs and government, and do not need legislative authorization to pass a particular ordinance. City of Junction City v. Griffin, 227 Kan. 332, 334 (1980). As promotion of economic development in a community is clearly a local affair, the city of Eureka may exercise its home rule power to make a grant to a non-profit corporation under the circumstances described above, provided such action does not run afoul of any constitutional limitations. In this regard, two recent Kansas cases provide guidance as to the constitutionality of making such a grant.

In Ulrich v. Board of Thomas County Commissioners, 234 Kan. 782 (1984), the Kansas Supreme Court considered the constitutionality of a law which authorized the board of trustees of a county hospital to transfer certain hospital assets, including "unencumbered monies," to a private, non-profit corporation which would operate a private hospital. The court stated that grants of public funds to a private corporation are valid where a public purpose is shown, and ruled that the operation of a hospital by a private, non-profit corporation promoted the public health and was for a public purpose. (Id. at 789-790.) Therefore, the court held that the statute authorizing the transfer of hospital assets to a non-profit corporation was constitutional.

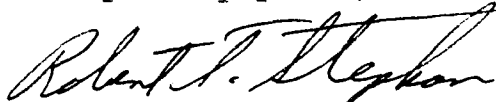
In State ex rel. Tomasic v. City of Kansas City, 237 Kan. 572 (1985), the court considered the authority of a city to convey a plant site consisting of 568 acres in the heart of the Kansas City industrial district to General Motors for the nominal sum of \$250,000. The court rejected the contention that the conveyance was an unauthorized donation by the city, stating that "not only will the city receive the cash payment of \$250,000, it will receive the real and valuable consideration of the economic benefits which are expected to flow from GM's presence in the city." Id. at 595. The court cited the Ulrich case in noting that it had "previously held that the entire transaction is to be taken as a whole and that the consideration for a transfer of property by the state to a private entity may consist, at

least in part, of the public benefit which flows from the transfer." Id.

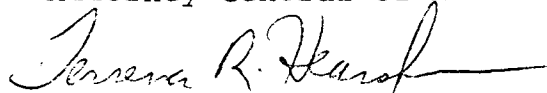
The Ulrich case and the Kansas City case, supra, indicate that economic benefits which are expected to flow to a city may serve as consideration for a grant made to a private corporation. Our research into the legislative history of the pari-mutuel amendment which was approved by voters last November reveals that one of the primary reasons for submission of the amendment to voters was the claim of proponents that pari-mutuel racing would stimulate and enhance the Kansas economy. Accordingly, in our judgment the economic benefits which are expected to flow to the city of Eureka from the development of facilities for pari-mutuel horse and dog races may serve as consideration for a grant from the city to a private corporation to aid such development. However, in order to assure that there is adequate consideration for the grant, the city should include a contractual provision mandating return of the grant monies in the event the fair association is unsuccessful in initiating pari-mutuel races.

In summary, it is our opinion that the city of Eureka may make a grant in the amount \$100,000 to the Greenwood County Fair Association, Inc., a non-profit corporation, for the purpose of assisting in the development of facilities for pari-mutuel horse and dog races in the city of Eureka, as long as economic benefits are expected to return to the city.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General