



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 88-122

Elsbeth D. Schafer  
Assistant City Attorney  
City of Topeka  
215 E. 7th Street, Room 353  
Topeka, Kansas 66603-3979

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

Synopsis: The city of Topeka may, pursuant to home rule powers granted by article 12, section 5 of the Kansas Constitution, establish a program whereby cash grants would be awarded to new or expanding businesses which invest private capital and create new jobs in the city's economy. Cited herein: K.S.A. 19-4101; Kan. Const., Art. 12, §5.

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Dear Ms. Schafer:

You request our opinion concerning a municipality's authority to promote its economic growth. Specifically, you ask whether the city of Topeka may establish a program whereby cash grants would be awarded to new or expanding businesses. You describe the program as follows:

"[T]he city of Topeka, Kansas proposes to make available certain funds on a grant basis as an economic incentive to new or expanding businesses, said program to be contractually administered by the Greater Topeka Chamber of Commerce and subject to


the rules of and final approval by the City. Allocation of the economic grants would be based upon the number of new jobs created and investment of private capital in the local economy. If the economic incentive is granted, the funds may be used by the individual business to defray the expense of land acquisition, special assessments, building permits, construction costs, etc."

We have considered the validity of economic development grants in two previous opinions. In Attorney General Opinion No. 87-52, we upheld a proposed grant to assist in the development of facilities for pari-mutuel horse and dog races in the city of Eureka, and noted that economic benefits which are expected to flow to a city may serve as consideration for a grant (made pursuant to article 12, §5 of the Kansas Constitution) made to a private corporation. Similarly, in Attorney General Opinion No. 86-40, we opined that a county program (established under K.S.A. 19-4101 et seq.) awarding grants to industries as inducements to locate in a county was an economic development program that served a public purpose. Additionally, the Kansas Supreme Court has held that grants to revitalize and rehabilitate a downtown business area do not violate the Kansas Constitution or United States Constitution. Duckworth v. City of Kansas City, Kansas, No. 61,421, April 29, 1988 (unpublished opinion).

Pursuant to the foregoing opinions, and authorities cited therein, it is our opinion that the city of Topeka may, pursuant to home rule powers granted by article 12, §5 of the Kansas Constitution, establish a program whereby cash grants would be awarded to new or expanding businesses which invest private capital and create new jobs in the city's economy.

In regard to the delegation of administrative authority to Greater Topeka Chamber of Commerce, it should be noted that the the ordinance establishing the program should prescribe sufficient standards and rules to guide the Chamber in administering the program. See 2 McQuillin, Municipal Corporations, §10.40a (3d Ed.)

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General