



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88-142

Joseph F. Harkins, Director
Kansas Water Office
Suite 200
109 SW Ninth
Topeka, Kansas 66612-1215

Re: Waters and Watercourses -- Obstructions In Streams;
Environmental Coordination -- Water Projects
Environmental Coordination Act; Environmental
Review Process

Synopsis: The environmental coordination act provides that
"[n]othing in this act shall be construed as
preempting or duplicating any existing
environmental review process otherwise provided or
authorized by law." This language means that a
water development project is not required to be
reviewed pursuant to the act if such review would
duplicate an existing environmental review
procedure. Cited herein: K.S.A. 1987 Supp.
82a-325; 82a-326; 82a-327.

* * *

Dear Mr. Harkins:

As Director of the Kansas Water Office you request our opinion
regarding the interpretation of a provision contained in the
water projects environmental coordination act [act], K.S.A.
82a-325 et seq. Specifically, your inquiry concerns the
following provision in K.S.A. 1987 Supp. 82a-327(d):

"Nothing in this act shall be construed as preempting or duplicating any existing environmental review process otherwise provided or authorized by law."

You ask "whether this provision exempts review under the . . . Act if that review would, in the judgment of the Chief Engineer of the Division of Water Resources, duplicate review under any existing environmental review process or whether it merely states that review under the . . . Act does not duplicate review under any existing environmental review process."

The act requires "that the environmental effect of any water development project be considered before such water development project is approved or permitted." K.S.A. 1987 Supp. 82a-325. Agencies which issue permits for a "water development project" [defined in K.S.A. 1987 Supp. 82a-326(a)] must have the project reviewed by the appropriate environmental review agencies, which are listed in K.S.A. 1987 Supp. 82a-326(b). The criteria which the review agencies "shall consider" in reviewing a project are listed in K.S.A. 1987 Supp. 82a-327(b). The permitting agency "shall consider" the recommendations of the review agencies, but is not bound to accept the recommendations. K.S.A. 1987 Supp. 82a-327(d).

The issue presented to us is whether the statutory language in question means that the review process under the environmental coordination act is not duplicative of any existing environmental review process and must also be undertaken, or whether an existing review process provided by law exempts review under the act. To answer this question, the rules of statutory construction must be applied.

"The first rule of statutory construction is to ascertain the intent of the legislature." State v. Ashley, 236 Kan. 551, 553 (1985). Such intent "is to be determined from a general consideration of the entire act." State v. Adee, 241 Kan. 825, 829 (1987). Statutes should not be construed to require the performance of "vain, idle, or useless acts." In re Gantz, 10 Kan. App. 2d 299, 301 (1985). "'If possible, doubtful provisions should be given a reasonable, rational, sensible, and intelligent construction.'" In re Adoption of Baby Boy L, 231 Kan. 199, 209 (1982) quoting 73 Am. Jur. 2d Statutes § 265.

The courts have also said that statutes must be construed to "advance the sense and meaning" of the context of the law. Mahone v. Mahone, 213 Kan. 346, Syl. ¶ 1 (1973). In Madison v. Goodyear Tire & Rubber Co., 8 Kan. App. 2d 575, Syl. ¶ 3, the court stated:

"In determining legislative intent, courts are not limited to a mere consideration of the language employed, but may properly look to the historical background of the enactment, the circumstances attending its passage, the purposes to be accomplished, and the effect the statute may have under the various constructions suggested."
See In re Estate of Estes, 239 Kan. 192, 195 (1986).

In addition, in construing a statute "a court must use reason and consider the practicalities of the matter addressed." Sterling Drilling Co. v. Kansas Department of Revenue, 9 Kan. App. 2d 557, 559 (1984). Also, a court "may inquire into the reasons which impelled the statute's adoption and the objective sought to be obtained." Kopp's Rug Co. v. Talbot, 5 Kan. App. 2d 565, 567 (1980).

In our opinion the statutory language in question means that a water development project is not required to be reviewed pursuant to K.S.A. 82a-325 et seq. if this procedure would duplicate an existing environmental review process. The purpose of the act is to provide for a review of all water development projects, with the objective to "protect the environment while facilitating the use, enjoyment, health and welfare of the people." A project is not required to meet the approval of each review agency; the act provides that a permitting agency may issue a permit even if a review agency determines that a project may have adverse environmental effects. We believe the intent of the legislature is that projects be reviewed. That intent and the reason for the act would be met if the review process occurred pursuant to existing law. Thus, the statutory provision exempts review under the act if that review would duplicate an existing review process. To interpret the statute otherwise would not give practical effect to the meaning of the statute.

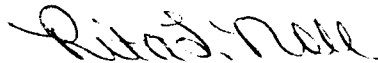
In summary, the environmental coordination act provides that "[n]othing in this act shall be construed as preempting or duplicating any existing environmental review process otherwise provided or authorized by law." This language means

that a water development project is not required to be reviewed pursuant to the act if such review would duplicate an existing environmental review procedure.

Very truly yours,



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