



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 1

The Honorable Wanda Fuller
State Representative, Eighty-Seventh District
2808 Bennett
Wichita, Kansas 67211-3848

Re: State Departments; Public Officers and Employees--
Department of Corrections; Community Corrections
Act--Grants to Counties for Community Correctional
Services; Purchase of Real Estate

Synopsis: L. 1988, ch. 29, sec. 8 does not apply to the
purchase of an office building by Sedgwick county
with monies received through the community
corrections grant program. Cited herein: K.S.A.
75-5290; L. 1988, ch. 29, sec. 8; L. 1988, ch.
32, sec. 2; K.A.R. 44-11-123.

* * *

Dear Representative Fuller:

You have requested our opinion of whether section 8 of chapter 29 of the 1988 Session Laws would require specific legislative authorization before the Sedgwick county board of county commissioners may purchase an office building with grant monies obtained from the Kansas Department of Corrections (DOC). You explain that the office building is needed to house the county's community corrections administrative offices.

L. 1988, ch. 29, sec. 8 provides in pertinent part:

"No moneys appropriated from the state general fund or any special revenue fund for the fiscal years ending June 30, 1988, or June 30, 1989, by this act or any other appropriations act of the 1988 regular session of the legislature for any state agency, as defined by K.S.A. 75-3701 and amendments thereto, shall be expended for the acquisition of fee title to any real property, whether by purchase, lease-purchase, exchange, contract or by any other method, unless specifically authorized by act of the legislature to acquire title to such real property. No action of the state finance council shall be effective to approve or authorize the expenditure of any such moneys by any state agency, as defined by K.S.A. 75-3701 and amendments thereto, for the acquisition of title to any real property unless specifically authorized by act of the legislature to acquire title to such real property." (Emphasis added.)

The Sedgwick county community corrections department receives state aid from DOC pursuant to K.S.A. 75-5290 et seq., the community corrections act. The grant program established by this act is funded by monies appropriated for DOC from the state general fund. See L. 1988, ch. 32, sec. 2. The question thus becomes whether section 8 of chapter 29 operates to prohibit a local unit of government or private entity from using state aid obtained through a program administered by a state agency to purchase real property absent specific legislative authorization. In our opinion, section 8 does not operate this broadly.


By its terms, L. 1988, ch. 29, sec. 8 applies to expenditures of state agencies for the acquisition of fee title to any real property. In the case at hand, DOC is not acquiring fee title to the property, Sedgwick county is. The object of DOC's expenditure is state aid to a local unit of government. See Division of Accounts and Reports, Policy and Procedure Manual, filing no. 7,002, p. 14 of 54 (May 2, 1988); K.S.A. 75-3728. It is Sedgwick county which will make the expenditure to acquire the property. While DOC must approve the amendment to Sedgwick county community corrections department's budget to allow the grant money to be used for the purchase of this building, K.A.R.

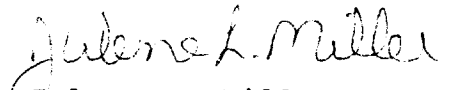
44-11-123, DOC is not making the ultimate expenditure and is not acquiring fee title to the property.

Further, we do not believe the legislature intended this provision as a condition on grants of state aid. An interpretation requiring specific legislative authorization for every acquisition of real property by an entity receiving grant money would inundate the legislature with requests for such authorization, particularly since section 8 precludes the state finance council from granting such authorization. We believe the legislature intended only to prevent state agencies from acquiring property to be owned by the state without specific legislative approval.

In conclusion, L. 1988, ch. 29, sec. 8 does not apply to the purchase of an office building by Sedgwick county with monies received through the community corrections grant program.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

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