



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 33

The Honorable Paul Feleciano, Jr.
State Senator, Twenty-Eighth District
State Capitol, Room 452-E
Topeka, Kansas 66612

Re: Waters and Watercourses -- Water Storage-- State
Water Plan Storage Act; Conservation Storage Water
Supply Fund

Synopsis: Kansas statutes authorize expenditures from the
state conservation storage water supply fund to be
made only for the purpose of acquiring or
developing conservation storage water supply to
implement the state water plan. Appropriations
from the fund for land treatment and flood control
in this instance do not meet the purpose of the
statute. Cited herein: K.S.A. 1988 Sup. 82a-1301;
82a-1305; 82a-1306; 82a-1308a; K.S.A.
82a-1315a; K.S.A. 1988 Supp. 82a-1315b; K.S.A.
82a-1320; K.A.R. 98-5-1.

* * *

Dear Senator Feleciano:

You ask our opinion regarding the state water plan storage
act. You inform us that for fiscal year 1989 the Kansas
Legislature appropriated \$1,157,482 from the state
conservation storage water supply fund for two certain
projects. Specifically, your question is whether these
appropriations conform with the legislative intent for use of
the monies in the fund.

The state water plan storage act (act), K.S.A. 82a-1301 et seq., provides that the director of the Kansas Water Office may enter into contracts for the withdrawal and use of waters from the state's conservation storage water supply. K.S.A. 1988 Supp. 82a-1305(a); K.S.A. 82a-1320. Each contract must contain a provision for the minimum annual charge, and a provision setting the charge "per 1,000 gallons of water at the point of withdrawal from the reservoir. . . ." K.S.A. 1988 Supp. 82a-1306. These charges are set by the director with approval from the Kansas Water Authority pursuant to statutory criteria. K.S.A. 1988 Supp. 82a-1306(a); K.S.A. 1988 Supp. 82a-1308a.

Amounts charged pursuant to contracts and the Act are paid to the director who remits the entire amount to the state treasurer. "[T]he state treasurer, except as provided in K.S.A. 82a-1315b, shall deposit the same in the state treasury to the credit of the state general fund." K.S.A. 82a-1315a. The deposit of money received from the contracts under the act is further regulated in K.S.A. 1988 Supp. 82a-1315b:

"(b) That portion of all moneys received by the state treasurer pursuant to K.S.A. 82a-1315a which is not attributable to (1) the annual repayment on water storage costs in federal reservoirs as computed under subsection (a) (1) of K.S.A. 82a-1308a; (2) the operation, maintenance and repair costs associated with the state's conservation water supply capacity; and (3) the costs in administering and enforcing the provisions of this act, shall be deposited in the state treasury to the credit of the state conservation storage water supply fund which is hereby established. The director shall provide the treasurer with an accounting of the total remittances and shall deposit money only to the credit of the state conservation storage water supply fund after the full amount of the costs attributable to the state general fund from the preceding calendar year have been repaid. . . .

(c) The state conservation storage water supply fund shall serve in part as a

savings fund to further the purpose of this act.

. . . .

(d) All expenditures from the state conservation storage water supply fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the Kansas water office or by a person or persons designated by the director and shall be used solely for the purpose of acquisition or development of conservation storage water supply in impoundments deemed necessary to implement the state water plan, including expenditures related to the issuance of revenue bonds for such purposes and non-water supply benefits associated with such purposes."

"Conservation storage water supply capacity" is defined in K.A.R. 98-5-1(c) as

"the space in a reservoir which has been:

- (1) Purchased, contracted for purchase, or otherwise acquired by the state; and
- (2) designated for the storage of water for any beneficial purpose or for sediment accumulation purposes in proportion to the amount of storage purchased, contracted for purchase, or otherwise acquired by the state."

You state that for fiscal year 1989 the legislature authorized appropriation of funds from the state conservation storage water supply fund in the amount of \$240,000 for land treatment above the multipurpose small lakes project at Centralia, and \$917,482 for flood control storage space in the Wellington multipurpose small lakes project. We agree with your conclusion that these appropriations do not conform with the legislative intent of K.S.A. 1988 Supp. 82a-1315b(d). This statute provides that the fund is to be used only for acquiring or developing conservation storage water supply in

impoundments to implement the state water plan. Therefore, it is our opinion that land treatment and flood control do not appear to be consistent with the purposes for which the state conservation storage water supply fund may be used.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
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RTS:JLM:RLN:bas