



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 11, 1989

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

ATTORNEY GENERAL OPINION NO. 89- 45

Horace B. Edwards
Secretary of Transportation
Kansas Department of Transportation
Docking State Office Building
Topeka, Kansas 66612-1568

Re: State Departments; Public Officers and Employees--
Department of Transportation--Railroad
Rehabilitation Loan Guarantee Fund; Limits on
Guarantee Under 1989 House Bill No. 2520

Synopsis: A refinancing loan to the Mid States Port Authority made by a participating financial institution may be guaranteed by the Secretary of Transportation and such refinancing loan is not subject to the 50% loss limitation applicable to the original federal government loan for acquisition and rehabilitation. Cited herein: K.S.A. 75-5029, as amended by 1989 House Bill No. 2520; 75-5030; 1989 House Bill No. 2520, New Section 1; and Kan. Const., Art. 11, §9.

*

*

*

Dear Secretary Edwards:

As Secretary of Transportation and administrator for the state railroad rehabilitation loan guarantee fund, you request our opinion on the scope of your authority to guarantee a refinancing loan to be made by a private financial institution to the Mid States Port Authority pursuant to 1989 House Bill No. 2520. Specifically, you inquire if the refinancing loan guarantee is subject to the exception clause of K.S.A. 75-5030

which limits the state guarantee to 50% of any loss that would be assumed by the federal government upon default. You express the opinion that the terms of House Bill No. 2520 do not restrict the percentage of a refinancing loan which may be guaranteed by the state of Kansas. We agree.

The Mid States Port Authority is a public body corporate and politic, organized and existing under the authority of K.S.A. 12-3401 et seq. The Authority was created by agreement of fourteen Kansas counties for the purpose of acquiring a portion of the bankrupt Rock Island railroad which prior to 1983 served the northwestern part of the state. The acquisition of the railroad was made possible by an \$18,000,000 loan from the Federal Railroad Administration. The Port Authority now has the opportunity to refinance the federal loan with private financial institutions and is encouraged to do so by new federal deficit reduction measures.

In order for the Authority to obtain the original federal loan, the state of Kansas was required to guarantee the loan. Under the Kansas Constitution, Article 11, Section 9, as it then provided, the state could not guarantee the entirety of the loan and was limited to participating in an amount not exceeding one-half of any loss suffered by the federal government upon default. See Attorney General Opinion No. 83-61. The provisions of K.S.A. 75-5029 and 75-5030 were enacted in accordance with Opinion No. 83-61 and, therefore, contain a fifty percent restriction on the state guarantee.

We view your inquiry as entirely a matter of statutory interpretation since the Kansas Constitution, Article 11, Section 9, was amended in 1986 to delete the percentage limitations on state participation in works of internal improvements. L. 1986, ch. 432. Consequently, the state constitution would not be relevant to your question, except to note that the 1986 amendments eliminated any constitutional reason for the legislature to impose participation restrictions on the loan guarantee fund and that any such restrictions must therefore flow from the clear language of the statutes in question or by necessary implication therefrom.

In order to determine whether the percentage limits of K.S.A. 75-5030 have any application to a refinancing loan with a financial institution other than the federal government, we turn to certain commonly accepted rules of statutory construction. It is the fundamental rule of statutory construction, to which all others are subordinate, that the purpose and intent of the legislature governs when that intent

can be ascertained from the statute. Kansas State Board of Healing Arts v. Dickerson, 229 Kan. 627 (1981). Another primary rule of statutory construction provides that we are to find the legislative intent from the language of the statute itself, and where the language is plain, unambiguous and also appropriate to the obvious purpose, the court should follow the intent as expressed by the words used. Underwood v. Allmon, 215 Kan. 201, 204 (1974), citing City of Overland Park, v. Nikias, 209 Kan. 643 (1972).

New section 1 of the 1989 House Bill No. 2520 provides:

"For the purpose of facilitating the refinancing of the loan guaranteed by the secretary of transportation in accordance with K.S.A. 75-5030 and amendments thereto, the secretary of transportation is hereby authorized to enter into an agreement with the mid-states port authority and the financial institutions participating in such refinancing to guarantee the repayment of any amounts which are in default on any loan obtained by the mid-states port authority for such refinancing. Such agreement may contain such terms and conditions as the secretary of transportation may deem appropriate to carry out the purposes of this section, except that the total principal amount guaranteed thereby shall not exceed \$7,000,000." (Emphasis added.)

Clearly, the purpose of this section is to authorize the guarantee of refinancing agreements which heretofore had not been authorized by either K.S.A. 75-5029 or 75-5030. By its terms, the new section grants to the Secretary new powers for participation in refinancing agreements with financial institutions, with the only limitation that the total principal amount guaranteed not exceed seven million dollars.

Applying the above-cited rules of construction to the language of K.S.A. 75-5030 and 75-5029, it is also apparent that the limitation "except that the total of all such amounts paid under this section shall not exceed 50% of the loss which would otherwise be assumed by the federal government in the event of default of such loan for such project" refers to the original financing with the federal government and not to the refinancing with financial institutions. In addition, the

sentence of K.S.A. 75-5029 limiting expenditures from the fund to half of the federal government's participation was removed when K.S.A. 75-5029 was amended to cover the refinancing. The initial grant of authority in this statute was only for acquisition and rehabilitation and had to be accomplished "in participation with the federal government."

Thus in applying these rules of construction we find that the limits contained in New Section 1 of House Bill No. 2520 govern refinancing arrangements with financial institutions, while the percent limits of K.S.A. 75-5030 govern acquisition and rehabilitation financing in connection with the federal government. This interpretation is further reinforced by the application of other rules of construction.

In construing changes in statutes, the courts presume the legislature intended to supply some want, to fill some deficiency, or add something to make the former legislation more complete and workable. Huss v. DeMott, 215 Kan. 450, 451, 452 (1974). As previously indicated, the statutes did not specifically authorize refinancing and only authorized loan guarantees to the federal government. In order to accomplish the proposed refinancing with private financial institutions, a change in legislation was required.

The last rule of construction that we will apply involves a presumption. We can presume that the legislature was knowledgeable about prior and existing law [Szoboszlay v. Glessner, 233 Kan. 475, 480 (1983)] and as such, we may look into the existing conditions, the causes which impelled the adoption of the new provisions, and the objective sought to be attained. State, ex rel. v. Overland Park, 215 Kan. 700, 714 (1974). Consequently, the 1986 change in the Constitution and the recent opportunity of the Port Authority to refinance become relevant factors in determining the reasons for the new, separate and different limitations placed on the loan guarantee by New Section 1 of House Bill No. 2520. Simply stated, the language and limitations of K.S.A. 75-5030 make no sense in the context of refinancing with a financial institution that is not the federal government, while the new requirements of New Section 1 fit perfectly.

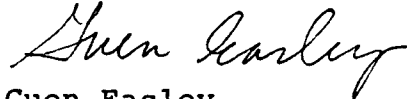
Thus, by the terms and clear legislative intent of K.S.A. 75-5029, 75-5030 and 1989 House Bill No. 2520, any agreement to guarantee a refinancing loan made by a financial institution to the Mid States Port Authority is governed by House Bill No. 2520 and not by K.S.A. 75-5030.

Therefore, it is our opinion that a refinancing loan to the Mid States Port Authority made by a participating financial institution may be guaranteed by the Secretary of Transportation and such refinancing loan is not subject to the 50% loss limitation applicable to the original federal government loan for acquisition and rehabilitation.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General

RTS:JLM:GE:jm