



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 60

Harland E. Priddle  
Secretary  
Kansas Department of Commerce  
400 West 8th Street, 5th Floor  
Topeka, Kansas 66603-3957

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

Synopsis: Moneys emanating from the federally funded  
Community Development Block Grant Program, which is  
administered (as to non-entitlement cities) by the  
Kansas Department of Commerce, may be loaned by a  
city to a private business which invests capital  
and creates new jobs in the city's economy. Such  
loans, which are regulated by the state (through  
approval of the local revolving loan fund plan), do  
not violate the Kansas Constitution or any state  
statute. Cited herein: K.S.A. 9-702; Kan.  
Const., Art. 12, §5.

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Dear Mr. Priddle:

You request our opinion as to whether moneys emanating from  
the federally funded Community Development Block Grant  
Program, which is administered (as to non-entitlement cities)  
by the Kansas Department of Commerce, may be loaned by a  
municipality to a private business in order to stimulate  
economic development and create jobs. Such loans would be  
regulated by the state through approval of the local revolving  
loan fund plan.

The Community Development Block Grant Program is governed by Title I of the Housing and Community Development Act of 1974, and you provide the following overview of the allowed utilization of the funds:

1. Funds passed from HUD to the State's Small Cities Program.
2. State grants the funds to a municipality.
3. Municipality loans the funds to a private business.
4. Business repays the loan to the municipality.
5. Municipality may or may not be allowed by State to capitalize local funds with repayment of loan by business.
6. If not allowed by State to capitalize local fund, loan repayments made by business to municipality return to State program and is redistributed by State.
7. If allowed by State to capitalize local fund, loan repayments made by business to municipality are placed in the local revolving loan fund.
8. If the Local Revolving Loan Fund Plan is disapproved by the State, it is returned to municipality for change.
9. If Local Revolving Loan Fund Plan is approved by State, the municipality may keep the loan payments made by the business. These monies are regulated by the State (through the approval of the Local Revolving Loan Fund Plan) and are free of federal regulation, i.e., Title I.

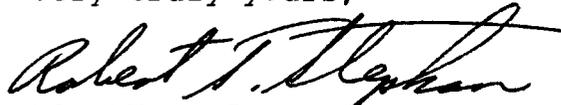
While this office has not opined as to the propriety of a city making loans to stimulate economic development, we have considered the validity of economic development grants in several previous opinions. In Attorney General Opinion No. 88-122, we stated that the city of Topeka may, pursuant home rule 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. Similarly, 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, section 5 of the Kansas Constitution) made to a

private corporation. Additionally, the Kansas Supreme Court has held that grants to revitalize and rehabilitate a downtown business area do not violate the Kansas Constitution. Duckworth v. City of Kansas City, Kansas, 243 Kan. 386 (1988).

If economic development grants are permissible under the Kansas Constitution, it would appear that a city may loan monies to a private corporation under the circumstances you describe. Such a loan would not constitute "banking," as that term is defined in K.S.A. 9-702, nor would it violate any other state statute of which we are aware.

In summary, it is our opinion that moneys emanating from the federally funded Community Development Block Grant Program, which is administered (as to non-entitlement cities) by the Kansas Department of Commerce, may be loaned by a city to a private business which invests capital and creates new jobs in the city's economy. Such loans, which are regulated by the state (through approval of the local revolving loan fund plan) do not violate the Kansas Constitution or any state statute.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JLM:TRH:jm