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ATTORNEY GENERAL OPINION NO. 91- 42

The Honorable Joan Adam  
State Representative, Forty-Eighth District  
State Capitol, Room 330-N  
Topeka, Kansas 66612

The Honorable Rochelle Chronister  
State Representative, Thirteenth District  
State Capitol, Room 182-W  
Topeka, Kansas 66612

Re:            Cities and Municipalities--Port  
              Authorities--Purpose; Creation; Legislative Approval

Synopsis: Under subsection (a) of K.S.A. 1990 Supp. 12-3402, no port authority shall be created without approval of the legislature by concurrent resolution. Such required legislative approval relates to "creation" of a port authority, i.e. activation of a port authority by ordinance or resolution. K.S.A. 1990 Supp. 12-3401(e). K.S.A. 1990 Supp. 12-3402(a) does not require approval of the ordinance itself, and the legislature may approve of the concept of activating a joint port authority by ordinance even though the required joint ordinances and resolutions have not yet been adopted. Cited herein: K.S.A. 1990 Supp. 12-3401; 12-3402; 1991 House Concurrent Resolution No. 5026.

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Representative Joan Adam  
Representative Rochelle Chronister  
Page 2

Dear Representatives Adam and Chronister:

You request our interpretation of K.S.A. 1990 Supp. 12-3402(a). Specifically, you note that 1991 House Concurrent Resolution No. 5026 grants approval for the establishment of a joint port authority prior to the time local governments adopt the necessary ordinances and resolutions under the aforesaid statute. You ask whether this is permissible under K.S.A. 1990 Supp. 12-3401 et seq.

K.S.A. 1990 Supp. 12-3402(a) requires legislative approval for the creation of a port authority, and provides, in part, as follows:

"A port authority shall be a public body corporate and politic which if established shall be known as the 'port authority' of the city or the county. Joint port authorities may be created under authority of this act by cooperative agreement executed by the governing bodies of any city or county or cities or counties. Such joint authorities formed by such cooperative agreement shall have all the powers and jurisdiction enumerated in this act. Such creation shall be by ordinance or resolution and except for port authorities created prior to April 1, 1981, none shall be created without approval of the legislature by concurrent resolution. The authority shall not transact any business or exercise powers hereunder until the passage of a concurrent resolution by the legislature as hereinbefore provided." (Emphasis added.)

As the underscored portion of the above-quoted statutory excerpt indicates, no port authority shall be "created" without approval of the legislature. The term "created" is defined in K.S.A. 1990 Supp. 12-3401(e) as follows:

"'Created,' as related to port authorities, means the activation of such authorities by ordinance or resolution as provided herein."

Representative Joan Adam  
Representative Rochelle Chronister  
Page 3

Thus, the required legislative approval under subsection (a) of K.S.A. 1990 Supp. 12-3402 relates to "creation" of a port authority, i.e. activation of a port authority by ordinance or resolution. The statute does not require approval of the ordinance or resolution itself, and the legislature may approve of the concept of activating a joint port authority by ordinance even though the required joint ordinances and resolutions have not yet been adopted. Accordingly, the "advance approval" granted by 1991 House Concurrent Resolution No. 5026 appears to satisfy the requirement of legislative approval under K.S.A. 1990 Supp. 12-3402.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JLM:TRH:jm