

Subject FILE
State Bonds
Administration
Copy to _____



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

February 7, 1974

Opinion No. 74- 48

James W. Bibb
Director of the Budget
Department of Administration
Statehouse
Topeka, Kansas 66612

Dear Mr. Bibb:

In the enactment of legislation providing for a central motor pool for state motor vehicles, there were provided restrictions upon the purchase of motor vehicles by individual state agencies. K.S.A. 1973 Supp. 75-4609 states thus:

"From and after the effective date of this act, no state agency, except the governor, shall purchase any passenger motor vehicle, except under the following conditions: (a) the purchase of such passenger motor vehicles has been authorized by appropriation act, and

(b) the passenger motor vehicle has, in the opinion of the secretary of administration, only systems and equipment customarily incorporated into a standard passenger motor vehicle completely equipped for ordinary operation, or is equipped with additional systems or equipment found by such secretary to be appropriate in the particular purchase, and

(c) the purchase price of the passenger motor vehicle, exclusive of any such additional systems or equipment, is not in excess of such amount as may be specified in appropriation or other act."

In an opinion dated November 9, 1973, Franklin R. Theis, Chief Attorney for the Department of Administration concluded that

James W. Bibb
February 7, 1974
Page Two

"what is required for the purchase of passenger motor vehicles by a state agency except the governor, is an 'appropriation' in such lawful form as to exclude its use by the agency for any purpose other than the purchase of passenger motor vehicles as defined by K.S.A. 1972 Supp. 75-4601(b), unless, of course, the agency has been excluded from the operation of the act by other statutory provisions."

This office has orally concurred in this view, which is fully consistent with the apparent legislative intent to impose strict legal limitations upon the purchase of automobiles by state agencies. Thus, no agency is legally entitled to purchase motor vehicles unless moneys are lawfully appropriated to it for that purpose by specific line item appropriation.

This matter has since that time required extensive time and attention of this office entirely disproportionate to the legal complexity or subtlety of the legal questions raised. This has resulted in part from the failure of the Legislature at its last session to provide line item appropriations for motor vehicle purchases, and its apparent belief that the requirement of K.S.A. 75-4609 was satisfied by inclusion of money for motor vehicle purchases without specific designation thereof by law. This belief may have resulted from reliance upon an opinion by Attorney General John Anderson, Jr., dated November 19, 1959, to Representative Alvin Bauman, who inquired, following failure of the 1959 Legislature to provide a general retirement system for state employees, concerning the legality of a retirement or superannuation plan adopted without statutory authority by the Board of Regents for employees of institutions of higher education under its control and supervision. He stated thus, in pertinent part:

"As you know, . . . the 1953 session passed the new Department of Administration Act, which act has been in operation since July 1, 1953, and has controlled the submission of budgets by every state agency and department since that time. Under that act each agency or department prepares a budget of all its proposed expenditures for the fiscal year commencing after termination of the following Legislature and such detailed budget then becomes a part of the Governor's budget report.

"These detailed budgets, as is well-known by members of the Legislature, are not only required by law to be furnished the Legislature, but such departmental budgets are in fact thoroughly examined by committees of both houses. Thus in the budgets

submitted for the institutions of higher education . . . , there are contained breakdowns of the amounts required for retired personnel at such institutions for fiscal years 1956, 1957, 1958, 1959 and 1960. These amounts were included in the Governor's budget report and in the departmental budgets for those years, as required by law, and became a part of the Legislature's appropriations for salaries and wages for such institutions in each of those years. A substantial body of authority recognizes that retirement benefits may be regarded as in the nature of deferred payments of salary.

* * *

This broad authority [ch. 297, L. 1917, to fix compensation of officers and employees], coupled with the ratification by successive sessions of the Legislature of the retirement plan in the form of appropriations for salaries and wages, which included retirement compensation, lead us to conclude the retirement plan heretofore used by the Board of Regents is valid."

This opinion is curiously defensive. If, of course, the Board enjoyed by virtue of its authority under the 1917 act to fix compensation of its employees the power to establish a retirement plan, it was entirely unnecessary to find legislative ratification of that authority already granted.

In this instance, involving K.S.A. 1973 Supp. 75-4609, the Legislature expressly required specific appropriations of money for a specific purpose. The language of the statute itself precluded any finding of "ratification," for authority to purchase motor vehicles was expressly withheld unless the purchase "has been authorized by appropriation act," and unless the purchase price is not in excess of "such amount as may be specified in an appropriation act." This amount is legally ascertainable only by resort to an appropriation act itself, and not to detailed budget documents of whatever nature.

This requirement has apparently been found burdensome, and the proposed bill is apparently intended to authorize the purchase of passenger motor vehicles without providing funds therefor by line item appropriation. Subparagraphs (a) and (c) are proposed to be amended as follows, authorizing the purchase of cars if

"(a) Moneys for the purchase of such passenger motor vehicle are included within funds appropriated for the state agency and the purchase has been approved by the secretary of administration, and . . .

James W. Bibb
February 7, 1974
Page Four

"(c) the purchase price of the passenger motor vehicle, exclusive of any such additional systems or equipment, is not in excess of such amount as may be available from funds appropriated for such agency."

We have no question concerning the legality of this proposal. Whereas, under K.S.A. 1973 Supp. 75-4609, a purchase of motor vehicles absent a line item appropriation therefor would give rise to a cause of action for misappropriation of funds. Under paragraph (a) as amended, the question whether moneys are available is hereafter to be ascertained by a review of budget documents to ascertain whether the Legislature intended an appropriation of moneys for a described purpose, such as capital outlay, or other operating expenses, to include moneys for the purchase of motor vehicles. This is appropriate if the Legislature so wishes. However, we would be required to regard the dollar limitation to which paragraph (c) refers as only the total constitutionally appropriated amount available for capital outlay or other operating expenses, e.g., and not the amount that may be detailed in budget documents. Such detailed estimates and recommendations are not, of course, appropriations, and in and of themselves would afford no legally enforceable basis for an action for misappropriation of funds if the detailed items set forth therein were exceeded. Absent a line item appropriation, an appropriation act is as a matter of law silent on the use of funds thereby appropriated other than as respects the general purposes described in the enactment.

Accordingly, in answer to your first question, if it is determined that the total moneys appropriated to an agency include moneys available for the purchase of motor vehicles, the agency may purchase such vehicles with the approval of the Secretary of Administration.

You secondly inquire whether if "moneys were not specifically provided for the purchase of passenger vehicles in the budget document on which the Legislature based its appropriation act, may the Secretary of Administration refuse the purchase of such passenger motor vehicles." Under the proposed amendment, if it cannot be determined that an appropriation included moneys permitted to be used for the purchase of vehicles, the Secretary not only may, but must, refuse his consent. He may, of course, withhold consent even if funds for such purchases are available.

Whether this procedure is practicable, and preserves the legislative control over motor vehicle purchases that the present section was enacted to assure, is a question to be resolved in the legislative forum. If, of course, budget documents are desired to be adopted as a legally referable source of guidance

James W. Bibb
February 7, 1974
Page Five

and direction, rather than merely for administrative purposes, it would be a simple matter of draftsmanship and straightforwardness to insert appropriate references in proposed enactments before the Legislature.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:j sm