

FILE

Subject:

*State Guards
Highway*

Copy to



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

March 8, 1974

Opinion No. 74- 78

Frank L. Johnson
Chief Attorney
Legal Department
State Highway Commission
State Office Building
Topeka, Kansas 66612

Dear Mr. Johnson:

You inquire concerning K.S.A. 68-411 which states thus:

"The state highway commission shall make partial payment to a contractor performing any road or bridge work under contract with it, as the work may progress, said partial payment to be not less than ninety percent (90%) of the contract price of the material delivered and work done and accepted. The highway commission shall provide by regulation, to be made a part of all specifications, for the withholding of not more than ten percent (10%) of the full contract price of any such work until the work is satisfactorily completed and approved by the state highway commission" [Emphasis supplied.]

It is proposed that the Commission establish by regulation a procedure whereby the retained percentage may be held in the form of securities approved by the Commission and deposited in an escrow account.


The statute is silent as to the form and manner in which the withholding shall be accomplished. Its direction is satisfied in our view if the Commission provides by regulation a procedure whereby the retained percentages may be held in the form of securities approved by the Commission and deposited with it by the contractor, or alternatively, a procedure such as that adopted by the Utah State Department of Highways, whereby bonds or securi-

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ties acceptable to the Highway Department are placed in escrow pursuant to an appropriate agreement assuring the right of the Commission to satisfaction of its lawful demands from the securities or proceeds so held.

Other procedures may be considered in the course of amending the current regulation. It is sufficient for us to conclude at this time that the Commission is not restricted, under the terms of the statute, to the present procedure. The statute provides ample latitude for alternative means of withholding an amount equal to ten percent of the full contract price subject to Commission control.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm