

Subject

Copy to

*State Roads
Highway Commission
State Highway
Legislature 1974*



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

April 10, 1974

Opinion No. 74- 118

Honorable Randall Palmer
Representative Third District
802 S. Catalpa
Pittsburg, Kansas 66762

Dear Representative Palmer:

You inquire whether under K.S.A. 68-2301,

"the Kansas Highway Commission has authority to build toll roads as express highways, upon a determination pursuant to a feasibility study, under said act, that public funds for construction are not available and that the construction of such toll road can be financed entirely through proceeds of the bonds issued pursuant to K.S.A. 68-2301 and without need for further enabling legislation."

K.S.A. 68-2301(c) states thus in pertinent part:

"In constructing or reconstructing the state system of modern express highways and freeways established in this section, the commission shall evaluate from time to time the feasibility of designating a portion or portions of any of the modern express highways and freeways within the said system as a toll road. If the commission shall determine that the designation of any such portion as a toll road is feasible, based on the projected traffic, engineering, cost and financing of the proposed toll road and a determination that adequate public funds for construction of such toll road can be financed entirely through proceeds of the bonds issued pursuant to this act, the commission shall submit to the legislature a recommendation that such portion be constructed as a toll road."

[Emphasis supplied.]

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The underscored language is self-explanatory. Although the act is less than completely explicit on the question, the mandatory submission of a recommendation to the Legislature upon a determination that designation of any portion of an expressway or freeway as a toll road is "feasible" suggests, absent clear statutory language to the contrary, that legislative action upon the recommendation is necessary.

K.S.A. 68-2049, first enacted in 1957, states thus:

"Notwithstanding any of the foregoing provisions of this act, no turnpike revenue bonds of the authority shall be issued under the provisions of this act for a second or subsequent turnpike project without a specific act of the legislature authorizing such issuance."

This section is repealed by 1974 Senate Bill 878. That same bill authorizes the Kansas Turnpike Authority to issue revenue bonds for construction of a toll road project ending near Galena, Kansas. Notwithstanding the repeal of K.S.A. 68-2049, supra, which purports to abolish the necessity for specific legislative authorization for issuance of turnpike revenue bonds of the Authority for "a second or subsequent turnpike project," Senate Bill 878 nonetheless provides such express authority for the Galena turnpike bonds. In view of the substance of Senate Bill 878, the repeal of K.S.A. 68-2049 does not appear significant, for at the same time as the Legislature has repealed the law requiring express legislative approval for the issuance of turnpike revenue bonds of the Authority for any second or subsequent turnpike, it enacts such express authority for just such a second turnpike. Moreover, in section 3, a feasibility study authorized for a toll road or turnpike project from the vicinity of Ottawa to a point on the Kansas-Oklahoma border, is required to be completed by December 31, 1974, and the commission to report its findings and recommendations thereon to the Governor and the 1975 session of the Legislature. This requirement obviously imports, tacitly at least, a continuing requirement of legislative approval for the issuance of revenue bonds of the Authority for subsequent projects.

However, to respond specifically to your question, nothing in K.S.A. 68-2301 authorizes the State Highway Commission to proceed further, as outlined in your letter, without enabling legislation.

Yours very truly,



VERN MILLER
Attorney General

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