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STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

June 20, 1974

Opinion No. 74- 204

Franklin R. Theis
Chief Attorney
Department of Administration
State Capitol
Topeka, Kansas 66612

Dear Mr. Theis:

You advise that the director of the Division of Architectural Services of the Department of Administration has reached agreement with owners of certain real property in the City of Topeka that he wishes to purchase, as described in K.S.A. 75-3635 et seq. In order to purchase these properties, he proposes to enter into purchase agreements with the owners thereof, in his capacity as director. He intends to fund the purchase price of these properties, as well as subsequent remodeling costs and other expenses, from the sale of revenue bonds which he is authorized to issue pursuant to K.S.A. 75-3635. Questions have arisen concerning this transaction, upon which you request our opinion.

We assume, as you suggest, that the total purchase price of the property is within the bond limitation expressed in K.S.A. 75-3635, and that the intended purchase price of each parcel is below the highest appraised figure of the three appraisals received pursuant to K.S.A. 75-3641.

You inquire whether the Legislature has made the necessary appropriations in order to make funds available to complete the transactions which are proposed. The second paragraph of K.S.A. 75-3635 states thus:

"To provide for the payment of the costs of acquisition of said lots or tracts of land and improvements thereon, and to provide additional funds for acquisition of facilities for use in connection therewith and for improvements and renovation of the

office building and facilities, and until moneys are available in the operating fund for such purpose for the maintenance and security of the building and grounds so acquired, the director of architectural services is authorized to issue callable revenue bonds in an amount not to exceed one million three hundred thousand dollars (\$1,300,000)."

Under K.S.A. 75-3636, the state board of treasury examiners and the state treasurer are constituted a state investment board for the purposes of K.S.A. 75-3635 et seq., and are empowered to purchase the callable revenue bonds issued by the director:

"[F]or such purpose said board is authorized and directed to use any moneys in the active accounts or time deposits, open accounts of the state of Kansas."

Upon sale of the bonds, the state treasurer is directed, pursuant to K.S.A. 75-3637, to

"deposit the proceeds received from the sale of revenue bonds as authorized by this act in the 5th and Kansas avenue bond proceeds fund, which fund is hereby created."

Upon approval of merchantable titles and warranty deeds to the properties in question as to form and legality by this office, the director of accounts and reports

"shall issue warrants to the seller or sellers of such tracts for the purchase price thereof, such warrants to be paid from moneys in the 5th and Kansas avenue bond proceeds fund in the state treasury." [Emphasis supplied.]

You inquire whether moneys in the 5th and Kansas avenue bond proceeds fund may be drawn therefrom for payments of warrants issued for the purchase price of the properties involved unless and until the Legislature appropriates moneys from that fund for that purpose.

To recapitulate the financing mechanism for this proposed transaction, callable revenue bonds issued by the director of Architectural Services pursuant to K.S.A. 75-3635 are to be purchased by the state investment board, as described above, for which purpose that board is authorized and directed to use "any moneys in the active accounts or time deposits, open accounts of the state of Kansas." Thus, funds for the purchase of these bonds origi-

nate from moneys in the state treasury. No appropriation of funds was made to the state investment board for its use in purchasing revenue bonds issued by the director of Architectural Services. If, of course, no funds actually leave the state treasury in the course of the purchase of such bonds, no appropriation to the state investment board for this purpose is necessary. When the sale of bonds is completed, the state treasurer is directed to "deposit the proceeds received from the sale . . . in the 5th and Kansas avenue bond proceeds fund," which fund is "hereby created" by K.S.A. 75-3637. Warrants issued by the state director of accounts and reports to the sellers of real property in question are to be paid "from moneys in the 5th and Kansas avenue bond proceeds fund in the state treasury." Clearly, it appears, when the state investment board draws upon "any moneys in the active accounts or time deposits, open accounts of the state of Kansas," as it is directed to do in order to purchase the revenue bonds issued by the director of the Division of Architectural Services, the moneys so drawn do not leave the state treasury, but rather are transferred to and deposited in a special fund which is likewise "in the state treasury." Warrants issued by the state director of accounts and reports for the purchase price of the properties in question may not be paid from the "5th and Kansas avenue bond proceeds fund in the state treasury," unless and until money is appropriated from that fund for that purpose.

Article 2, § 24 of the Kansas Constitution states thus:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation made by law, and no appropriation shall be for a longer term than two years."

The constitutional necessity of an appropriation in this instance is clear under principles of law which have been well settled for at least a century of the history of this state. In Martin v. Francis, 13 Kan. 220 (1874), the state printer sought payment of a warrant issued to him by the state superintendent of insurance and drawn on the state treasurer in the amount of \$43, payable out of the insurance fund, in payment for certain printing done for the transaction of business by the insurance department. The state treasurer refused to pay the warrant, on the ground that "no appropriation had been made by the legislature of 1874" for payment of warrants drawn on the insurance fund.

The 1871 act creating the Insurance Department, ch. 93, L. 1871, provided that insurance companies doing business in the state must pay certain fees to the superintendent of insurance. Section 17 directed thus:

Franklin R. Theis
June 20, 1974
Page Four

"All the aforesaid fees shall be paid by the superintendent into the state treasury for an insurance fund, and shall be used for the purpose of defraying the expenses of the insurance department, and for no other purpose whatsoever."

Section 4 provides in pertinent part thus:

"All the salaries, payments and expenditures for said insurance department, authorized by this act, shall be paid by the treasurer of state upon the certificate of the superintendent, in the same manner as other like expenses: Provided, the amount so paid out shall at no time exceed that collected from the insurance companies and paid into the state treasury as provided in this act."

The act made no appropriations whatever out of the insurance fund in the state treasury, or otherwise, for the expenses of the department. Although no appropriations were made for the years 1871 or 1872, warrants of the superintendent of insurance were honored and paid by the state treasurer. An appropriation was passed for the insurance department for 1873, but when none was passed for 1874, the state treasurer refused to honor further warrants on the insurance fund without an appropriation thereof. The court posed the question squarely:

"Can any money belonging to the state, rightfully in the state treasury, and over which the legislature has the rightful control, be drawn from the state treasury except in pursuance of some act of the legislature passed for that purpose within one year prior to the attempted drawing of the money? We must answer this question in the negative.

* * *

Section 24 of article 2 of the constitution reads as follows: 'No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law; and no appropriation shall be for a longer term than one year.' [Amended in 1876 to two years.] This section would seem to be decisive of the question now under consideration. 'No money shall be drawn,' etc; this would seem to mean that no money may ever rightfully be in the state treasury shall be drawn therefrom except in pursuance of an act of the legislature specifically authorizing the

Franklin R. Theis
June 20, 1974
Page Five

same to be done, passed within one year prior thereto."

Unquestionably, funds for the purchase of the property in question must come from the state treasury. Indeed, for the purchase of revenue bonds issued by the state investment board, as described above, that board is authorized and directed "to use any moneys in the active accounts or time deposits, open accounts of the state of Kansas." K.S.A. 76-3636. No moneys were appropriated by either the 1973 or the 1974 Legislature to the state investment board for its use in purchasing such bonds. Of course, insofar as it clearly appears that money paid by the board for these bonds remains in the state treasury, specifically, in the "5th and Kansas avenue bond proceeds fund in the state treasury," K.S.A. 75-3637, it is surely not necessary that an appropriation have been made for the board to enable it to purchase the bonds issued under the act. However, in order that moneys in the "5th and Kansas avenue bond proceeds fund in the state treasury" may be drawn therefrom to pay warrants issued by the state director of accounts and reports to the seller or sellers of the real property in question, it is clearly and unequivocally necessary that an appropriation have been made therefor, as required by Article 2, section 24 of the Kansas Constitution.

The principle of constitutional law involved here is neither novel nor technical. The requirement of the constitution is plain and unambiguous. It is, accordingly, our opinion that no funds may be drawn from the 5th and Kansas Avenue Bond Proceeds Fund created by K.S.A. 75-3637, for the payment of any warrants which might be issued by the state director of accounts and reports to the sellers of the real property in question in payment of the purchase price thereof. In view of this conclusion, it is not necessary to consider whether any of those funds created by K.S.A. 75-3638 are funds in the state treasury, or the further question you raise whether the funding provisions of K.S.A. 75-3635 et seq. comply with Article 2, § 24, or Article 11, §§ 4 and 5.

Yours very truly,

VERN MILLER
Attorney General

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