

FILE
Subject State Transfers
Lands + Property
Copy to _____



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

August 15, 1974

Opinion No. 74- 277

Honorable Duane S. "Pete" McGill
Speaker, House of Representatives
P.O. Box 493
Winfield, Kansas 67155

Dear Mr. Speaker:

We have your letter of July 8, suggesting that somewhere in the provisions of K.S.A. 75-3635 through -3640, there lies a "specific appropriation made by law" which is valid for no "longer term than two years."

Under K.S.A. 75-3635, in order to obtain funds for the purposes set forth therein, the director of architectural services is authorized to issue callable revenue bonds in an amount not to exceed \$1,500,000. Although the state investment board is authorized to purchase these bonds, the Legislature appropriated no moneys to that board from the state treasury for that purpose. Rather, K.S.A. 75-3636 provides only that "[f]or such purpose said board is authorized and directed to use any moneys in the active accounts or time deposit, open accounts of the state of Kansas." No appropriation of money is necessary at this point, however, for no funds leave the State Treasury as a result of the purchase of these bonds by the state investment board. Under K.S.A. 75-3637, the state treasurer is directed merely 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."

No state money is appropriated to this fund. On the contrary, the state investment board is authorized to draw upon no money set apart by the Legislature in any fashion, but may use *any* moneys in the active accounts or time deposit, open accounts of the state of Kansas." [Emphasis supplied.] The moneys which the state treasurer places in the 5th and Kansas avenue bond proceeds fund are not appropriated to that fund, but are transferred

Hon. Duane S. "Pete" McGill
August 15, 1974
Page Two

there without an appropriation thereof. In short, the Legislature has set apart no moneys for deposit in the 5th and Kansas avenue bond proceeds fund.

Yet, it is apparently your contention that a legislative appropriation of state moneys exists in the direction of K.S.A. 75-3637 that

"the state 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."

This, of course, is no more than a grant of authority to the state director of accounts and reports. Warrants issued pursuant to this authority may not be paid unless and until there is a "specific appropriation made by law" for that purpose. Your contention ignores the vital and constitutional distinction between the transfer of state moneys to a described fund and a grant of authority for the payment of warrants from moneys therein, and an appropriation of moneys in a described fund for that purpose. K.S.A. 75-3637 provides for the transfer of unappropriated state moneys to a specific fund and authorizes the payment of warrants therefrom. It does not appropriate so much as a single dime in that fund, however, for payment of the warrants thereby authorized to be issued.

Indeed, this precise distinction was recognized and observed by the Legislature in the appropriation acts challenged in *State ex rel. Anderson v. Fadely*, 180 Kan. 652, 308 P.2d 537 (1957). In section 1 of ch. 34, L. 1956, the Legislature authorized and directed the state treasurer

"to transfer . . . from and out of the general revenue fund of the state of Kansas the sum of \$22,382.00 and to credit said sum so transferred to the fund known and designated as the 'state emergency fund'"

The Legislature itself recognized that a fund transfer is not in and of itself an appropriation, for it went on in section 2 of the enactment to provide that the

"said sum of \$22,382.00 so authorized to be transferred by section 1 of this act is hereby appropriated and made available to the state finance council for the use and purposes and within the limitations imposed and prescribed by section 75-3713"

Hon. Duane S. "Pete" McGill
August 15, 1974
Page Three

Thus, in *Fadely*, there was a specific appropriation. It was challenged not upon any grounds involved herein, but upon the argument that appropriation of moneys to the state finance council to be used for any purpose authorized by then G.S. 1955 Supp. 75-3713 did not satisfy the constitutional requirement that an appropriation be "specific," and hence, for a specified purpose. Thus, it was argued that appropriation of moneys to the finance council for its use within the authority provided by statute constituted a circumvention of the constitutional requirement of a "specific appropriation."

The court did not approve this argument. The court stated thus:

"The term 'specific appropriation made by law' may be defined as an authority of the legislature, given at the proper time and in legal form to the proper officials, to apply a distinctly specified sum from out of the state treasury, in a given period, for a specified objective or demand against the state. In general terms a 'specific appropriation made by law' is the act of setting money apart formally or officially for a special use or purpose by the legislature in clear and unequivocal terms in a duly enacted law. . . . [Citations omitted.] Giving the words used in Art. 2, § 24 of the constitution their common and ordinary meaning it seems reasonably clear to this court that money belonging to the state and rightfully in the state treasury except in pursuance of an act passed by the legislature setting apart or assigning such money to a particular public use for a term not longer than two years which must be specific in amount and specific in purpose to indicate, with reasonable exactness, to the public officials who are authorized to withdraw and use, within such period, the sum so appropriated or set apart to the objective, purpose or plan sought to be accomplished by the appropriation, and for no other purpose" 180 Kan. at 661.

The moneys placed in the 5th and Kansas avenue bond proceeds fund by the state treasurer were never set apart by the Legislature for that purpose. Rather, they were drawn, as indicated above, by the state investment board from "any moneys in the active accounts or time deposit, open accounts of the state of Kansas." In the above quoted language upon which you rely, the court expressly requires, as an element of an appropriation, that the Legislature set apart a specified sum of money for a specified purpose. In authorizing the state investment board to draw upon "any moneys . . . ," the Legislature set apart no moneys whatever. Certainly, the deposit of moneys by the state treasurer in a specified fund does not constitute an appropriation. A direction

Hon. Duane S. "Pete" McGill
August 15, 1974
Page Four

to a state officer that he issue warrants to be paid from a specified fund is that, precisely that, and no more. It is an authority which exists whether money is appropriated for payment of the warrants so authorized or no. If no money is appropriated, the authority is virtually meaningless. The authority exists independently of any appropriation, and persists, under the act in question, not for two years, as you seem to suggest, but so long as the law is not repealed. In the court's own language, *supra*, the court distinguishes between the setting apart of money by the Legislature, which was not done in this case, and its use by "public officials who are authorized to withdraw and use, within such period, the sum so appropriated or set apart"

It is a long-established principle of constitutional law in this state that authority conferred by the Legislature upon a state official to draw upon moneys in a specified fund, to be used for statutorily defined purposes, does not constitute an appropriation of the moneys in that fund. *State ex rel. Board of Regents of the State Normal School v. Stover*, 47 Kan. 119 (1891) and *Martin v. Francis*, 13 Kan. 220 (1874).

Lastly, your attention is invited to Article 2, § 16 of the Kansas Constitution which states in pertinent part thus:

"No bill shall contain more than one subject,
which shall be *clearly* expressed in its title . . ."
[Emphasis supplied.]

The title of the 1973 act in question is found at ch. 352, L. 1973, and describes it thus:

"AN ACT relating to the acquisition of certain tracts of land and improvements thereon in the city of Topeka by the state director of architectural services for use of the state of Kansas and agencies thereof; authorizing the issuance of revenue bonds and providing for the retirement thereof; creating a state investment board and prescribing its powers and duties; authorizing the leasing and subleasing of space in the building and grounds so acquired and for rental rates for use thereof; prescribing the powers and duties of the director of architectural services in connection therewith and establishing an advisory committee to advise and consult with such director."

The title is silent as to any appropriation which might have been included in the enactment.

Hon. Duane S. "Pete" McGill
August 15, 1974
Page Five

I am sure that after reviewing this matter, you will agree that the act in question contains no appropriation whatever of funds in the state treasury.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

cc: James W. Bibb
Director
Division of Budget
Capitol Building
Topeka, Kansas 66612

L. M. Cornish, Jr.
Attorney at Law
First National Bank Tower
Topeka, Kansas 66603

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