

STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider  
Attorney General

February 8, 1977

ATTORNEY GENERAL OPINION NO. 77-52

Mr. Thomas Pitner  
Chief Attorney  
Department of Administration  
2nd Floor - State Capitol Building  
Topeka, Kansas 66612

Re: Architectural Services--Director--Duties

Synopsis: The appropriation of \$32,000 to the Director of Architectural Services made by the 1976 legislature for a study to determine comparative construction and operation costs and visitation estimates for various locations for a new state historical society museum may include any alternative sites which the Director deems appropriate, in addition to the property already acquired by the state pursuant to K.S.A. 1976 Supp. 76-2306 et seq. The contractual services for such study are not exclusively architectural and are not subject to the selection process prescribed by K.S.A. 1976 Supp. 75-5401 et seq.

\* \* \*

Dear Mr. Pitner:

You inquire concerning the use of an appropriation which was made by the 1976 legislature, in the amount of \$32,000, to the Director of Architectural Services

"for contractual services for a study to determine comparative construction and operation cost and visitation estimates of various locations for a new state historical society museum building."

Mr. Thomas Pitner  
Page Two  
February 8, 1977

The use of the appropriation is questioned in light of past legislation actions regarding a site for a new historical museum.

In 1972, the legislature appropriated \$10,000 from the state general fund to the State Historical Society to

"Determine available sites and acquisition costs for a new historical museum location, including taking a purchase option not to exceed \$500 on suitable land if deemed available."

In 1973, the legislature authorized the purchase of a tract of land, described by metes and bounds, "for the site of a state historical museum. . . ." The property is that which was subsequently purchased by the Society in the name of the State of Kansas, that being the land described in the 1973 enactment, as the property constituting the "building and site of the Pottawatomie Baptist Mission. . . ." and located near U.S. Interstate Highway 70 west of the Topeka city limits, and which was described as offering an "ideal location for a state historical museum. . . ." See K.S.A. 1976 Supp. 76-2036 et seq. Also in 1973, the sum of \$190,000 was appropriated for purchase of the property described above.

During the 1976 legislature, there was apparently some discussion of alternative sites for the proposed new museum, one being the so-called capitol area plaza. No legislation resulted from those discussions. However, the appropriation described above was enacted. The question is raised, first, whether the study is to be conducted only on the tract of land already purchased by the state for an historical museum, or whether the study may be of whatever scope the Director of Architectural Services determines. The appropriation itself does not identify any alternative sites on which the comparative study is based, and it thus becomes uncertain whether the study is restricted by the prior legislative action approving purchase of the Pottawatomie Baptist Mission site for use as an historical museum, or whether the study may include other sites.

The legislature has authorized the purchase of a site, recited in ch. 345, L. 1973, as an "ideal location for a state historical museum," and the site has now been purchased. The legislature is always free, of course, to authorize construction of a museum on a different site, however. In my judgment, the 1976 appropriation of \$32,000 to the Director of Architectural Services may be used for a comparative study of any locations which the Director deems appropriate for inclusion in such study.

Mr. Thomas Pitner  
Page Three  
February 8, 1977

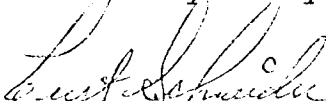
Secondly, you question whether the services rendered in the conduct of the study are architectural in nature, and therefore subject to the selection process prescribed in K.S.A. 1976 Supp. 75-5401 et seq. K.S.A. 1976 Supp. 75-5402(c) defines "architectural services" as including

"those professional services of an architectural nature as well as basic structural, mechanical and electrical engineering services and incidental services that members of the architectural profession and those in their employ may logically or justifiably perform concerning state buildings and grounds."

The practice of architecture is defined by K.S.A. 1976 Supp. 6-102 as the "rendering of service for compensation by consultation, planning or designing of buildings or the responsible administration of construction projects."

The legislature has authorized no building to be built, designed or planned. Obviously, the comparative cost and visitation estimates are to be formulated without reference to any existing design or any project of an identifiable size authorized by any legislative enactment. The nature of the comparative study is not entirely clear, from the mere language of the appropriation act. Clearly, however, the appropriation does not contemplate the design or planning of any structure, but rather a study of comparative construction and operation costs, and comparative visitation estimates. There are architectural firms which are doubtless qualified to perform such services. At the same time, I cannot conclude clearly as a matter of law that the services entailed in the study are exclusively and inherently architectural in nature, and that nonarchitectural firms might not be equally qualified to perform the necessary studies. In this light, I must conclude that the services are not required to be obtained through the negotiation process prescribed by K.S.A. 1976 Supp. 75-5401 et seq.

Yours, very truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj