

STATE OF KANSAS

## Office of the Attorney General

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

**Curt T. Schneider**  
Attorney General

April 14, 1977

### ATTORNEY GENERAL OPINION NO. 77-125

Mr. W. Keith Weltmer  
Secretary of Administration  
Department of Administration  
2nd Floor - State Capitol Building  
Topeka, Kansas 66612

Re: Contracts--Competitive Bidding--Supreme Court Building

Synopsis: Contracts for construction of quarters for the Court of Appeals and for temporary quarters for my offices, both to be located in the Supreme Court building under construction, may not be negotiated with the present contractor or contractors employed on the project, but must be let by competitive bids.

\* \* \*

Dear Secretary Weltmer:

You inquire whether contracts for the construction of quarters for the Court of Appeals and temporary quarters for my offices, both to be located in the Supreme Court building, may be negotiated with the present contractor or contractors employed on the project, as a change order, or whether such contracts must be let by competitive bids.

In 1972, a joint resolution was passed by the Legislature which directed and authorized the Capitol Area Plaza Authority to provide for the preparation of plans and designs for the "construction, development, furnishing, equipping and improvement" of a supreme court building, to provide

Mr. W. Keith Weltmer  
Page Two  
April 14, 1977

"housing for the offices and facilities of the supreme court, including the supreme courtroom and offices for the supreme court justices, clerk of the supreme court, judicial administrator, supreme court reporter and other state offices and officers under the jurisdiction and control of the supreme court, and for temporarily housing the office of the attorney general, the state reference library and the state law library. Said building shall be planned and designed so as to provide sufficient space for the furnishing and equipping of an additional courtroom and offices for judges."

The total cost was directed not to exceed \$8,400,000. The issuance of temporary notes in an amount not to exceed \$100,000 was authorized for the preparation of such plans and designs. Ch. 398, L. 1972. In 1973, the sum of \$8,400,000 was appropriated to the Authority, for "Construction of the supreme court building (to include temporary quarters for the attorney general)." Ch. 21, L. 1973. In 1974, once again, all appropriations and reappropriations to the Authority of funds for the project referred to accounts for "construction of the supreme court building (to include temporary quarters for the attorney general)." Ch. 14, L. 1974. In 1975, a further appropriation of \$150,000 was made to the Authority for "Construction of the supreme court building (to include temporary quarters for the attorney general)." Ch. 12, § 2, L. 1975. In 1976, the sum of \$272,000 was appropriated from the state general fund to the Authority "[t]o provide quarters for the intermediate court of appeals and the attorney general," and a like amount was appropriated for that purpose from an omnibus crime act grant. The court of appeals was created by the 1975 legislature, to be operative on January 10, 1977. Ch. 178, § 1, L. 1975.

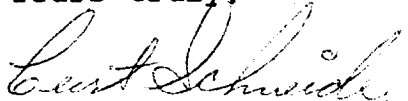
Clearly, the 1972 joint resolution authorized plans and design of the structure to include "sufficient space" for the furnishing of an additional courtroom and offices for judges. However, contracts for the actual construction of quarters for the Court of Appeals would obviously have been premature prior to 1975, when legislation was passed authorizing establishment of that court, and no such contract was let. In 1975, the Director of Architectural Services was directed to provide "a courtroom and other suitable quarters in Topeka for the use of the court of appeals and its staff. Ch. 178, § 12, L. 1975, but no appropriation for that purpose was made.

Mr. W. Keith Weltmer  
Page Three  
April 14, 1977

While a contract for construction of quarters for my offices would have been permissible and indeed within the express language of appropriations for construction which were made by the 1973 legislature and thereafter, no such contract for construction of quarters for the Court of Appeals would have been authorized to be paid from those construction appropriations, for the Court of Appeals quarters were simply not within the stated purposes of those construction appropriations.

Thus, I cannot regard the construction of quarters for the Court of Appeals as within the scope of any existing construction contract for the Supreme Court building. Although construction of quarters for my offices would have been within the scope of appropriations for construction of the building which were approved by the legislature as early as 1973, I understand that no construction contract for either my offices or those of the Court of Appeals has been let. The project entails construction of quarters occupying most, if not all, of the entire second floor, and in my judgment, this construction can scarcely be regarded as within the scope of existing construction contracts which do not include completion of the second floor whatever. The construction of quarters for my staff and for the Court of Appeals is not within the scope of the project for which contracts have been let, and in my addition, competitive bidding is required for the letting of additional contracts for construction of quarters on the second floor of the structure. Although the additional construction will occur on the premises of the building now under way, existing contracts have not made provision for completion of the second floor, apparently, and the construction of offices on that floor constitutes new and additional work which may not fairly be deemed to fall within the scope of the projects for which existing construction contracts were let by competitive bidding.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj