



STATE OF KANSAS

## Office of the Attorney General

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

**Curt T. Schneider**  
Attorney General

July 22, 1977

ATTORNEY GENERAL OPINION NO. 77- 239

Mr. Joseph W. Snell  
Executive Director  
Kansas State Historical Society  
10th and Jackson Streets  
Topeka, Kansas 66612

Re: State Historical Preservation Agency--Historic Sites  
Board of Review--Composition and Powers

Synopsis: (1) The Kansas Historic Preservation Act grants the governor no discretion to appoint members of the state historic sites board of review for terms of other than three (3) years.

(2) Funds received by the Kansas Historical Society pursuant to 16 U.S.C. 470 may be expended without legislative appropriation of such funds.

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Dear Mr. Snell:

You request our interpretation of certain portions of Chapter 284, Laws of 1977 (1977 Senate Bill 130 - State Historic Preservation Act). Specifically you ask: (1) whether the governor may appoint members of the state historic sites board of review for terms of less than three years; and (2) whether the federal historic preservation grants which the State Historical Society pursuant

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1. Such grants are made pursuant to the National Historic Preservation Act of 1966 (16 U.S.C. § 470, *et seq.*).

Mr. Joseph W. Snell  
Page Two  
July 22, 1977

to Chapter 284, Laws of 1977, must pass upon fall outside the budget process required of state agencies.

The State Historic Preservation Act provides for the creation of a state historic sites board of review

". . . which shall be composed of the following members: (1) The state historic preservation officer or such officer's designee; (2) the director of the budget or such director's designee; and (3) five (5) members appointed by the governor for three-year terms, a majority of whom shall be professionally qualified in the fields of architecture, history and archeology."

You inquire whether the terms of persons first appointed by the governor to the board could be fixed for less than three years, so that the terms of all five appointees will not expire simultaneously. You express concern that if the terms of these members all expire at the same time, the effectiveness of the board could be hampered by the loss of continuity and of experienced members. The terms of members appointed by the governor are fixed by section 5 of the act, and the governor has no discretion to appoint members to the board with terms of lesser duration than that fixed by statute.

Secondly, you inquire whether provisions of the act relating to receipt and disbursement of federal assistance and benefits which become available under the National Historic Preservation Act of 1966 permit the board to disburse such moneys without an appropriation therefor by the Kansas Legislature. Section 9 of the act provides thus:

"(a) The state historical society is hereby designated as the official state agency to administer federal assistance under provisions of the national historic preservation act of 1966 and to accept and disburse funds apportioned to the state under the provisions of said act.

(b) The state historical society, as the administrative agency for the state for such federal assistance and benefits as may

Mr. Joseph W. Snell  
Page Three  
July 22, 1977

be available under the national historic preservation act of 1966, shall have the right and is authorized and empowered to: (1) Apply for such assistance and benefits as may be available to the state under said act, and the state treasurer is hereby authorized to receive and disburse such moneys upon the proper voucher by the agency.

(2) Disburse federal and state funds to eligible local governments and private agencies and individuals as directed by the historic sites board of review according to the priorities established in the Kansas preservation law."

In *State ex rel. Boynton v. State Highway Commission*, 139 Kan. 391, 32 P.2d 493 (1934), the attorney general challenged the authority of the Highway Commission to contract with a federal agency for the borrowing of money on revenue anticipation warrants, and to pay the principal and interest on such warrants in accordance with ch. 98, L. 1933, and ch. 4, L. 1934. It was urged, *inter alia*, that the acts in question permitted tax anticipation warrants to be repaid without the appropriation of money therefor, although moneys for this purpose were derived from the proceeds of taxes levied on motor vehicles and motor fuels pursuant to article 11, §§ 9 and 10, Kansas Constitution. The court held that no appropriation was necessary, for the proceeds of these taxes were not deposited in the state treasury:

"The two acts together provide a method of conducting certain state business, which includes the borrowing of money for certain purposes and provisions for its repayment, but neither of them makes a specific appropriation. . . . [S]ection 24 of article 2 of our constitution applies only to moneys that find their way into the state treasury. When our people amended . . . our constitution . . . so that the state could construct and maintain a state system of highways and levy special taxes on motor vehicles and motor fuels for that purpose, they made no specific provision that the moneys so raised and used should necessarily find their way into the

Mr. Joseph W. Snell  
Page Four  
July 22, 1977

state treasury, but left the legislature free to provide for the collection and disbursement of such funds in the way it deemed best. What the legislature did was to provide that these moneys, as collected, should be transmitted to the state treasurer and by him placed in the highway fund and disbursed on proper orders by the highway commission . . . . Since these funds are not required by the constitution to find their way into the state treasury, and by statute do not do so, section 24 of article 2, requiring appropriation of moneys from the state treasury, has no application. These funds are collected for a specific purpose. The legislature would have no authority to appropriate them for other purposes. They are collected, segregated, set aside, and can be used for one purpose only, name, the construction and maintenance of state highways. This is not the only fund the state has, which, although deposited with the state treasurer, and disbursed by him under proper directions of other officials, does not find its way into the state treasury, and therefore does not require specific appropriation every two years by the legislature." 139 Kan. at 394-395.

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

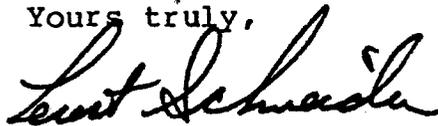
"No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law."

Unless monies awarded under the National Historic Preservation Act of 1966, 16 U.S.C.A. § 470 *et seq.*, and accepted by the State Historical Society under ch. 284, § 9, L. 1977, are deposited in the state treasury, no appropriation is necessary to authorize the disbursement and expenditure of such funds. As in *State ex rel. Boynton v. State Highway Commission, supra*, no provision of the state constitution requires these funds to be deposited in the state treasury, and nothing in ch. 284, L. 1977, imposes

Mr. Joseph W. Snell  
Page Five  
July 22, 1977

such a requirement. The state treasurer is authorized to receive such moneys, but only as custodian, and is specifically authorized to disburse said moneys upon the proper voucher of the Society. Because these moneys are held by the state treasurer only as custodian, and because they are not required by any constitutional or statutory provision to reach the state treasury, they do not, and no appropriation is needed to authorize the expenditure of federal grants and other assistance which the Society receives pursuant to section 9, § 284, L. 1977.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj



STATE OF KANSAS

## Office of the Attorney General

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

**Curt T. Schneider**  
Attorney General

September 15, 1977

Mr. Joseph W. Snell  
Executive Director  
Kansas State Historical Society  
10th and Jackson Streets  
Topeka, Kansas 66612

Dear Mr. Snell:

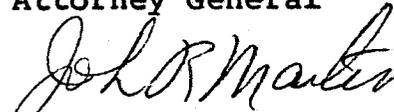
I write to confirm our telephone conversation of some time ago concerning Opinion No. 77-239. In that opinion, we concluded that funds received by the Kansas Historical Society pursuant to the National Historic Preservation Act of 1966, 16 U.S.C. §§ 470 et seq., could be expended without legislation appropriation of such funds therefor, on the ground that no provision required that those funds be deposited in the state treasury. Unfortunately, in reaching this conclusion, we entirely overlooked K.S.A. 75-3734, which provides that "[f]ederal funds received by any state agency shall be deposited in the state treasury . . . ."

I very much regret this omission, and I am authorized to withdraw that portion of the cited opinion which conflicts with this statutory provision.

Yours truly,

CURT T. SCHNEIDER  
Attorney General

BY:

  
JOHN R. MARTIN  
First Assistant  
Attorney General

JRM:kj