STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 78-306

The Honorable Ben Foster
State Representative
920 O. W. Garvey Building
Wichita, Kansas 67202

Re: Elections--Corporations--Contributions

Synopsis: Energy Transportation Systems, Inc., a privately-owned Delaware corporation which proposes to construct a pipeline through and across the State of Kansas for the transportation of coal slurry, is not engaged in any of the businesses enumerated in K.S.A. 25-1709, and is not prohibited by that statute from making contributions to candidates for public office in this state.

* * *

Dear Representative Foster:

You inquire concerning the application of K.S.A. 25-1709 to proposed contributions by Energy Transportation Systems, Inc., to candidates for public office. That statute provides in pertinent part thus:

> "No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, or water company, or any company having the right to take or condemn land or to exercise franchises in public ways granted by the state or by any county or city, and no trustee or trustees owning or holding the majority of the stock of such corporation,

> shall pay or contribute in order to aid, promote, or prevent the nomination or election of any person to public office . . . ."

You advise that Energy Transportation Systems Inc., is a privately-owned Delaware corporation with its principal domicile in San Francisco, California. It is owned by Bechtel Incorporated, of San Francisco, California; Lehman Brothers, of New York; Kansas-Nebraska Natural Gas Company; and United Energy Resources in Houston, Texas. It is a newly formed company which proposes to build a coal slurry pipeline from Wyoming through Nebraska, Kansas, Oklahoma and into Arkansas. It is proposed that Wyoming coal will be pulverized to a fine consistency, mixed with equal quantities of water, and pumped through a 38" underground pipeline to its destination. You advise that in the event Kansas customers are developed, there will be an outlet in Kansas. It is planned that two pumping stations will be constructed in Kansas, each of which will use 50 acres of land. The bulk of the material carried through the pipeline will be shipped through Kansas to Oklahoma and other states. If the company develops no Kansas customers, of course, all of the coal slurry will be shipped through to other states. No Kansas water is proposed to be used in the project. At the destination, the coal will be separate from the water, and the water either used in a utility cooling tower or returned to its natural state and discharged into a river. The powdered coal will be sold to a utility or to industrial users. No charge will be made for water, and no water will be sold.

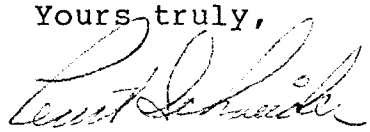
Your concern arises from the fact that the company will operate as a common carrier, falling with the definition thereof at K.S.A. 66-105, which states thus:

> "The term 'common carriers,' as used in this act, shall include all railroad companies, express companies, street railroads, suburban or interurban railroads, sleeping-car companies, freight-line companies, equipment companies, pipe-line companies, equipment companies, pipe-line companies, and all persons or associations of persons, whether incorporated or not, operating such agencies for public use in the conveyance of persons or property within this state."

K.S.A. 25-1709 prohibits contributions to candidates for public office by corporations which carry on a variety of businesses, all of which are subject to especial public regulations. The statute reflects an apparent legislative judgment that such corporations have an extraordinary interest in the political process because of that regulation and that through contributions to candidates may come to wield undue influence upon that regulation. With the enactment of rigorous public disclosure requirements of political contributions, that judgment might well be reexamined. However, the statute remains in effect and must be followed.

In enacting the statute in 1911, the legislature might well have intended to include within the prohibition all corporations which were engaged in business subject to special public regulation. However, it did not include the terms "public utility" or "common carrier" in enumerating the kinds of corporations which were prohibited from making such contributions. That same legislature, in 1911, created the Public Utilities Commission, and defined the terms "public utility" and "common carrier" in prescribing its jurisdiction, ch. 238 §§ 3 and 4, L. 1911, which now appear at K.S.A. 66104 and -105. Whether the omission was intentional or inadvertent, it is clear that a common carrier, as defined by K.S.A. 66-105, which is not engaged in carrying on any business enumerated in K.S.A. 25-1709, is not prohibited by the latter statute from contributing monies to candidates for public office. "It is a fundamental rule that a criminal statute is to be strictly construed and is not to be extended . . . to embrace acts or conduct not clearly included within its prohibitions." *State v. Doyen*, 224 Kan. 482 at 488 (1978). Any corporation which violates K.S.A. 25-1709 is subject to a fine of not more than $10,000, and although it is not strictly a criminal statute, there is no basis here for extending its scope beyond the plain and explicit enumeration of corporations which are subject to it. From the facts which you have furnished and are stated above, it is clear that although the corporation may be a common carrier, it is not engaged in any of the businesses enumerated in the referenced statute, and is not prohibited thereby from making contributions to candidates for public office in this state.

Yours truly,



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