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November 15, 1978

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ATTORNEY GENERAL OPINION NO. 78- 367

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

Re: Employment Security--Special Employment Security Fund--  
Expenditures

Synopsis: The Secretary of Human Resources is authorized by K.S.A. 1977 Supp. 44-715(a) to acquire property in order to establish offices for the operation of the Division of Employment in such places and in such number as he may deem necessary, and monies in the special employment security fund established by K.S.A. 44-716a may be used for that purpose.

\* \* \*

Dear Secretary Weltmer:

Under date of July 20, 1978, I furnished my written opinion, No. 78-241, to Mr. Patrick Brazil, Director of Employment of the Department of Human Resources, concerning the use of monies in the special employment security fund established by K.S.A. 44-716a. In pertinent part, that statute directs that monies therein may be used "for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants (or other funds) received for or in the employment security administration fund." Mr. Brazil inquired whether monies in the fund could be used to purchase land adjacent to its local office in Wichita, Kansas, to provide parking space for persons utilizing the services of the Division of Employment. We responded, in part, thus:

Mr. W. Keith Weltmer  
Page Two  
November 15, 1978

"The sole question here is whether the expenditure of moneys for parking facilities is a 'cost of administration,' and a cost not chargeable against federal funds. You advise that federal funds may not be spent for this purpose. What constitutes a 'cost of administration' is not, of course, defined. The phrase invites one to distinguish between operating costs and capital improvements, a distinction, however, which is not clearly relevant to the purpose of the fund. Its purpose is to provide moneys for expenditures incurred in the administration of the program which are not chargeable against federal funds themselves. The furnishing of appropriate quarters to house the employment security program is surely a necessary cost in the administration of the program. In most Kansas communities users of the services of the program must rely on private transportation to come to the offices of the Division of Employment, and the furnishing of parking space for users of its services is entirely appropriate. The term 'cost of administration' should be broadly construed, in my judgment, to include all expenses which are reasonably and directly related to the furnishing of services of the employment security program."

You request that I reconsider that opinion, urging that in your opinion, "Kansas law, by implication, suggests that, except where specifically authorized by statute, a state agency may not acquire or dispose of real property," and that K.S.A. 44-716a does not provide that authority.

You cite 81A C.J.S., *States*, § 145, as authority for the general rule that it is the legislature alone which decides who may acquire or dispose of real property on behalf of the state. Certainly, that is the rule in this state. K.S.A. 1977 Supp. 44-715(a) commences thus:

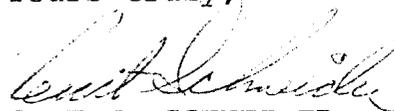
"The secretary of human resources shall establish and maintain employment offices in such number and in such places as may be

Mr. W. Keith Weltmer  
Page Three  
November 15, 1978

necessary for the proper administration of  
this act and for the purposes of performing  
such duties as are within the purview of the  
act of congress . . . ."

This is an express grant of authority to the Secretary to acquire and furnish appropriate physical facilities for the offices of the Division of Employment. Nothing in this section implies that the Secretary may provide such offices only by rental or lease. As you point out, the legislature has passed a number of special enactments authorizing the acquisition of particular tracts of real property. I cannot infer from this host of discrete, usually unrelated enactments a gloss of legislative history which supports such a restrictive construction of the very express statutory authority of the Secretary to provide quarters for the Division of Employment. He is to "establish and maintain . . . offices in such number and in such places" as may be necessary for the operation of the act. This language evinces no legislative purpose that the Secretary must resort to the legislature for express authority to acquire property for each separate and individual office which he may deem necessary for the operation of the Division of Employment. In my estimation, this provision constitutes an express grant of authority to the Secretary to acquire property in order to establish offices in such number and in such places as he deems necessary for the proper administration of the act, and that monies in the special employment security fund established by K.S.A. 44-716a may be used for that purpose.

Yours truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj