



STATE OF KANSAS

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ROBERT T. STEPHAN
ATTORNEY GENERAL

September 11, 1980

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ATTORNEY GENERAL OPINION NO. 80- 193

Mr. Thomas P. Barr
Historic Properties Supervisor
Kansas State Historical Society
120 West Tenth Street
Topeka, Kansas 66612

Re: State Institutions--Patriotic and Historical
Property--Lease of Certain Lands to City of Hays

Synopsis: The City of Hays may not construct new buildings or structures on that portion of Kansas Frontier Historical Park leased to the City until a lease modification agreement is agreed upon and executed, pursuant to the provisions of L. 1980, ch. 303. Such a lease modification agreement, if executed, would allow the City to construct additions to existing buildings and other structures, provided that the prior written consent of the Kansas State Historical Society is obtained. Cited herein: K.S.A. 1979 Supp. 76-2007a, 76-2007c, and 76-2007g; L. 1976, ch. 410, §§2 and 4(b); and L. 1979, ch. 303, §3.

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Dear Mr. Barr:

You request our opinion as to whether the Kansas State Historical Society has the authority to allow the City of Hays to construct certain "golf cart sheds" on that portion of Kansas Frontier Historical Park (on the Fort Hays Military Reservation) leased to the City as a golf course open to the public. You advise that the sheds would be constructed with private funds, and under the proposal submitted by the City, those persons providing funds for construction would be entitled to occupy the sheds "rent-free" for a number of years.

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The land upon which the subject golf course is situated is a part of what is officially known as "Kansas Frontier Historical Park on the Fort Hays Military Reservation." The City of Hays currently operates the golf course under the terms of a lease entered into by the City and the State of Kansas, pursuant to L. 1976, ch. 410, §2. The lease provides, in part, as follows:

"Lessee shall not construct any new buildings or other structures in the golf course areas of such real estate."

This restriction on new construction was required to be included in the lease pursuant to L. 1976, ch. 410, §4(b) [K.S.A. 76-2007c]. The 1979 Legislature amended the subject act to allow certain modifications to the lease executed in 1976. One of the modifications authorized is set forth in K.S.A. 1979 Supp. 76-2007c (L. 1979, ch. 303, §3), which statute provides, in part, as follows (amendatory provisions underscored):

"Th lease entered into pursuant to the provisions of this act shall contain the following restrictions or limitations on the use of the land so leased:

. . . .

"(b) no new buildings or other structures shall be constructed in the golf course area of such property, except that: (1) Existing facilities, buildings and other structures, may be maintained or repaired, or any combination thereof, without the written consent of the state historical society so long as the, maintenance or repair, or any combination thereof, of any existing facility does not materially change the contours or topography of such property; and (2) additions to existing buildings and other structures may be constructed with the prior written consent of the state historical society, and any such construction shall be conducted under the supervision of the state historical society;"
(Emphasis added.)

Another section of the 1979 Act, K.S.A. 1979 Supp. 76-2007g, provides as follows:

"Any lease entered into prior to the effective date of this act under K.S.A. 76-2007a to

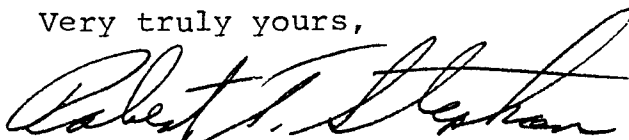
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76-2007c, inclusive, may be modified, with the agreement of the parties thereto, to provide for the changes in the terms of such lease authorized by this act." (Emphasis added.)

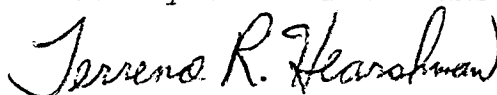
This provision makes it clear that the lease previously executed may be modified to reflect the changes authorized by the 1979 Act, including the relaxation of the total prohibition on new construction, provided the changes are agreed to by the parties. In our judgment, a modification agreement must be executed in the same manner as the original lease (see K.S.A. 1979 Supp. 76-2007a) before the changes authorized by L. 1979, ch. 303 become effective. Therefore, until such a modification agreement is executed, both the State and the City must abide by the terms of the existing lease, including the prohibition against new construction.

In the event a modification agreement, incorporating the changes authorized by L. 1979, ch. 303, is agreed upon and executed, the proposed golf cart sheds could, in our opinion, be constructed, provided the prior written consent of the Historical Society is obtained. Of course, the right of any individual to "occupy" or "use" the sheds under an agreement with the City of Hays would be subject to the provisions and continued operation of the lease between the State and the City.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm