



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

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ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81-254

Mr. Joe P. Rishel, Chairman
Kansas Fish and Game Commission
Box 54A, Rural Route 1
Pratt, Kansas 67124

Re: State Boards, Commissions and Authorities--Fish
and Game Commission--Authority to Accept Beneficial
Interest in Trust Property

Synopsis: The provisions of K.S.A. 58-2431 et seq. govern the creation of trusts for the benefit of the state of Kansas. Among other requirements, said statutory provisions prescribe that the trustee of such a trust must be an agency of the state of Kansas, and that, in the case of written instruments, the beneficial interest in the trust must be accepted by the governor. The Kansas Fish and Game Commission must comply with the requirements of K.S.A. 58-2431 et seq. prior to entering into any trust agreement whereby moneys are donated for the improvement of donated lands.

Where the Kansas Fish and Game Commission is the trustee under a trust for the improvement of certain donated state lands, and is contracting for the improvement of such lands, the competitive bidding requirements prescribed by K.S.A. 1980 Supp. 75-3739 would apply. Kansas Attorney General Opinion No. 81-244 is modified as set forth herein. Cited herein: K.S.A. 58-2431, 58-2437, K.S.A. 1980 Supp. 75-3739.

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Mr. Joe P. Rishel
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Dear Mr. Rishel:

As you are aware, this office previously issued Kansas Attorney General Opinion No. 81-244, which opinion concerned the authority of the Kansas Fish and Game Commission (hereinafter referred to as "the Commission") to accept a donation of mined land from Gulf Oil Corporation, and the Commission's authority to enter into a proposed real estate donation agreement. It has come to our attention that said opinion, relating to a trust to be established for the improvement of the donated lands, does not consider certain state statutes governing trusts for the benefit of the state of Kansas, and must be modified.

In the previous opinion, we did not discuss the provisions of K.S.A. 58-2431 et seq. Among other requirements, said statutory provisions prescribe that, in the case of written instruments, the beneficial interest in any trust for the benefit of the state of Kansas shall be accepted by the governor of the state of Kansas (K.S.A. 58-2431), and that the trustee under a written trust instrument shall be an agency of the state of Kansas (K.S.A. 58-2437). Accordingly, it is our opinion that the proposed trust for the improvement of certain donated lands considered in our prior opinion must comply with the requirements of K.S.A. 58-2431 et seq. To achieve such compliance, a state agency must be designated as trustee and the governor must accept the beneficial interest in the trust.

As a result of this change, another aspect of the prior opinion, which relates to the application of K.S.A. 1980 Supp. 75-3739 to contracts for the improvement of the donated lands, needs corresponding modification. In the prior opinion, we had stated that the competitive bidding requirements imposed by said statute were not applicable, due to the fact that a corporate trustee would be holding legal title to the donated moneys and be entering into the subject contracts. As it is now clear that a state agency must act as the trustee and, therefore, hold legal title to the trust property and enter into the subject contracts, it is our opinion that, under such a trust agreement, the trustee would have to comply with the competitive bidding requirements prescribed by K.S.A. 1980 Supp. 75-3739. Kansas Attorney General Opinion No. 81-244 is modified to the extent set forth above, but remains controlling as to issues not dealt with herein.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm