



STATE OF KANSAS

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February 28, 1983

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ATTORNEY GENERAL OPINION NO. 83- 25

Joseph F. Harkins
Director, Kansas Water Office
503 Kansas Avenue
Topeka, Kansas 66603

Re: Waters and Watercourses -- Water Plan Storage --
Amendment of Contracts

Synopsis: K.S.A. 82a-1316 provides that any contract for the withdrawal of water held in conservation storage by the state may be amended by written agreement of the parties, provided that such amendment does not affect the rate per unit of water or the minimum charge payable each year. Provisions specifying the point of withdrawal of water, however, may be amended so as to change the reservoir named in the contract. Such an amendment must, in order to have effect, be transmitted to and approved by the legislature in the same manner as water purchase contracts. Cited herein: K.S.A. 19-3435, 82a-1301, K.S.A. 1982 Supp. 82a-1307, K.S.A. 82a-1316, L. 1976, ch. 441, §4, L. 1982, ch. 438, §1.

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Dear Mr. Harkins:

As Director of the Kansas Water Office, you request our opinion on a matter involving a contract for the purchase of water held in storage by the state. Specifically, you inquire concerning the manner in which the contract may be amended, or, alternatively, whether the extent of the proposed changes would require the implementation of a new, separate contract.

The contract in question, No. 81-6, was negotiated between the Kansas Water Office and Public Wholesale Water Supply District No. 5 ("the district") in 1981. The district, which covers all or part of five counties in the southeastern part

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of the state, is organized pursuant to K.S.A. 19-3435 et seq., and is a quasi-municipal corporation made up of various municipalities that are interested in securing a continuing supply of water. As a result of the negotiations, on December 16, 1981, a contract was agreed to by which the district can purchase up to 87 million gallons of water each year for a term of 40 years. While you inform us that the district was initially interested in withdrawing the water from John Redmond Lake, or, alternatively, from Council Grove Reservoir, both of these sites were fully allocated by 1981. As a result, the district contracted for water from Marion Reservoir, despite factors which made such a location less than ideal.

However, the situation has now changed, as water previously allocated in Council Grove Reservoir has been freed due to various circumstances. The district, which has not used any of the water contracted for from Marion Reservoir, wishes to amend its agreement with the water office to allow withdrawals from Council Grove, which, after John Redmond, was its original preferred site. You inquire regarding the power of the water office to make such an amendment, in lieu of negotiating an entirely new contract. In that time is of the essence, we have expedited our reply.

In our opinion, nothing in the Kansas Water Plan Storage Act, K.S.A. 82a-1301 et seq., precludes the making of such an amendment to the existing water purchase contract between your office and the district. K.S.A. 82a-1316 provides as follows:

"No assignment, sale, conveyance or transfer of all or any part of a contract under K.S.A. 82a-1305, or of interest thereunder, or of interest therein shall be valid unless and until the same is approved by the board under such reasonable terms and conditions as the board may impose. Any contract under K.S.A. 82a-1305 may be amended or nullified by written agreement of the parties thereto made and recorded as provided in this act for original contracts under K.S.A. 82a-1305, but no such amendment shall change any rate specified in the original contract in accordance with either paragraphs (a) or (b) of K.S.A. 82a-1306.

"Every such contract amendment shall be transmitted as provided in K.S.A. 82a-1307 for original contracts, and shall be subject to revocation as provided in K.S.A. 82a-1307. Whenever a contract amendment is so revoked, the contract to which the amendment applied shall

remain valid and unchanged, as though such amendment had never been agreed upon." (Emphasis added.)

As the only terms sought to be changed (references to the reservoir's name and the description of the point of withdrawal) are not included among those expressly made inviolate by the statute, it may be presumed that they are allowed. See, e.g., State v. Wood, 231 Kan. 699 (1982), U.S. v. Jones, 567 F.2d 965 (10th Cir. 1977).

Assuming that an agreement regarding the amendment is reached, it must be forwarded to and approved by the legislature as provided in K.S.A. 1982 Supp. 82a-1307. Therein, it is stated [at subsection (a)]:

"Except as provided in paragraph (b), on the first day of each regular legislative session, the Kansas water office shall transmit to the house of representatives and the senate of this state, and to the secretary of state, copies of each contract made and executed under K.S.A. 82a-1305 since the day preceding the first day of the regular legislative session occurring most recently prior to such transmission. Such contract copies transmitted to the secretary of state shall be and remain filed in the office of the secretary of state from the date transmitted until the end of the fifth year following the end of the term thereof, and during such time shall be available for public inspection during regular business hours. At any time during the first 60 calendar days of the regular legislative session when a contract is transmitted as provided in this section, the legislature may disapprove and revoke such contract by adoption of a concurrent resolution so providing."
(Emphasis added.)

Since the statutory deadline for submission of contracts and amendments thereto to the 1983 session of the legislature has already passed, by the terms of the above subsection it would be the 1984 session which would review the amendment contemplated here. While the amendment would be of immediate force and effect, revocation would still be a possibility until the 61st calendar day of next year's session.

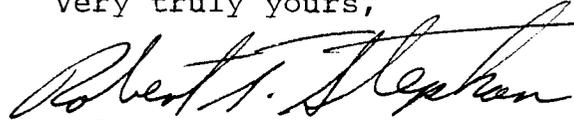
However, we would note that the legislature could, if it desired, amend the general rule contained in subsection (a) of K.S.A. 1982 Supp. 82a-1307. Such action was taken both in the 1976 and 1982 sessions, and involved extending the time

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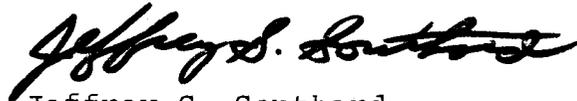
for submission of contracts until later on in the session. See L. 1976, ch. 441, §4 and L. 1982, ch. 438, §1. Given the length of time that the district would be uncertain as to the acceptability of the amendment, such action could be considered here.

In conclusion, K.S.A. 82a-1316 provides that any contract for the withdrawal of water held in conservation storage by the state may be amended by written agreement of the parties, provided that such amendment does not affect the rate per unit of water or the minimum charge payable each year. Provisions specifying the point of withdrawal of water, however, may be amended so as to change the reservoir named in the contract. Such an amendment must, in order to have effect, be transmitted to and approved by the legislature in the same manner as water purchase contracts.

Very truly yours,



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Jeffrey S. Southard
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RTS:BJS:JSS:hle