



STATE OF KANSAS

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April 22, 1983

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ATTORNEY GENERAL OPINION NO. 83- 61

The Honorable Mike Hayden
Speaker
House of Representatives
Room 377-W, Capitol
Topeka, Kansas 66612

Re: Constitution of the State of Kansas -- Finance
and Taxation -- Internal Improvements; Railroad
Loan Guarantee Fund

Synopsis: Article 11, §9 of the Kansas Constitution prohibits the state of Kansas from expending state moneys to guarantee loans made by the federal government for railroad rehabilitation where the federal government will be fully reimbursed on the loans by the state. However, Article 11, §9 does not prohibit the legislature from providing payment of state moneys in an amount not to exceed one-half of the loss assumed by the federal government in the event of default on any loan made for a railroad project. Cited herein: Kan. Const., Art. 11, §9.

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Dear Speaker Hayden:

You inquire by telephone today regarding a draft bill (attached) establishing a railroad rehabilitation loan guarantee fund. You ask if the proposed bill would violate Article 11, §9 of the Kansas Constitution which provides:

"The state shall never be a party in carrying on any work of internal improvement except that: (1) It may adopt, construct, reconstruct and maintain a state system of highways, but no general property tax shall ever be laid

nor general obligation bonds issued by the state for such highways; (2) it may be a party to flood control works and works for the conservation or development of water resources; (3) it may, whenever any work of internal improvement not authorized by (1) or (2) is once authorized by a separate bill passed by the affirmative vote of not less than two-thirds of all members then elected (or appointed) and qualified to each house, expend or distribute funds received from the federal government therefor and may participate with the federal government therein by contributing any state funds appropriated in accordance with law for such purpose in any amount not exceeding the amount received from the federal government for such improvement, but no general property tax shall ever be laid nor general obligation bonds be issued by the state therefor; and (4) it may expend funds received from the federal government for any public purpose in accordance with the federal law authorizing the same."

First, we note that in our judgment the expenditure of state moneys for the support of railroads makes the state a party to a work of internal improvement. Thus, Art. 11, §9 is applicable.

Second, if the proposed bill is to be effective, two procedural requirements must be met: The bill must be passed by a 2/3 vote of each house of the legislature since this proposal could only proceed pursuant to Art. 11, §9(3), and the federal contribution must have been "received" by the state of Kansas for disbursement on any project. See Kan. Att'y Gen. Op. No. 82-257, enclosed.

The proposal contemplates that the federal government will loan some \$18 million to a Kansas port authority. In the event of default, the federal government will be repaid in full with interest from assets of the defunct railroads and the moneys appropriated from the proposed railroad rehabilitation loan guarantee fund. While there is some confusing language in the bill which makes Sections 1 and 2 difficult to construe together, we have attempted to address the intent and general purpose of the bill in expressing our opinion.

In our opinion, the bill as drafted would contravene Article 11, §9. Without belaboring this opinion with detail, we note that such a procedure means that in the event of a default on the loan, the State of Kansas would pay an amount exceeding the amount ultimately expended by the federal government. In short, if there is no default on the loan the State

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pays nothing. If there is a default, the federal government pays nothing and the State pays for any loss beyond the assets of the railroads involved. We believe such proposal to be unconstititutional.

Being cognizant of the needs of Kansans for rail service and the desire of the Kansas Legislature to respond to those needs, we are happy to suggest an alternative method of promoting the federal loan proposal. In our judgment, Article 11, §9 would not prohibit the legislature from amending the proposed bill to provide for the payment by the State of Kansas of an amount not to exceed one-half the loss assumed by the federal government in the event of default on any loan for a particular railroad project. Thus, in the event of a default, both the federal and state governments would absorb equal portions of the loss on the principal and interest of the loans.

We cannot speculate on what response this proposal will receive in Washington, but it seems most fair and responsible to us. More importantly, however, this latter suggestion represents the limits to which the state of Kansas may constitutionally participate in works of internal improvements such as railroad rehabilitation.

In summary, it is our opinion that Article 11, §9 of the Kansas Constitution prohibits the state of Kansas from expending state moneys to guarantee loans made by the federal government for railroad rehabilitation where the federal government will be fully reimbursed on the loans by the state. However, Article 11, §9 does not prohibit the legislature from providing payment of state moneys in an amount not to exceed one-half of the loss assumed by the federal government in the event of default on any loan made for a railroad project.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:hle

Enc.