



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 95

The Honorable Robert H. Miller
State Representative, Eightieth District
R.R. 1
Wellington, Kansas 67152

Re: Agricultural Hall of Fame -- State Aid -- Internal
Improvements

Synopsis: State appropriations to the Agricultural Hall of
Fame are not violative of Article 11, Section 9 of
the Kansas Constitution. Cited herein: K.S.A.
2-2701, 1983 House Bill No. 2140, Kan. Const.
Art. 11, §6, Kan. Const. 1982 Supp., Art. 11,
§9, 36 U.S.C.A. §§971, 973.

* * *

Dear Representative Miller:

You request the Attorney General's opinion concerning the recent appropriation by the 1983 Kansas Legislature to the Agricultural Hall of Fame of \$250,000.00, 1983 House Bill No. 2140. You ask if this action violates the prohibition against state participation in works of internal improvement contained in Article 11, Section 9 of the Kansas Constitution. Secondly, you inquire whether past appropriations to the Agricultural Hall of Fame by the Kansas Legislature in fiscal years 1981, 1982 and 1983, were violative of the same constitutional provision.

This office has had numerous occasions to opine regarding which activities of state government constitute participation in works of internal improvements and we have in such context discussed the numerous court decisions of this and other jurisdictions. See e.g., Kan. Att'y Gen. Op. No. 79-27. Suffice it to say that Article 11, Sec. 9 is intended to limit state involvement in commercial enterprise, prevent insolvency of the state treasury and "logrolling." Except for those situations permitted explicitly by this section, the state, as a state, is absolutely prohibited from being

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a party to a work of internal improvement. As those exceptions are not relevant here and there can be little question that the state, by making a grant-in-aid, is a participant in the activity (Id. at six), the remaining question is whether the Agricultural Hall of Fame qualifies as a work of internal improvement. In our judgment, it does not.

It is to be remembered that the state is not prohibited from expending funds for public purposes, particularly public buildings. Such improvements are authorized by Article 11, Sec. 6 of the Kansas Constitution. In comparing these two constitutional provisions, the Kansas Supreme Court observed thus:

"The term 'public improvements,' are used in section 5 [now contained in article 11, section 6], meant public buildings which the state should need in carrying on its functions, such as the statehouse, state penal, educational and eleemosynary institutions (Wyandotte Constitutional Convention, p. 327), while the term 'internal improvements,' used in section 8 [now contained in article 11, section 9], applied to turnpikes, canals and the like." State ex rel. Boynton v. State Highway Commission, 138 Kan. 913, 919 (1934).

To further illustrate the distinction between these two classes of improvements we note first, Leavenworth County v. Miller, 7 Kan. 479 (1871), where the Court observed that the state is "prohibited from opening up or constructing any roads, highways, bridges, ferries, streets, pavements, wharfs, levees, drains, waterworks, gas works, or the like" Id. at 493. Consistent with this list of proscribed activities was a subsequent determination by the Court that the placement of an oil refinery at the state penitentiary at Lansing would constitute a work of internal improvement. State v. Kelly, 71 Kan. 811 (1905). Similarly, we have opined that expenditure of federal historical preservation funds by the state legislature to a private commercial enterprise is also prohibited by our constitution. Kan. Att'y Gen. Op. No. 79-27.

On the other hand, the construction of student dormitories at state educational institutions have been held to be "public improvements" and not "internal improvements." State ex rel. Fatzer v. Board of Regents, 167 Kan. 587 (1949). Such dormitories held an obvious connection with a recognized government function, namely, education. Based on this and other court decisions, our office has concluded that construction of a state fish hatchery (Kan. Att'y Gen. Op. No. 82-72) and the appropriation of public funds to non-commercial public television (Kan. Att'y Gen. Op. No. 80-55), are not prohibited by the constitutional restrictions on internal improvements.

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In our judgment, the expenditure of state funds in the form of grants-in-aid to the Agricultural Hall of Fame is the spending of public funds for a public purpose or public improvement. The Agricultural Hall of Fame was created by an Act of Congress in 1960 (P.L. 86-680). Its purpose is to honor farmers and the industry of farming in general; to record the history of agriculture in the United States and to educate on the subject through the use of libraries, museums and their collections. See 36 U.S.C.A. §971 et seq. (1960). The Agricultural Hall of Fame is established as a non-profit public corporation chartered under the laws of the United States and is entitled to receive charitable contributions. 36 U.S.C.A. §973 and articles of incorporation §5. In this regard, the Hall of Fame is similar in form and substance to the State Historical Society, various historical sites and parks, numerous museums and libraries connected with state educational institutions.

Although the Agricultural Hall of Fame is not state owned, the State of Kansas does have a vested interest in its operations. In 1969, the State Highway Commission was granted the right of eminent domain over property located in Wyandotte County, Kansas, for the purposes of providing visual access, recreational facilities and landscaping on the area of land immediately surrounding the Agricultural Hall of Fame. See K.S.A. 2-2701.

Finally, we consider the issue of whether the grants-in-aid herein are for a public purpose. This office has previously examined the judicially created "public purpose" doctrine. See Attorney General Opinion No. 81-208. Therein we relied upon the reasoning of the Supreme Court of Ohio in State ex rel., McClure v. Hagerman, 155 Ohio St. 320, 98 N.E.2d 835 (1951), which stated:

"Each case must be decided in the light of the existing conditions, with respect to the objects sought to be accomplished, the degree and manner in which that object affects the public welfare, and the nature and character of the thing to be done; but the court will give weight to a legislative determination of what is a municipal purpose, as well as widespread opinion and general practice which regard as city purposes some things which may not be such by absolute necessity, or on a narrow interpretation of constitutional provisions. Where an appropriation of public funds is primarily for public purposes, it is not necessarily rendered violative of constitutional provisions against gifts and loans of public credit by an incidental result which

may be of private benefit. On the other hand, if the result is chiefly that of private benefit, an incidental or even ostensible public purpose will not save its constitutionality. A purpose may be a public one so as to be within a municipal power to appropriate funds therefor, even though it is not a necessary purpose. It has been laid down as a general rule that the question whether the performance of an act or the accomplishment of a specific purpose constitutes a 'public purpose' for which municipal funds may be lawfully disbursed rests in the judgment of the municipal authorities, and the courts will not assume to substitute their judgment for that of the authorities unless the latter's exercise of judgment or discretion is shown to have been unquestionably abused." (Footnotes omitted.)
Id. at 334-335.

By way of further analysis we quote from Leavenworth County v. Miller, supra:

"The object which determines the character of a corporation is that designed by the legislature, rather than that sought by the company. If that object be primarily the private interests of its members, although an incidental benefit may accrue to the government therefrom, then the compensation is private; but if the subject be of the public interest, to be secured by the exercise of powers delegated for that purpose, which would otherwise repose in the state, then, although private interests may be incidentally promoted, the corporation is in its nature public; . . .

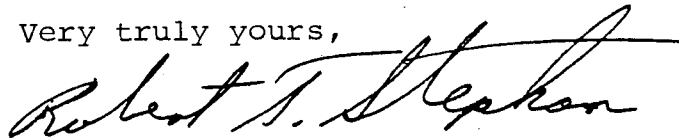
"There are several classes of corporations, such as public municipal corporations, the leading object of which is to promote the public interest; corporations technically private, but yet of a quasi public character, having in view some grand public enterprise, in which the public interests are directly involved to such an extent as to justify conferring upon them important governmental powers . . . of this class are railroads . . . and corporations strictly private, the direct object of which is to promote private interests, and in which the public has no concern, except the indirect

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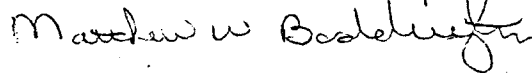
benefit resulting from the promotion of trade and the development of the general resources of the county." Id. at 520, 521. See also, 64 C.J.S. Municipal Corporations §1835 (1960).

Based on the principles enunciated above, we are not persuaded that the nature of activities performed by the Agricultural Hall of Fame or its legal status as a non-profit corporation require the conclusion that the Hall of Fame is a work of internal improvement within the meaning of Article 11, §9, or has a private, rather than public, purpose. Therefore, as all the appropriations about which you inquire are within the permissible parameters of the Kansas "public purpose" doctrine and the Agricultural Hall of Fame may be viewed as a quasi-public corporation, we can only conclude that past and present state appropriations to the Agricultural Hall of Fame are not prohibited by Article 11, §9 of the Kansas Constitution.

Very truly yours,



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Attorney General of Kansas



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RTS:BJS:MWB:hle