



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

October 18, 1984

ATTORNEY GENERAL OPINION NO. 84-107

Mr. Charles J. "Jamie" Schwartz
Secretary
Kansas Department of Economic Development
503 Kansas Avenue, Sixth Floor
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities --
Department of Economic Development -- Establishment
of Incubator Facilities for Small Business Concerns

Synopsis: The authority of the Kansas Department of Economic Development to make grants pursuant to Chapter 276 of the 1984 Session Laws of Kansas (to establish incubator facilities for small business concerns) is subject to the condition that only qualified nonprofit corporations shall be eligible to receive a grant. A city or county is not such a nonprofit corporation, and is not eligible to receive a grant, even under circumstances where the city or county agrees to "pass the funds through" to an eligible nonprofit corporation. Cited herein: L. 1984, ch. 276, §1, L. 1984, ch. 23, §21, 42 U.S.C.A. §§5302(a)(1), 5306(d)(2)(A), 24 C.F.R. §§570.1(a)(3), 570.3(w), 570.488.

* * *

Dear Mr. Schwartz:

You request our interpretation of Chapter 276 of the 1984 Session Laws of Kansas. That enactment directs the Kansas Department of Economic Development (KDED) to establish a grant program for the purpose of funding one or more "incubator facilities" for small business concerns, and defines an "incubator facility" as "a building or buildings that provide space and support services for small business concerns which are beginning operation." Your specific question is whether the enactment authorizes KDED to make

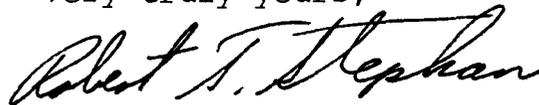
grants to "units of general local government," which "units" would be required to "pass those funds through to an eligible nonprofit development corporation."

Your inquiry is prompted by the fact that Section 1(d) of the above-referenced law prescribes that only nonprofit corporations affiliated with community industrial development committees or commissions shall be eligible to receive a grant, whereas federal law has been interpreted as providing that only "units of general local government" (i.e. a city, county or other political subdivision) shall be eligible to receive a grant. [See 42 U.S.C.A. §§5302(a)(1), 5306(d)(2)(A); 24 C.F.R. §§570.1(a)(3), 570.3(w), 570.488.] Since the grant program is federally funded [see L. 1984, ch. 23, §21(c)], it is necessary to determine whether KDED can comply with the federal regulations, i.e. make grants to "units of general local government," without violating the express terms of the state enabling legislation.

Section 1(d) of Chapter 276 of the 1984 Session Laws of Kansas specifically provides that "only nonprofit corporations which are affiliated with community industrial development committees or commissions established by Kansas counties or cities shall be eligible to receive a grant" from KDED. As an administrative agency of the state, KDED must exercise any administrative authority conferred upon it in accordance with the conditions which have been imposed by law. See Olathe Community Hospital v. Kansas Corporation Comm'n, 232 Kan. 161, 167 (1982). In this regard, the authority to make grants pursuant to the above-cited law is subject to the condition that only the above-described nonprofit corporations shall be eligible to receive a grant. A city or county is not such a nonprofit corporation, and, in our judgment, is not eligible to receive a grant, even under circumstances where the city or county agrees to "pass the funds through" to an eligible nonprofit corporation.

Since state law, as interpreted above, does not confer authority upon KDED to make grants in the manner required by federal law, i.e. to designate a "unit of general local government" as a recipient of the grant, it is clear that KDED may not make a grant unless and until Chapter 276 of the 1984 Session Laws of Kansas is amended to provide for compliance with federal law.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Terrence R. Hearshman
Assistant Attorney General