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ATTORNEY GENERAL OPINION NO. 86- 68

The Honorable Lee Hamm
State Representative,
One Hundred Eighth District
State Capitol, Room 285-W
Topeka, Kansas 66612

Re: Agriculture--Grain Commodity Commissions--
Collection and Disposition of Assessments;
Authorized Expenditures

Synopsis: Grain commodity commissions have power to recommend policy and action to the secretary of the State Board of Agriculture. The commissions may override a determination made by the secretary based on those recommendations by a two-thirds vote of its members. As funds of the commission are to be used to implement the administration of the grain commodity commissions act, by implication, the commissions may determine how the funds are to be used. Cited herein: K.S.A. 2-3001; 2-3005; 2-3008; 75-3701; K.S.A. 1985 Supp. 75-3717; K.S.A. 75-3717a.

* * *

Dear Representative Hamm:

You have requested the opinion of our office regarding the authority of the legislature to determine how grain commodity commissions' money is to be used.

The grain commodity commissions were established pursuant to K.S.A. 2-3001 et seq. Specifically, K.S.A. 2-3002

establishes three separate commissions, the Kansas corn commission, the Kansas grain sorghum commission, and the Kansas soybean commission. Each commission is attached to and part of the division of markets of the state board of agriculture. Each commission has express powers and duties, as provided in K.S.A. 2-3005. These powers and duties include making recommendations to the secretary of the state board of agriculture regarding their respective interests and advising and cooperating with Kansas State University regarding research and development.

A mill levy is assessed on each bushel of the respective grains when marketed through commercial channels. K.S.A. 2-3008 provides that the moneys collected shall be deposited in the state treasury. Twenty percent of each deposit is to be credited to the general fund, and the balance is to be credited to each of the respective commission funds proportionally as derived from the assessment of each respective grain. Your question concerns these funds.

For purposes of budget formulations, each grain commodity commission is a state agency. K.S.A. 75-3701(3) states:

"'State agency' means any state office or officer, department, board, commission, institution, bureau or any agency, division or unit within any office, department, board, commission or other state authority or any person requesting a state appropriation."

This broad definition makes the provisions regarding preparation of budgets, K.S.A. 75-3701 et seq., applicable to the grain commodity commissions.

Preparing budgets is a function of the state agencies. K.S.A. 1985 Supp. 75-3717(a) provides in pertinent part:

"As provided in this section, each state agency, not later than October first of each year, shall file with the division of the budget its budget estimates, and all amendments and revisions thereof, in the form provided by the director of the budget, including a full explanation of its requests for any appropriations for the expansion of present services and the addition of new services."

It would appear, therefore, that there is a legislative intent to allow each agency to determine how its funds are to be expended within the bounds of its statutory duties and powers. However, this general provision is limited by K.S.A. 75-3717a, which provides:

"Nothing in this act shall be construed to limit or be contrary to any inherent prerogative of the executive department or the legislature." (Emphasis added.)

In other words, allowing each agency to determine how its funds are to be expended is the grant of a privilege, not an exclusive right.

In their present form, the statutes indicate that at least impliedly, the commissions may determine how their funds are to be used. As previously mentioned, the commissions have express powers and duties. K.S.A. 2-3005(a) states:

"In the administration of this act each said commission shall have the following duties, authorities and powers:

"(1) To recommend to the secretary policy regarding marketing, campaigns of development, education and publicity for the Kansas grain commodity and products made therefrom represented by it,

"(2) to recommend to the secretary the acceptance of grants and donations;

"(3) to recommend the secretary enter into such contracts as may be necessary or advisable for the purposes of this act;

"(4) to recommend that the secretary cooperate with any local, state, national or international organization or agency, whether voluntary or created by the law of any state or by federal law, engaged in work or activities similar to the work and activities of each said commission, and to direct the division to enter into contracts with such agencies or organizations for carrying on campaigns of development, education or publicity;

"(5) to be advisory to and cooperate and work with Kansas state university or other educational or research facilities regarding research and development connected with the grain commodities represented by each said commission."

While these powers are advisory in nature, the commissions may, by a two-thirds vote of its members, disapprove of any determination made by the secretary of the board of agriculture regarding their recommendations. In effect, as long as the action of the commission does not abrogate, limit or otherwise affect the power of the secretary to administer the internal operations of the division, recommendations of the commission may be implemented. See K.S.A. 2-3005(b).

The use of the funds is limited by K.S.A. 2-3008(b), which provides:

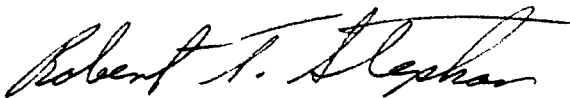
"All money so credited to the [respective commissions' funds] shall be expended for the respective commissions in the administration of this act, and for the payment of claims based upon obligations incurred in the performance of the activities and functions set forth in this act, and for no other purpose."

In short, the legislature has given powers to the commissions to make recommendations, to override disapproval of those recommendations, and has further provided that commission funds are to be used for the administration of the act. It is our opinion that the legislature has impliedly given the commissions authority to implement their recommendations, as limited by the provisions of K.S.A. 2-3008(b).

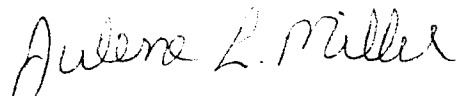
However, the legislature does possess an inherent prerogative to determine how the money is to be spent. "The power to appropriate money belonging to the state and rightfully in the state treasury and over which the legislature has the rightful control is a legislative power, and, except as is restricted by the constitution, the legislature has the exclusive power to direct how, when and for what purpose the public funds shall be applied in carrying out the objects of the state government." State, ex rel, v. Fadely, 180 Kan. 652, Syl. ¶4 (1957). Attorney General Opinion No. 82-20 opined that "there can be little question that the submission of budget requests by state agencies . . . are part of the

appropriation process," p. 10. In that the commodity commissions funds are derived from a mill levy, the legislature has authority to direct how the money is to be used. Thus, if the legislature were to amend the applicable statutes, it could formulate the budgets for the commissions. However, unless and until the legislature chooses to amend the statutes, in our opinion the commissions may determine how their moneys are to be spent.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
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