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ATTORNEY GENERAL OPINION NO. 86- 91

David Barclay
Deputy Secretary
Kansas Department of Economic Development
400 W. 8th, Fifth Floor
Topeka, Kansas 66603-3957

Re: Economic Development--Kansas Venture Capital
Company Act--Implementation

Economic Development--Kansas Statewide Risk
Capital System Act--Implementation

Synopsis: The Kansas Department of Economic Development may implement the provisions of 1986 Substitute for Senate Bill No. 756 and 1986 Substitute for Senate Bill No. 757 prior to January 12, 1987 (the date the department is reorganized under the title Department of Commerce). Accordingly, the Secretary of Economic Development may certify investment in nonvoting preferred stock of Kansas Venture Capital, Inc., by the pooled money investment board; adopt rules and regulations on or before October 1, 1986; act upon applications for certification of Kansas venture capital companies; and otherwise implement the provisions of the Kansas Statewide Risk Capital System Act and the Kansas Venture Capital Company Act. Additionally, investors in certified Kansas venture capital companies and Kansas Venture Capital, Inc., are eligible for the tax credits prescribed by Sections 10, 11 and 12 of Substitute for Senate Bill No. 756, and Section 4 of Substitute for Senate Bill No. 757, for taxable years commencing after December 31, 1985 (and prior to January 1, 1993).

Cited herein: 1986 Substitute for Senate Bill No. 756; 1986 Substitute for Senate Bill No. 757; 1986 House Bill No. 2951.

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Dear Mr. Barclay:

You request our opinion as to whether the Kansas Department of Economic Development may implement the provisions of 1986 Substitute for Senate Bill No. 756 and 1986 Substitute for Senate Bill No. 757 prior to January 12, 1987 (the date that the department is reorganized under the title Department of Commerce). Additionally, you ask whether investors in certified Kansas venture capital companies and Kansas Venture Capital, Inc., are eligible for the tax credits prescribed by the aforesaid bills in calendar year 1986. Your questions arise because both Substitute for Senate bill No. 756 and Substitute for Senate Bill No. 757 provide for implementation by the Kansas Department of Commerce, an agency which will not come into existence until January 12, 1987.

1986 Substitute for Senate bill No. 757 enacts the Kansas Venture Capital Company Act and became effective upon publication in the Kansas Register on May 22, 1986. The purpose of the act (as stated in Section 6 thereof) is to facilitate the formation of private venture capital companies by granting tax credits to taxpayers investing in such companies. The Department of Commerce is to certify and regulate venture capital companies, and Section 5 of the act provides that the Secretary of Commerce shall adopt rules and regulations to implement the act on or before October 1, 1986. Section 5 provides that no company may be certified until the secretary (of commerce) adopts said rules and regulations, and under Section 4 of the act, investors in certified Kansas venture capital companies are eligible for a credit against income tax liability for taxable years commencing after December 31, 1985 (and prior to January 1, 1993).

1986 Substitute for Senate Bill No. 756 enacts the Kansas Statewide Risk Capital System Act and became effective on May 22, 1986. The purpose of the act, as stated in Section 1 thereof, is as follows:

"The purpose of this act is to create a Kansas statewide risk capital system to

meet the special needs of the various regions of Kansas. This system will invest \$10,000,000 of state funds to create private risk capital for investment in smaller Kansas businesses. This investment will, in turn, lead to further growth, diversification and improvement of the Kansas economy in all geographic regions in a diversified range of primary sectors concerned with products, processes and services that create jobs, wealth and income for the benefit of Kansas and Kansans especially in nonmetropolitan areas of the state."

Section 3 of the act authorizes the secretary of the department of commerce "to certify investment in nonvoting preferred stock of Kansas Venture Capital, Inc., in a total not to exceed \$10,000,000 by the pooled money investment board" subject to numerous terms and conditions. One such condition [subsection 3(d)] is that "investments in common stock of Kansas Venture Capital, Inc. shall meet the terms and conditions of Substitute for 1986 Senate Bill No. 757."

Sections 10 and 11 of the act provide that investors in Kansas Venture Capital, Inc., are eligible for a credit against income tax liability and tax liabilities imposed pursuant to K.S.A. 79-1106 to 79-1116, and K.S.A. 40-2801, for taxable years commencing after December 31, 1985 (and prior to January 1, 1993).

1986 House Bill No. 2951 creates the Department of Commerce and provides for the appointment of a Secretary of Commerce. The act becomes effective on January 12, 1987, and the Department of Economic Development is abolished as of that date. Other sections of the act provide for the transfer of powers and duties from the Department of Economic Development to the Department of Commerce.

The questions you have posed require a determination of whether the legislature intended to delay implementation of the Venture Capital Company Act and the Risk Capital System Act until January 12, 1987 (the date the Department of Commerce comes into existence), or whether it intended that the initial implementation be undertaken by the Department of Economic Development (as predecessor to the Department of Commerce). The legislative proceedings culminating in the enactment of the above-referenced bills may be considered in

determining legislative intent. Hulme v. Woleslagel, 208 Kan. 385 (1972). Additionally, we are guided by certain rules of statutory construction enunciated by the Kansas Supreme Court, to wit:

"In interpreting legislative acts it must be remembered where a statute is susceptible of more than one construction, it must be given that construction which, when considered in its entirety, gives expression to its intent and purposes, even though such construction is not within the strict literal interpretation of the statute. Reeves v. Board of Johnson County Comm'rs, 226 Kan. 397, 402 P.2d 93 (1979); State v. V.F.W. Post No. 3722, 215 Kan. 693, 697, 527 P.2d 1020 (1974). Further, it is the duty of a court, in ascertaining legislative intent, to reconcile--where so far as possible--various conflicting provisions of the act in order to make them consistent, harmonious, and sensible. Eurich v. Alkire, 224 Kan. 236, 238, 579 P.2d 1207 (1978); Jordan v. Doonan Truck & Equipment Inc., 220 Kan. 431, 434, 552 P.2d 881 (1976). In keeping therewith, when the interpretation of one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law. State v. Dumler, 221 Kan. 386, Syl. ¶2, 559 P.2d 798 (1977).

In determining legislative intent, courts are not limited to a mere consideration of the language employed, but may properly look into the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished and the effect the statute may have under various suggested constructions. Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357,

367, 582 P.2d 1123 (1978)." Jackson v. City of Kansas City, 235 Kan. 278, 318 (1984).

Applying the aforesaid rules of statutory construction, we note that information distributed at a committee hearing on Senate Bill 756 stated that "this system will make private capital available to sound local businesses in many parts of the state in 1986." (Attachment 1 to Minutes of Senate Assessment and Taxation Committee, April 3, 1986.) Additionally, the requirement that rules and regulations be adopted implementing Senate Bill No. 757 (Section 5) by October 1, 1986, and the provisions affirming eligibility for tax credits for taxable years commencing after December 31, 1985, mitigate against any conclusion that the legislature intended to delay implementation of these bills until January 12, 1987. Further, the purposes of the subject acts, and the importance attached to economic development by the legislature during 1986 Session, support the conclusion that the legislature intended that the initial implementation of Substitute for Senate Bill No. 756 and Substitute for Senate Bill No. 757 be undertaken by Department of Economic Development (as predecessor to the Department of Commerce).

In accordance with the above-quoted authorities and for the reasons stated above, it is our opinion that the Kansas Department of Economic Development may implement the provisions of 1986 Substitute for Senate Bill No. 756 and 1986 Substitute for Senate Bill No. 757 prior to January 12, 1987 (the date the department is reorganized under the title Department of Commerce). Accordingly, the Secretary of Economic Development may certify investment in nonvoting preferred stock of Kansas Venture Capital, Inc., by the pooled money investment board; adopt rules and regulations on or before October 1, 1986; act upon applications for certification of Kansas venture capital companies; and otherwise implement the provisions of the Kansas Statewide Risk Capital System Act and the Kansas Venture Capital Company Act. Additionally, investors in certified Kansas venture capital companies and Kansas Venture Capital, Inc., are eligible for the tax credits prescribed by Sections 10, 11 and 12 of Substitute for Senate Bill No. 756, and Section 4 of

Substitute for Senate Bill No. 757, for taxable years commencing after December 31, 1985 (and prior to January 1, 1993).

Very truly yours,


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