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July 1, 1988

ATTORNEY GENERAL OPINION NO. 88-87

Ms. Dorothy L. Ilgen
Executive Director
Kansas Arts Commission
700 Jackson, Suite 1004
Topeka, Kansas 66603-3714

Re: State Boards, Commissions and Authorities -- Kansas Arts Commission -- Powers and Duties; Funds; Expenditures

Taxation -- State Gaming Revenues -- State Gaming Revenue Funds; Authorized Uses

Synopsis: By virtue of authority granted to the Kansas Arts Commission by K.S.A. 74-5204, the Commission is permitted to make the proposed grants of economic development initiative fund moneys pursuant to 1988 House Bill No. 2808 and K.S.A. 1987 Supp. 79-4804. Cited herein: K.S.A. 74-5204; K.S.A. 1987 Supp. 79-4801; 79-4804; 1988 House Bill No. 2808.

* * *

Dear Ms. Ilgen:

As Executive Director of the Kansas Arts Commission (KAC) you request our opinion on the permissible uses of gaming revenues funds appropriated pursuant to 1988 House Bill 2808, Sec. 10 and K.S.A. 1987 Supp. 79-4804 for use by the KAC. The KAC proposes using these funds as grants to applicant organizations for the following purposes: (1)

renovation or refurbishment of arts facilities, including gallery space, performing arts theatre, and other building or spaces; (2) purchase of equipment, including but not limited to lighting equipment, gallery panels, copy machines, portable dance floor, and other equipment; and (3) seed money for endowment campaigns whereby the KAC funds would be used to generate long-term investment income which would be used as operating income by the organization. The KAC also proposes using these funds in order to establish an artists fellowship program that would make non-matching grants to individual resident artists.

K.S.A. 1987 Supp. 79-4801 allows moneys credited to the state gaming fund to be "expended or transferred only for the purposes and in the manner provided by this act. . . ." The economic development initiative funds (EDIF) in question were received by the Arts Commission pursuant to K.S.A. 1987 Supp. 79-4804. That statute requires that expenditures from the EDIF "Shall be made in accordance with appropriation acts for the financing of such programs supporting and enhancing the existing economic foundation of the state and fostering growth through the expansion of current and the establishment and attraction of new, commercial and industrial enterprises. . . ." (Emphasis added). In the required appropriation act, the Senate Subcommittee report discusses how the EDIF funds should be used by the KAC:

"Recommend that \$400,000 of expenditures of \$450,000 from the Economic Development Initiatives Fund be used for support of arts programming, such as the Rural Arts Initiatives program or programs or functions that promote economic development, such as, but not restricted to, the following: challenge grants for arts organizations; capital improvements for arts facilities; theater and dance company touring incentives; visual arts programs; performances by major art companies; and development of promotional video on the arts in Kansas." Kansas 1988 House Bill No. 2808 Kansas Register, Vol. 7, No. 18, May 5, 1988.

Thus, the appropriation act authorizes expenditures that support arts programming and the report discusses examples of permissible expenditures.

K.S.A. 74-5204 grants the KAC much discretion:

"The Commission may do any and all other acts or things as may be deemed necessary and convenient by the commission to foster and promote the development of the arts in the state."

This broad grant of power enables the KAC to fulfill its statutory purpose and thus "support, coordinate, foster, and develop the arts and their practice within this state."

K.S.A. 74-5204(b). The proposed uses of EDIF moneys all in some manner support or foster arts within the state. Thus, the proposed uses fall within the purview of the Arts Commission's authority. The question therefore becomes whether the legislative appropriation act and the EDIF statutes authorize the proposed grants and expenditures.

The first two proposed uses of EDIF funds (whereby a grantee will renovate and refurbish art facilities or purchase equipment and supplies to be used by such facilities) can be easily categorized as capital improvement or investment. As the report on the appropriation act specifically discusses capital improvements these uses have specific legislative approval.

The other proposed expenditures are not uses specifically discussed by the report on the appropriation act. However, the appropriation act report states that the uses discussed are not intended to be restrictive. Moreover, K.S.A. 1987 Suppp. 79-4804 permits EDIF funds to be used to support, enhance or foster economic growth within the state. It can be plausibly and convincingly argued that the proposed uses of EDIF moneys by KAC (uses that generate long-term investment income for operation of endowment campaigns and award non-matching grants to resident artists) support and foster art programs and promote economic development. Thus, while these specific uses are not individually mentioned in the appropriation act report, they are not inconsistent with the general language in the appropriation act of EDIF moneys to the KAC, nor with the purposes established pursuant to K.S.A. 1987 Supp. 79-4804. Moreover, the question of what promotes the economy in the arts field appears to be a discretionary decision, properly made by either the state legislature or the state agency delegated the authority to make those decisions.

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It is therefore our opinion that, pursuant to discretionary authority granted to the Kansas Arts Commission by K.S.A. 74-5204, both K.S.A. 1987 Supp. 79-4804 and 1988 House Bill No. 2808 appropriation act permit the proposed expenditure of EDIF moneys.

Very truly yours,

Robert T. Stephan
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