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ATTORNEY GENERAL OPINION NO. 91-120

The Honorable Joan Finney  
Governor  
State Capitol, 2nd Floor  
Topeka, Kansas 66603

William G. Brundage, Ph.D.  
President  
Kansas Technology Enterprise Corporation  
112 W. 6th, Suite 400  
Topeka, Kansas 66603

RE: State Boards, Commissions and Authorities -- Kansas  
Technology Enterprise Corporation -- Powers

Constitution of the State of Kansas -- Legislative  
-- Appointment of Officers

Synopsis: Kansas technology enterprise corporation (KTEC)  
does not have statutory authority with sufficient  
guidelines and standards to enable it to form a  
subsidiary corporation.

The governor has only such appointing power granted  
by the constitution or the legislature. Cited  
herein: K.S.A. 1990 Supp. 74-8104; Kan.  
Const., art. 2, § 18, art. 15, § 1.

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Governor Joan Finney  
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Dear Governor Finney and Dr. Brundage:

Each of you have requested our opinion regarding powers granted Kansas technology enterprise corporation (KTEC) and the creation of mid-american manufacturing technology center (MAMTC). Since both requests focus on similar questions, we will issue a joint opinion. Specifically, you both ask whether it is legal or appropriate for a public-private agency such as KTEC to create or own another public-private agency.

"The creation of various offices and departments of government not otherwise provided for in the Kansas Constitution is a legislative function." Leek v. Theis, 217 Kan. 784, 808 (1975). Since the legislature creates the agencies, the agencies' powers are "dependent upon authorizing statutes; therefore, any exercise of authority claimed by the agency must come from within the statutes either expressly or by clear implication." State ex rel. Secretary of SRS v. Fomby, 11 Kan.App.2d 138 (1986). The legislature can delegate even its legislative authority to an agency if the legislature has set out standards which "enable one reading them to know his rights, obligations, and limitations thereunder." State ex rel. v. Bennett, 222 Kan. 12, 21 (1977). The modern trend is to allow the "standards to be implied from the statutory purpose . . . and to require less detailed standards and guidance to the administrative agencies in order to facilitate the administration of laws in areas of complex social and economic problems." Guardian Title Co. v. Bell, 248 Kan. 146, 154 (1991).

In this situation, KTEC is authorized to do a number of functions as set forth in K.S.A. 1990 Supp. 74-8104. None of these provisions specifically authorize the creation of a subsidiary corporation. Therefore, we must look to see if KTEC's broad general powers constitute a delegation of legislative authority to KTEC and, if so, whether sufficient standards and guidelines were set out.

During the 1991 legislative session, the legislature approved \$1 million for the state's portion of the funds necessary to establish mid-american manufacturing technology center (MAMTC). This amount was line-item vetoed by Governor Finney. The legislature responded by increasing KTEC's funding from the economic development initiative fund, with the intent stated in conference committee recommendations that support for MAMTC come from KTEC's resources. Also, a fund was established to accept federal funds to support MAMTC. However, even though the legislature apparently approved of the funding of MAMTC, there is

no evidence that they authorized it or adopted any proposal for the creation of MAMTC or delegated this authority to KTEC with sufficient standards and guidelines for KTEC to follow. Therefore, when KTEC formed MAMTC they acted legislatively without the proper authority. See Attorney General Opinion No. 91-8.

Governor Finney's next question deals with the Governor's appointment power. Article 2, section 18 of the Kansas constitution states that "the legislature may provide for the election or appointment of all officers and the filling of all vacancies not otherwise provided for in this constitution." Furthermore, article 15, section 1 of the constitution provides that "all officers whose election or appointment is not otherwise provided for, shall be chosen or appointed as may be prescribed by law."

"The act of appointment is not one that exclusively rests with the governor." Leek v. Theis, 217 Kan. 784 (1975).

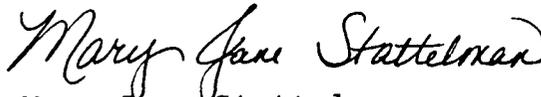
"The only power the governor has to make official appointments is that conferred upon [her] by specific constitutional or statutory provisions." Leek v. Theis, Id. Thus, the governor has no inherent power to appoint directors of quasi-governmental entities such as MAMTC, but that power may be granted to the governor through legislation.

In conclusion, Kansas technology enterprise corporation (KTEC) does not have statutory authority with sufficient guidelines and standards to enable it to form a subsidiary corporation. It is also our opinion that the governor has only such appointing power expressly granted by the constitution or the legislature.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelma  
Assistant Attorney General