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ATTORNEY GENERAL OPINION NO. 91- 152

Dr. Stanley Ollar, Jr., Chairperson
Citizens' Utility Ratepayers Board
1500 Southwest Arrowhead Road
Topeka, Kansas 66604-4027

Re: Public Utilities--Miscellaneous
Provisions--Citizens' Utility Ratepayers Board

Synopsis: Short of legislative directive indicating how CURB should contract for professional services, CURB should comprise its negotiating committee pursuant to the general statute, K.S.A. 75-3799. Cited herein: K.S.A. 1990 Supp. 66-1222, 66-1225, as amended by L. 1991, ch. 205 §§ 1 and 2; K.S.A. 66-1513; 75-3799.

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Dear Dr. Ollar:

As chairperson for the citizens' utility ratepayers board (hereinafter CURB) you inquire whether the agency should contract for professional services using the negotiating committee structures found in K.S.A. 66-1513 or those found in K.S.A. 75-3799.

You indicate that CURB used K.S.A. 66-1513 when it was a part of the Kansas corporation commission (KCC). CURB became a separate entity in June of 1989 (L. 1989, ch. 162, sec. 3) but continued to utilize the negotiating committee structure utilized by the KCC (as prescribed by K.S.A. 66-1513) because both CURB and the KCC extensively utilize consultants to act as technical experts in investigating and

presenting testimony and exhibits in utility regulatory matters. These consultants usually are selected through a bidding process, and the successful bid is selected by a negotiating committee as described in K.S.A. 66-1513(b) (1983). The negotiating committee has been comprised of curb counsel (as the designee of the KCC general counsel), a member of CURB (as a designee of the KCC chairperson), an individual from the department of administration, division of budget, and an individual from the department of administration, division of accounts and reports. Generally state agencies (other than the KCC) select bids for services using a negotiating committee described in K.S.A. 75-3799(b) (1984). That negotiating committee, in contrast to the one described above, is comprised of an individual from the department of administration, purchasing division, an individual from the agency seeking the contract, and an individual from accounts and reports.

The legislature did not direct the use of either of the statutes in question when it made CURB a separate entity. Our issue is thus one of legislative intent to be gleaned from a perusal of both statutes.

K.S.A. 75-3799 which applies to state agencies when contracting for professional services states:

"Upon request of the chief administrative officer of a state agency and subject to approval of the secretary of administration, the director of purchases may convene a financial services negotiating committee to obtain financial services for the state agency under this section."

Subsection (b) of this statute prescribes the negotiating committee structure as described above.

The statute that CURB currently uses, K.S.A. 66-1513, applies only to the KCC and states :

"(a) In accordance with the provisions of subsection (b), the state corporation commission is hereby authorized to contract for professional services, including but not limited to the services of engineers, accountants, attorneys and

economists, to assist in investigations and appraisals under K.S.A. 66-1502, and amendments thereto, which assistance may include preparation and presentation of expert testimony, when the expenses of such professional services are required to be assessed under that statute against the public utilities involved."

Subsection (b) of this statute prescribes the negotiating committee structure as described above.

In determining legislative intent we may look to the historical background and changes made in the statutes to be considered. If possible, we must give effect to the entire act and reconcile different provisions so as to make them consistent, harmonious and sensible. State v. Adee, 241 Kan. 825 (1987); Taylor v. Department of Health and Environment, 230 Kan. 283 (1981); Kansas Racing Management, Inc. v. Kansas Racing Comm'n, 244 Kan. 343 (1989).

Historically it made sense to use K.S.A. 66-1513 because CURB originated under the KCC and because the statute more specifically addresses the needs of the agency. This statute, however, authorizes the KCC to procure contracts but does not authorize CURB. CURB's authority comes from the agency's own enabling statutes.

The most recent legislative change to the CURB statutes evidences a legislative intent to provide the agency with some autonomy. K.S.A. 1990 Supp. 66-1225, as amended by L. 1991, ch. 205, sec. 2 states:

"All budgeting, purchasing and related management functions of the citizens' utility ratepayer board shall be administered under the direction and supervision of the board. All vouchers for expenditures from appropriations made for the use of the board shall be approved by the chairperson of the board or by a person or persons designated by the chairperson for such purpose. The budget of the board shall be financed in the same manner as the budget of the state corporation commission is financed, except that no assessments for financing the

budget of the board shall be levied
against electric or telephone cooperatives
specified in K.S.A. 1990 Supp. 66-1224,
and amendments thereto.

The statute directs that budgeting, purchasing and related
management functions be administered by the board and
expenditures be approved by the chairperson or by his
designee.

In our judgment this provision indicates a clear legislative
intent to provide CURB a wide latitude of authority in its
management functions that include the contracting for
professional services. And while neither K.S.A. 66-1513 nor
75-3799 serve this purpose ideally, only the general statute
K.S.A. 75-3799 may be used, given that the other statute
authorizes only the KCC to act. For this reason it is our
opinion that short of legislative directive indicating how
CURB should contract for professional services, CURB should
comprise its negotiating committee pursuant to the general
statute, K.S.A. 75-3799.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General