

Approved March 19, 1992
Date

MINUTES OF THE Senate COMMITTEE ON Economic Development

The meeting was called to order by Senator Dave Kerr at
Chairperson

8:00 a.m./~~xxx~~ on March 17, 1992 in room 123-S of the Capitol.

All members were present except:

Senator Bill Brady, Senator Marge Petty, Senator Wint Winter

Committee staff present:

Lynne Holt, Legislative Research Department
LaVonne Mumert, Committee Secretary

Conferees appearing before the committee:

Dr. Bill Brundage, President, Kansas Technology Enterprise Corporation
Laura Nicholl, Secretary, Department of Commerce

HB 2683 - KTEC, powers, cooperation with other state agencies

Dr. Bill Brundage testified in support of the bill (Attachment 1). He explained that there has been some confusion concerning the authority of the Kansas Technology Enterprise Corporation (KTEC) to establish a wholly-owned subsidiary. HB 2683 expressly gives KTEC that authority. Dr. Brundage said the question of KTEC's authority arose specifically with regard to the Mid-America Manufacturing Technology Center but he expects future need for such authority.

Lynne Holt explained that the amendments made by the House Committee resulted in the addition of four members to the KTEC board to be appointed by legislative officers to represent the private sector. Dr. Brundage stated that the KTEC board has been hampered because of a need for additional private sector members and noted that the university representatives cannot be involved in some projects due to a conflict of interest. Chairman Kerr (a member of the KTEC board) mentioned that he favors having more private sector involvement to help balance the influence of the universities.

Laura Nicholl told the Committee that she is supportive of the bill and agrees with the necessity for KTEC to have clear authority to establish wholly-owned subsidiaries. She feels that the addition of four members will make the board too large and unbalance the initial public-private sector representation. Ms. Nicholl also said she feels the language in the bill concerning cooperation between KTEC, Kansas, Inc. and the Department of Commerce is unnecessary because of the establishment of the Kansas Economic Development Coordinating Council.

Senator Salisbury moved that the minutes of the March 4, 1992 meeting be approved. Senator McClure seconded the motion, and the motion carried.

The meeting adjourned at 8:30. The next meeting of the Committee will be Thursday, March 19, 1992.

Testimony to the
Senate Economic Development Committee

concerning

House Bill No. 2683

March 17, 1992

William G. Brundage, Ph.D.

President

Kansas Technology Enterprise Corporation

Attachment 1
Sen. Eco. Dev.
3/17/92

KTEC
Testimony to the Senate Economic Development Committee
House Bill No. 2683

On August 26, 1991, the Kansas Technology Enterprise Corporation (KTEC) formally requested an opinion from the State's Attorney General concerning its authority to establish a wholly-owned subsidiary corporation. At approximately the same time, the Governor also requested an opinion concerning KTEC's authority to establish such a corporation. These requests were the result of concerns expressed by the Secretary of the Kansas Department of Commerce.

The Attorney General's opinion (Number 91-120) was released on October 1, 1991, (Attachment A). His opinion stated: "In conclusion, KTEC does not have statutory authority with sufficient guidelines and standards to enable it to form a subsidiary corporation."

Legal opinion given KTEC in 1988 was that KTEC did indeed have such authority. KTEC then proceeded to operate under this assumption. The ability to establish subsidiary corporations is critically important to an agency such as KTEC. Economic development today requires partnerships between the Public and Private sectors. It is necessary for KTEC to be able to, in many cases, operate like a business. This can and is done under the appropriate accountability requirements.

An excellent example is KTEC's award from the National Institute of Standards and Technology (NIST) to establish the Mid-America Manufacturing Technology Center (MAMTC). One of several reasons that NIST favored an award to KTEC was its ability to establish a subsidiary corporation. NIST has learned from experience with the first manufacturing technology centers that they need to be operated like a business in order to succeed. MAMTC could very well become the model for all NIST Manufacturing Technology Centers. This is but one example of how important HB 2683 is to KTEC.

KTEC formally requests that the Legislature approve HB 2683.



Attachment
A
Attorney General's Opinion
(Number 91-120)

Attachment A



*this copy contains the
changed paragraph on
pg. 2 (para. 4) as
amended by the A.G.*

STATE OF KANSAS

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October 1, 1991

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.

* * *

Governor Joan Finney
 William G. Brundage, Ph.D.
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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 adopted any*

Governor Joan Finney
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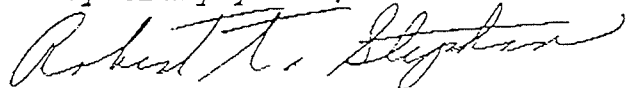
proposal for the creation of MAMTC or delegated this authority to KTEC with sufficient standards and guidelines for KTEC to follow. Therefore, when KTEC formed MAMTC they acted legislatively without the proper authority. See Attorney General Opinion No. 91-8.

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."

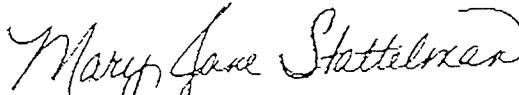
"The act of appointment is not one that exclusively rests with the governor." Leek v. Theis, 217 Kan. 784 (1975).
"The only power the governor has to make official appointments is that conferred upon [her] by specific constitutional or statutory provisions." Leek v. Theis, Id. Thus, the governor has 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

RTS:JLM:MJS:bas