

FILE

Subject

*County Funds  
Transfer Use of*

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STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
Attorney General

March 13, 1974

Opinion No. 74- 89

James R. Cobler, Director  
Division of Accounts and Reports  
Department of Administration  
State Capitol  
Topeka, Kansas 66612

Dear Mr. Cobler:

Ch. 106, § 1(a), L. 1973, now found at K.S.A. 20-2801, states thus:

"Notwithstanding any other provision of law, the county treasurer of each county shall collect all moneys due the county from fines, penalties and forfeitures, including all moneys collected under this act. The officers of each court [except municipal courts] of this state shall pay all of the proceeds of fines, penalties and forfeitures to the county treasurer who shall remit the same to the state treasurer, and the state treasurer shall deposit the same in the state treasury to the credit of the state school equalization fund."

This act was effective June 30, 1973. Section 30 thereof repealed K.S.A. 72-2401, which theretofore stated thus:

"The county treasurer shall collect all moneys due the county for school purposes from fines, forfeitures, or proceeds from the sale of estrays. On February 15 of each year the county treasurer shall allocate and pay to each school district any part of the territory of which is in the county, the amount it is entitled to receive from the county school fund."

Ch. 292, § 40, L. 1973, contains a provision virtually identical to that cited above in ch. 106.

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You inquire concerning the collection of the proceeds of those fines, penalties and forfeitures subject to the 1973 enactments cited above which were collected after the February 15, 1973, distribution, and were on hand or due and owing on June 1, 1973. Under K.S.A. 20-2801, the 1973 enactment, the county became required as of June 1 of that year to collect all moneys due the county from fines, penalties and forfeitures. Officers of courts of the state, excepting municipal courts, became required to pay to the county treasurer the proceeds of all fines, penalties and forfeitures, regardless of the date such proceeds were collected.

As of June 1, 1973, there existed no statutory authority for any disposition of the proceeds then on hand or due and owing to the county school fund. While the legislature did not specifically refer to those proceeds collected after the February 15, 1973, distribution date and June 30, 1973, the effective date of the act dedicating these funds to the state school equalization funds, it may very well have thought that such express provision was unnecessary, because of the broad and unambiguous scope of the 1973 enactment. In our opinion, the 1973 act applies to the proceeds of fines, penalties and forfeitures due and on hand on its effective date, June 1, 1973, and collected since the February 15 distribution of that year. Indeed, there exists no statutory authority for a county treasurer to do other with such monies than to remit them to the state treasurer.

By your letter of February 13, 1974, you advise that current records of the state treasurer disclose that approximately 14 counties have made no remittance of the funds in question, and that in at least one instance, the county treasurer indicates that these moneys were distributed to the local school district. There is absolutely no statutory authority whatever authorizing such distribution.

It is my recommendation that you make appropriate additional demands upon those county treasurers who have not remitted the funds in question to the state treasurer. If the funds are not remitted promptly as you require, this office should be notified, in order that we may begin appropriate legal action to recover for the state equalization fund the monies in question.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm  
cc: Tom Van Sickle  
State Treasurer