

FILE

Subject

Counties - Funds
Graysport Assoc
Prop. Feild
Revenue Sharing



Copy to

STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

April 29, 1974

Opinion No. 74- 128

Richard A. Medley
Montgomery County Attorney
Montgomery County Courthouse
Independence, Kansas 67301

Dear Mr. Medley:

You advise that in June, 1973, Mid-America, Inc., of Parsons, Kansas, a nonprofit organization designed to promote a nine-county area in Southeastern Kansas, requested the Montgomery County Commissioners to contribute county funds for an "industrial development advertising program to be directed by Mid-America," in the amount of \$7,595. By resolution approved June 19, 1973, the commissioners directed that this sum be paid from the federal revenue-sharing fund. A claim voucher, No. 6207, was approved for that amount on June 20, 1973, and the money paid.

Subsequently, you advise, the commissioners were informed by someone that federal revenue-sharing funds could not be utilized for this type of activity, and as a result, the commissioners reimbursed \$7,595 to the revenue-sharing fund from the general fund for the 1974 fiscal year.

You inquire, first, whether the "donation of the sum of \$7,595.00 of public monies to a private corporation for industrial development advertising [is] a legal use of the county's revenues?"

The procedure for establishing and operating a county economic development program is set forth at K.S.A. 19-4101 et seq. The initial section of this act states thus:

"Any county which has completed or is in the process of developing a comprehensive plan for the future physical growth and development of all or a part of its area may establish and conduct a program for its future economic growth and development in accordance with the provisions of this act."

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K.S.A. 19-4102 commences thus:

"The board of county commissioners of any such county may, by resolution, provide for the establishment of a county-wide economic development program and may provide for the financing thereof from its general operating fund"

Under K.S.A. 19-4103, any county establishing an economic development program under this act may utilize the funds authorized under this act

"to promote, stimulate and encourage the growth and development of the agriculture, commerce and industry of the county as a whole, in order to achieve maximum utilization of its human, economic and natural resources and tourist attractions; and to otherwise promote the general economic welfare and prosperity of the area."

Intercounty cooperation is encouraged under K.S.A. 19-4105:

"Any two or more such counties may jointly and cooperatively undertake programs to promote the growth and development of the area or region in which such counties are located and any county may likewise cooperate with political subdivisions of the county and with other public or private nonprofit agencies to achieve the purposes set forth in this act."
[Emphasis supplied.]

Thus, under this last cited statute, the contract or undertaking between the county and Mid-America, Inc., appears to fall within the authority it affords.

Secondly, you inquire whether the commissioners may "give more than \$5,000.00 to a private corporation for advertising purposes without complying with the provisions of K.S.A. 19-211." We have not been furnished any other documentation regarding any possible agreement between Montgomery County and Mid-America, Inc. If the county has contracted for services, i.e., for participation in an industrial development advertising program, K.S.A. 19-211 is inapplicable. On the face of the June 19, 1973, resolution, the commissioners agreed to contribute these funds in order that the county might participate in and benefit from the advertising program proposed by Mid-America, Inc. In this circumstance, the contribution was not a gift, but a contribution for which there was consideration, and the contribution stands in the position of a sum paid for the purchase of services by the county, to which K.S.A. 19-211 does not apply.

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Third, you inquire whether federal revenue sharing funds may be used for such a purpose.

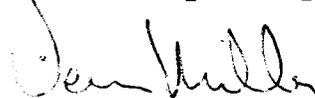
Title 31, Code of Federal Regulations § 51.31(a) states thus:

"Entitlement funds received by units of local government may be used only for priority expenditures. As used in this part, the term 'priority expenditures' means:

- (1) Ordinary and necessary maintenance and operating expenditures for --
 - (i) Public safety (including law enforcement, fire protection, and building code enforcement);
 - (ii) Environmental protection (including sewage disposal, sanitation, and pollution abatement);
 - (iii) Public transportation (including transit systems and streets and roads);
 - (iv) Health;
 - (v) Recreation;
 - (vi) Libraries;
 - (vii) Social services for the poor or aged; and
 - (viii) Financial administration, and
- (2) Ordinary and necessary capital expenditures authorized by law. No unit of local government may use entitlement funds for nonpriority expenditures which are defined as any expenditures other than those included in paragraphs (a)(1) and (2) of this section."

Funds for economic development and allied advertising programs do not readily fall into any of the enumerated categories. General fund monies, however, other than revenue-sharing funds may be spent for such a program, and the reimbursement of the revenue-sharing fund from the general fund is an appropriate means of correcting the error. Indeed, at this point, it appears to be the only feasible means of restoring to the revenue-sharing fund monies improperly spent from it, and charging an otherwise lawful expenditure to the fund from which it may properly be allowed.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm