

FILE

Subject

*Health, Public-Weas.
Regg - Pollution, General
Investigation
Revenue Sharing*



STATE OF KANSAS

Office of the Attorney General

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

*Withdrawn: see
A.G. opinion 74-244
Vol. VIII page 942*

Copy to

VERN MILLER
Attorney General

May 16, 1974

Opinion No. 74- 150

Mr. V. R. Moen
Ottawa County Attorney
216 West 2nd
Minneapolis, Kansas

Dear Mr. Moen:

We regret the delay in responding to your request concerning the necessary procedure for acquisition of a landfill site for solid waste disposal.

As you know the solid waste management act is found at K.S.A. 65-3401 et seq. The act delineates the procedural steps necessary, from the formulation of a plan which is to be approved by the state department of health to the final means of operation. One imperative step is departmental approval of the disposal area. It follows then that the county commissioners must decide upon a site which will meet this requirement. We note the county's compliance in the minutes of the May 14, 1973 meeting in which an option contract to purchase was approved.

We assume that departmental approval of the site was obtained, although we find no mention of it in the materials which you provided. With this assumption we find also that the Board held, in September, 1973, a public hearing so that the citizens of the county could offer comments on the plan. This hearing was held pursuant to a regulation of the Kansas Board of Health, K.A.R. 28-29-13.

Subsequent to these mandatory procedures the question arose as to the use of federal revenue sharing funds in this project, more particularly the construction of the regulation that in the use of the funds a governmental body must "provide for the expenditure of amounts received . . . only in accordance with the laws and procedures applicable to the expenditure of its own resources." Generally this provision requires that the statutory standards set for the allocation of public funds

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of the county be used also in the allocation of the revenue sharing funds. In Kansas we have specific statutes pertaining to the use of federal money. K.S.A. 1973 Supp. 12-1663 provides:

"Where any public agency receives federal aid through any federal agency for any purpose to be used alone or with funds of the public agency, such federal aid may be expended without regard to budget limitations and over, above or outside the budget, and such expenditures shall not be charged against the budget of the current or any other budget year of the public agency . . ."

The definition of a "public agency" includes a county, and "federal aid" means "a loan, borrowing, advance, gift or grant of federal money . . ." Federal revenue sharing funds fall within the latter definition. Thus, prior to their expenditure, those funds need not be budgeted, and the public hearing requirement of the Kansas budget law, K.S.A. 79-2929, is not applicable.

K.S.A. 12-1662 et seq. was passed in 1967, to facilitate the spending of federal funds, and to avoid the necessity of holding such moneys to await the succeeding budget year prior to their expenditure. From the information which you have submitted, it appears that Kansas law was followed carefully in this matter. Certainly, the requirements of the Kansas budget law, including the requirement of a public hearing upon the budget, are inapplicable to these funds inasmuch as their expenditure was not included in the budget, and was not required to be so included.

If you should have further questions on this matter, please feel free to call upon us.

Yours very truly,



VERN MILLER
Attorney General

VM:DMH:jsm

cc: Ottawa County Commissioners

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