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Revenue Sharing*



STATE OF KANSAS

*Office of the Attorney General*

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

VERN MILLER  
Attorney General

July 29, 1974

Opinion No. 74- 244

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

Dear Mr. Moen:

After discussions with the Office of Revenue Sharing, Department of the Treasury, Washington, D.C., we are constrained to withdraw our opinion no. 74-150, issued to you under date of May 16, 1974.

It has been our position, as you are aware, that revenue-sharing payments made to units of local government under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. §§ 1221 et seq., constitutes "federal aid" as defined by K.S.A. 12-1662(e), and may be expended by a unit of local government pursuant to K.S.A. 12-1663, although not included in the budget thereof adopted pursuant to K.S.A. 79-2925 et seq.

Notwithstanding the foregoing, it is the position of the Office of Revenue Sharing that revenue-sharing payments made to units of local government may be expended only when such expenditures are budgeted in the same manner as expenditures of their own revenues. Title 31, U.S.C. § 1243(a) provides in pertinent part thus:

"In order to qualify for any payment under subchapter I of this chapter for any entitlement period beginning on or after January 1, 1973, a . . . unit of local government must establish . . . to the satisfaction of the Secretary that---

\* \* \*

"(4) it will provide for the expenditures of amounts received under subchapter I of this chapter

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only in accordance with the laws and procedures  
applicable to the expenditure of its own revenues  
. . . ." [Emphasis supplied.]

This section, of course, refers to local law, and it was our view that the reference was to the whole of local law, including those provisions of state law dealing specifically with expenditure of monies received by units of local government from federal sources. However, after reviewing the matter, the Office of Revenue Sharing in Washington, D.C., has concluded that the reference to local law in 31 U.S.C. § 1242(a)(4) refers only to the state law governing expenditures of monies of local units of government of nonfederal origin. Thus, the provisions of K.S.A. 12-1662 et seq., exempting federal aid from the general budget law, K.S.A. 79-2925 et seq., are inapplicable to monies received by local units of government through revenue-sharing payments pursuant to the State and Local Fiscal Assistance Act of 1972.

Accordingly, no monies received by Ottawa County may be expended during fiscal 1975 unless provision is included therefor in the budget presently being prepared. We write to advise you of this, in order that the county may promptly take the necessary steps to assure that provisions for the expenditure of these funds are included in the budget for fiscal 1975 prior to its final adoption.

It is of the utmost importance that steps be taken to assure that the 1975 budget is prepared in accordance with the foregoing. We recognize that units of local government are now in the midst of budget preparation. Many budgets have been published already, as of this date, pursuant to K.S.A. 79-2929, which states thus:

"Prior to the filing of the adopted budget with the county clerk, the governing body of each taxing subdivision or municipality shall meet for the purpose of answering and hearing objections of taxpayers relating to the proposed budget and for the purpose of considering amendments to such proposed budget. Said governing body shall give at least ten (10) days' notice of time and place of said meeting by publication in a weekly or daily newspaper of the county having a general circulation therein, which notice shall set out all essential items in the budget excepting such groupings as may be designated by the state auditor on a special publication form prescribed by the state auditor and furnished with the regular budget form." [Pursuant to ch. 364, § 29, on and after January 13, 1975, reference to the state auditor in the foregoing shall mean the state director of accounts and reports.] [Emphasis supplied.]

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K.S.A. 79-2933 states thus:

"The hearing herein required to be held upon all budgets by all taxing subdivisions or municipalities of the state shall be held not less than ten (10) days prior to the date on which they shall certify their annual levies to the county clerk as required by law. After such hearing the budget shall be adopted or amended and adopted as amended, but no levy shall be made until and unless a budget is prepared, published and filed, but no levy of taxes shall be invalidated because of any insufficiency, informality, or delay in preparing, publishing or filing said budget."

In most units of local government, budgets have been either published already or preparation has been nearly completed for publication. It is virtually certain that, in most instances, revenue-sharing monies have not been included in the proposed 1975 budget, and these monies are not reflected in the published notice prepared pursuant to K.S.A. 79-2929. Publication of this notice is a critical step in the Kansas budgetary process. K.S.A. 79-2930 states in pertinent part thus:

"Each fund of the of the adopted budget filed with the county clerk in no event shall exceed the amount of such fund in the proposed budget as originally published . . . ."

Thus, in all those instances in which inclusion of the revenue-sharing funds in the proposed 1975 budget will increase the amount of any fund in any proposed budget heretofore published or prepared for publication, such budget must be amended to reflect proposed expenditures of revenue-sharing monies, and the amended budget published anew. If the required public hearing has been held, or scheduled, upon a budget which does not include revenue-sharing monies, it is necessary that the scheduled hearing be delayed, and if completed already, an additional hearing be held, in order to permit public objections to a published proposed budget which incorporates revenue-sharing monies for proposed expenditure in 1975.

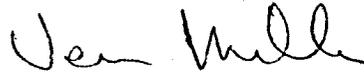
These steps will very likely result in delays in final adoption of budgets of many units of local government. Under K.S.A. 79-1801, all levies required by law to be certified to the county clerk must be so certified on or before August 25. However, the Kansas Supreme Court has held that this requirement is directory only, and not mandatory, and that lack of strict compliance therewith does not invalidate a belatedly certified levy, provided, of course, it is certified in sufficient time to permit the county clerk to complete the necessary steps to extend the levy. See

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Board of Rural High School District No. 4 v. Rupp, 152 Kan. 636, 106 P.2d 669 (1940); Rural High School District No. 93 v. Raub, 103 Kan: 757 (1918); and Railway Co. v. Rural High School District No. 1, 103 Kan. 874 (1918).

The question remains concerning all expenditures of revenue-sharing monies made since January 1, 1973. This question remains under review by compliance officials of the Office of Revenue Sharing, Washington, D.C. We have pointed out that since the first payments were received under the State and Local Fiscal Assistance Act of 1972, virtually all units of local government have proceeded upon the assumption that budgeting of such monies was not required under K.S.A. 12-1663, a view in which we concurred in our earlier opinion to you. Any lack of compliance on this score heretofore has been, so far as appears to us, entirely inadvertent and was in the utmost good faith belief that budgeting was not required. However, as stated above, we can express no view regarding past expenditures, for that question must be determined by the federal authorities.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm