

FILE

Subject

*Equity-Distribution
of Tax Moneys*



Copy to

STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

July 24, 1974

Opinion No. 74- 247

James T. McDonald
Secretary of Revenue
State Office Building
Topeka, Kansas 66612

Dear Secretary McDonald:

K.S.A. 1973 Supp. 72-7068 (a) provides thus:

"The director of taxation shall make distributions from the school district income tax fund to districts on the following dates: On May 1 and August 1 of each year, commencing in 1974, moneys transferred to such fund prior to each such date and on February 1 of each year, commencing in 1975, moneys transferred to such fund after July 31 of the preceding year."

We are advised that due to unanticipated delays, fewer income tax returns than expected will have been processed in sufficient time to permit inclusion of the proceeds thereof in the August 1 distribution contemplated by this provision. As a result, a substantially smaller sum will be available for distribution on that date than was relied upon for the preparation of district budget projections. The question is raised whether the requirement of the cited provision that distribution be made on August 1 is directory rather than mandatory, in order that the Director of Taxation may lawfully delay distribution a sufficient period, presently expected to be one month, past August 1 to allow the processing of sufficient returns to conform the amounts available for distribution more nearly to the projections.

In Curless v. Johnson County Board of County Comm'rs, 197 Kan. 580, 419 P.2d 876 (1966), the court pointed out that "the use of the word 'shall' does not prevent a statute from being construed as requiring a discretionary act." 197 Kan. at 586.

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More to the point is the observation in *Shriver v. Board of County Comm'rs*, 189 Kan. 548, 370 P.2d 124 (1962):

"Generally speaking, statutory provisions directing the mode of proceeding by public officers and intended to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties cannot be injuriously affected, are not regarded as mandatory, unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated."
189 Kan. at 556.

The question here is not, of course, whether any given distribution is entirely discretionary, but whether the Director is empowered to exercise his discretion, for good and sufficient reason, to delay a given distribution beyond the date specified therefor when to do so would effectuate the purposes of the School District Equalization Act, and permit the distribution of funds to districts lawfully entitled thereto in amounts which conform to the legislative scheme, and budgetary projections and planning based thereon. In our view, the provisions of the cited statute fixing dates for distributions to be made are not mandatory, but directory, and that thereunder, the Director is within the authority granted him by law to delay distributions for the reasonable time necessary, for good and sufficient reason, when to do so will permit more equitable and timely distribution of amounts initially contemplated to be available to school districts under the Act.

Thus, it is, accordingly, our opinion that the Director of Taxation may delay distribution beyond the August 1 date when necessary, in his judgment, to permit the autumn distribution to provide to school districts the amounts initially contemplated to be available for the August 1 distribution.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm

cc: Keith Weltmer, Legislative Post Audit
Richard Ryan, Legislative Research