

FILE

Subject

*Special Welfare
Funds - Taxes*

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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

July 29, 1974

Opinion No. 74- 248

Mr. Richard Jackson
Director
Economic Opportunity Office
State Capitol Building
Topeka, Kansas 66612

Dear Mr. Jackson:

K.S.A. 39-747 provides in pertinent part as follows:

"On January 1, 1974, county social welfare boards are hereby abolished and the secretary of social and rehabilitation services shall succeed to all property, records, supplies, equipment and any moneys or other assets of the county social welfare boards, including but not limited to uncollected funds for social welfare purposes: Provided, That this section shall not apply to any balance remaining in the county welfare fund immediately prior to January 1, 1974, which is unnecessary to meet any outstanding obligation of the county board of social welfare immediately prior to January 1, 1974, and such remaining balance shall be placed in the county general fund." [Emphasis supplied.]

Prior to the 1973 legislation, under K.S.A. 39-713(j), the county board of social welfare was required to prepare a county welfare budget, subject to approval by the state board of social welfare. It provided further:

"It shall be the duty of the board of county commissioners to make such levies upon the taxable property of the county as is necessary to raise the funds required by the county welfare budget"

K.S.A. 39-715, also repealed by ch. 186, § 42, L. 1973, provided thus:

Mr. Richard Jackson
July 29, 1974
Page Two

"(1) There is hereby created in the office of each county treasurer in this state a fund that shall be known and designated as the county welfare fund, and in which shall be deposited all receipts from taxes, funds derived from warrants and bond issues, sales, private gifts, grants, loans, and other revenues which the county board is authorized to receive. The fund so created shall be in such sum as shall guarantee that said county will be able to meet fully all obligations for assistance to the aged, blind, disabled, dependent children, and general assistance recipients who are entitled to such assistance and are certified therefor"

Thus, K.S.A. 39-747 purports to authorize the transfer of any outstanding balance remaining in the county welfare fund immediately prior to January 1, 1974, which is not then necessary to meet any outstanding obligation of the county board of social welfare, to the county general fund. Thus, proceeds from taxes levied for a specified purpose, to fund the county social welfare programs and obligations, will be diverted to general fund use. In Smith v. Haney, 73 Kan. 506, 85 Pac. 550 (1906), the court stated thus:

"The phrase 'general fund,' as applied to the fiscal management of a Kansas county, has a definite and well-recognized meaning. It covers the proceeds of a tax levied to provide for the usual current expenses. The building of a court-house is a special or extraordinary matter, and not one included in the purposes for which the general tax levy is made. To permit the diversion to that use, therefore, of any part of the unexpended proceeds of a general revenue tax would be a violation of the spirit and letter of the constitution." 73 Kan. at 509.

Article 11, § 5, of the Kansas Constitution states thus:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied."

Thus, as stated by Justice Brewer in Doty v. Ellsbree, 5 Kan. 209 (1873), "County funds raised for a specific purpose can be appropriated by the treasurer only for that purpose."

County funds raised by property taxation for welfare purposes may not constitutionally be diverted from that specified purpose to any of the general purposes which are funded by the general fund, and for which a general tax levy is made.

Mr. Richard Jackson
July 29, 1974
Page Three

The specific purpose for which the counties were authorized to levy a tax for welfare purposes is perhaps best summarized as "social welfare service," defined by K.S.A. 39-702, prior to its 1973 amendment, as

"giving assistance to needy persons, the prevention of public dependency, and promoting the rehabilitation of dependent persons or those who are approaching public dependency"

Kinds of such social welfare services were enumerated more specifically in K.S.A. 39-713, prior to its 1973 amendment, such as programs for the blind, care and protection of children, public assistance, and other such programs. It is for the purpose of "social welfare assistance" that funds levied for that purpose must be expended. To the extent that K.S.A. 39-747 purports to authorize the expenditure of the balance of social welfare funds remaining on January 1, 1974, for any purposes other than social welfare purposes, it is patently unconstitutional.

It is accordingly our opinion that the balance of tax revenues remaining in the social welfare fund immediately prior to January 1, 1974, and not then necessary to meet any outstanding obligations of the county board of social welfare, may not be transferred to the general fund of the county, but must be expended for the purposes for which the taxes for such fund were levied. Any funds heretofore transferred to the general fund, or moneys equivalent thereto, must nonetheless be expended only in accordance with the foregoing.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm