



STATE OF KANSAS

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CURT T. SCHNEIDER  
Attorney General

May 19, 1975

Opinion No. 75- 230

The Honorable Joan Finney  
State Treasurer of Kansas  
535 Kansas Avenue  
Topeka, Kansas 66603

Dear Mrs. Finney:

As it appears in the 1974 Supplement, K.S.A. 79-3425c provides for apportionment and distribution of the special city and county highway fund to cities and counties in the state.

Subsection (a) provides that commencing July 15, 1975, on January 15, April 15, July 15 and October 15 of each year, the state treasurer shall apportion and pay to the several counties of the state fifty-seven percent (57%) of the monies in the fund, and forty-three percent (43%) to the several cities of the state.

Subsection (b) provides for allocation and payment of the money to each county, and subsection (c) prescribes the manner of allocation and payment to the cities. Subsection (b) provides in pertinent part thus:

"The allocation and payment to each county under the provisions of this section shall be made in the following manner:

First, Each county of the state shall receive a payment of five thousand dollars (\$5,000).

Second, Of the balance remaining, fifty percent (50%) thereof shall be apportioned and paid to each county in the proportion that the total amount of money collected in such county from motor vehicle registration fees for the preceding calendar year bears to the total amount of money collected in all counties from motor vehicle registration fees for the preceding calendar year;

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Third, The remaining fifty percent (50%) of such balance shall be apportioned and paid to each county in the proportion that the average daily vehicle miles traveled in such county for the preceding calendar year bears to the average daily vehicle miles traveled in all counties of the state for the preceding calendar year. In the event that the amount of money received by any county pursuant to the foregoing distribution formula during the period of July 15 of any year, commencing in the year 1970, to April 15 of the next succeeding year is less than the total amount received by such county and all cities located within such county from the county road and city street fund . . . [and certain other funds during a prescribed period, then amounts shall be paid from the county equalization and adjustment fund sufficient to raise the amount paid to equal the amounts of certain prior distributions from those enumerated funds]."  
[Emphasis supplied.]

You inquire whether the underscored language provides that only the amount of money received by counties from the special city and county highway fund pursuant to K.S.A. 1974 Supp. 79-3425c(b) shall be used in calculating the apportionment of the county equalization and adjustment fund. You advise that the apportionment in the years 1971, 1972, 1973 and 1974 were made on the basis of the amount received by the counties pursuant to K.S.A. 1974 Supp. 79-3425c(b), plus the amount received by cities pursuant to K.S.A. 1974 Supp. 75-3425c(c). It is suggested that money "received by any county" includes money received not only by any county, but also by cities within the county, or, stated otherwise, that the word "county" is used to identify not a political entity, but a geographical area.

In our opinion, the underscored language clearly requires that only moneys received by counties, as counties, and not moneys received by cities or townships therein, may be considered in computing apportionment of the county equalization and adjustment fund. The language refers to money received by "a county pursuant to the foregoing distribution formula." The only "foregoing distribution formula" to which this language can possibly refer

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is the formula found at K.S.A. 1974 Supp. 79-3425c(b), paragraphs First, Second and the first sentence of paragraph Third, all of which refer only to counties, separately and apart from cities and townships. Indeed, the distribution formula for cities appears much later in the section, in the penultimate paragraph of this lengthy section.

Cities and counties are referred to throughout this section as separate and distinct entities. The distribution formulas are separate. Subsection (b), setting forth the county distribution formula, specifically requires certain counties to remit a certain portion of their receipts from the special city and county highway fund to cities. This direction would have been obviously unnecessary if any reference to counties in the section were to be construed as including references to cities therein. Indeed, in the sentence in question, which provides that if the amount received "by any county" is less than a prescribed amount, the state treasurer shall "apportion and pay to each such county" an amount necessary to meet prescribed standards, there is no basis whatever for regarding the term "county" as it first appears in the sentence as meaning other than what it means at the end of the sentence the obvious recipients of moneys from the county equalization and adjustment fund, i.e., counties as governmental entities.

We have been furnished with evidence of legislative intent, which is offered to suggest that the word "county" does not mean "county," but means not only the county, but also cities and townships therein. In Natural Gas Pipeline Co. v. State Commission of Revenue and Taxation, 163 Kan. 458, 183 P.2d 234 (1947), the court stated thus:

"When it appears the meaning of language used in a statute is indefinite, uncertain or ambiguous, the cardinal rule of statutory construction, to which all others are subordinate, is that the purpose and intent of the legislature is enacting it governs when that purpose and intent is ascertainable from the language to be found therein. . . . Another principle, of almost equal importance, is that when a statute is susceptible of more than one construction it must be given that construction which, when considered in its entirety, gives expression to its intent and purpose. . . ." 163 Kan. at 466.

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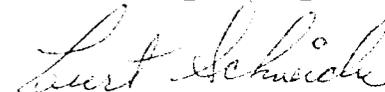
There is no ambiguity, uncertainty, or indefiniteness whatever in the phrase under consideration here. We are advised that when the first distribution was made, the matter was discussed and it "was established to the satisfaction of the persons then responsible for the distribution of the funds that it was the legislative intent to consider "county" as a geographic unit." Whoever divined this so-called "legislative intent" obviously did not call on the clear language of the statute for instruction. As stated by the court in State ex rel. Ferguson v. American Savings Stamp Co., 194 Kan. 297, 398 P.2d 1011 (1965),

"Although the intention of the lawmakers is to be given effect . . . , the intention must be determinable from the words used in the statute to express intent."

We have considered the items of evidence of legislative intent which have been offered. Such information would be of great assistance in appropriate instances of statutory ambiguity or indefiniteness. It is sufficient to point out here, however, that assuming the intent of all one hundred sixty legislators was as alleged, the language which was finally adopted, referring to "money received by any county," is not remotely suggestive of that intent. We cannot rewrite the statute to conform to unexpressed and indeed deftly concealed legislative intent.

You advise that because the 1975 apportionment is past due, your office has proceeded to make the 1975 distribution relying on the past precedent. In view of our reponse to your first question, the second question arises, whether any adjustment in future distributions is required to correct overpayments under the past practice. It is our opinion that the overpayment to any county in this or prior years should be deducted from the April 15, 1976, distribution from the county equalization and adjustment fund, and in distributions in future years from such fund, unless and until legislative action is taken to articulate the alleged 1970 legislative intent.

Yours very truly,



CURT T. SCHNEIDER  
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CTS:JRM:kj

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