



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 6, 1976

ATTORNEY GENERAL OPINION NO. 76- 6

Mr. Charles K. Hyter
City Attorney of Hutchinson
520 First National Center
Hutchinson, Kansas 67501

Re: Cities--Taxation--Use

Synopsis: A city may, in the exercise of constitutional home rule powers, provide by ordinance for the levy of a merchants' or occupational tax, the proceeds of which may be deposited in a special fund and used for purposes specified in the authorizing ordinance.

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Dear Mr. Hyter:

You request my opinion concerning the legal authority of the governing body of the City of Hutchinson to provide by ordinance for the levy of a tax on all merchants and businesses within the city. Under Article 12, § 5 of the Kansas Constitution, cities are constitutionally

"empowered to determine their local affairs and government, including the levying of taxes, excises, fees, charges and other exactions except when and as . . . limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class"

I agree with you that enactment of such an ordinance is within the constitutional authority of the city.

Mr. Charles K. Hyter

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You advise, however, that the governing body wishes to earmark the proceeds of the levy for special construction purposes, such as a new downtown community building, and the like. You question whether the proceeds of the tax may lawfully be segregated for deposit in such a capital improvement fund, and whether it is not necessary that they be deposited in the general fund. 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."

If the ordinance authorizing the levy specifies the purpose and object thereof, and that the proceeds shall be deposited in a fund created and identified by the ordinance, and uses for the purposes specified therein, I see no objection to thus earmarking proceeds of the levy for a special purpose, such as a capital improvement fund. However, if you should have further reservations based upon grounds other than those discussed above, please feel free to contact me.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj