



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 12, 1977

ATTORNEY GENERAL OPINION NO. 77-117

Mr. Dan Turner
City Attorney
Legal Department
215 East 7th Street
Topeka, Kansas 66603

Re: Cities--Street Lighting--Funds

Synopsis: Proceeds received by the city from the special city and county highway fund pursuant to K.S.A. 1976 Supp. 79-3425(c) may not be applied to the cost of electric current for the operation of street lighting systems, for such costs are not costs of street maintenance itself.

* * *

Dear Mr. Turner:

You advise that due to unforeseen and precipitous increases in the cost of lighting the public streets of the city, it is exploring the use of alternative sources of funding for such costs.


K.S.A. 1976 Supp. 79-3425(c) provides that moneys distributed to cities from the special city and county highway fund shall be credited to a separate fund to be used for the "construction, reconstruction, alteration, repair and maintenance of the streets and highways of such city" You inquire whether the expense of street lighting constitutes an expense for the "maintenance of streets" which could be defrayed from the allocation made to the city from the special city and county highway fund.

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In *Fisher v. Astoria*, 126 Or. 268, 269 P. 853, 60 A.L.R. 260 (1928), the court held that an act authorizing the city to create street improvement districts for the improvements of its streets, highways, alleys, avenues and the like, and to "provide for everything convenient and necessary concerning such improvement" authorized the city to assess property within such an improvement district for the cost of an ornamental lighting system. The court seemed not to hold that the lighting system itself was a street improvement, but that it was "convenient and necessary" to a street improvement. In *Utley v. City of Petersburg*, 114 So. 53 (Fla. 1932), the court held that a white-way system was not a "street improvement" within an enactment authorizing street improvements, as defined therein. A number of cases hold that the cost of street lighting equipment, and possibly the costs of current therefor, are public improvements, the cost of which may be assessed against property specially benefited thereby. However, I find little authority for the position that the costs of electric current for the operation of a street lighting system may be paid from funds which are dedicated to the maintenance of streets themselves. Stated simply, the costs of street lighting bears virtually no relationship to street maintenance itself.

Accordingly, I can but conclude that the costs of electric current for street lighting may not be defrayed from the separate fund for proceeds from the special city and county highway fund, which is devoted by law as a cost of street maintenance.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj