



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 5, 1977

ATTORNEY GENERAL OPINION NO. 77- 251

Mr. Philip C. Lacey
McPherson City Attorney
400 East Kansas Avenue
Post Office Box 650
McPherson, Kansas 67460

Re: Counties--Funds--Expenditures Within Cities

Synopsis: There is no statute of general application which prohibits the expenditure of county funds for services to be furnished within or improvements to be located within the limits of an incorporated city.

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Dear Mr. Lacey:

As city attorney for the City of McPherson, you request my opinion on the general subject of expenditures of county tax funds within the limits of an incorporated city within the county.

You advise that the population of the City of McPherson comprises approximately forty percent of the population of McPherson County and, of course, all property owners in the city pay ad valorem property taxes levied by the county. Notwithstanding, the McPherson County board of county commissioners has taken the position that they are prohibited by law from spending any of the general revenues of the county within the corporate limits of the city and for that reason has declined requests of the city governing body that the county contribute, for example, to defray the costs of certain paving improvements to be located within the city limits, but which will be of benefit to the entire community. In addition, the suggestion has been made that counties are permitted to expend county funds within the limits of cities of the third class, but may not do so within the limits of cities of the first and second class.

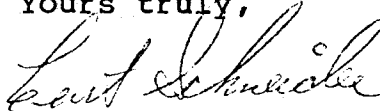
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The suggestion concerning cities of the third class may possibly derive from a mistaken interpretation of K.S.A. 80-1404, which provides that "[n]o city of the first or second class shall be included within the corporate limits of any township." This provision does not, of course, apply to counties. Cities of all classes are included within the corporate limits of the respective counties in which they are located, and there is no statute of general application which prohibits the expenditure of county funds for services or improvements to be provided or which are to be located within an incorporated city. To cite but one obvious example, county funds for services for the elderly are very commonly spent in programs operated in cities throughout the state, providing services to elderly residents of the county living both within and without the cities in such counties.

Concerning highways, K.S.A. 68-581, e.g., specifically authorizes counties to use any public funds available to the county for such purposes for the construction, reconstruction, maintenance and repair of new or existing streets within any incorporated city which the county designates a primary arterial highway.

If specific statutory authority is lacking for county participation in an improvement to be located within the city, the county may authorize such participation when it deems it in the interests of the county to do so, by adoption of a resolution under K.S.A. 1976 Supp. 19-101a(b). In short, there is no general statutory prohibition against the expenditure of county funds for either services to be provided or improvements to be made within the limits of an incorporated city of any class.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj