



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 16, 1978

ATTORNEY GENERAL OPINION NO. 78- 20

Mr. W. Keith Weltmer
Secretary of Administration
Department of Administration
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Re: State Monies--General Fund--Delinquent Intangibles Taxes

Synopsis: Monies held by the Sedgwick County Treasurer in the state general account deriving from monies collected prior to 1972 as delinquent intangibles tax payments due under G.S. 1949 79-3108 et seq. prior to 1963 repeal of state general fund participation in the proceeds thereof, may not be transferred to any other state tax account under K.S.A. 79-2918 unless such account is dedicated to the state general fund. There being no such accounts, the existing state tax accounts being dedicated to the state educational building fund, the state institutions building fund, and the state correctional institutions building fund, the monies in question should be transmitted to the Director of Accounts and Reports to be credited to the state general fund.

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Dear Secretary Weltmer:

You advise that the county treasurer of Sedgwick County has reported to Mr. James R. Cobler, Director of the Division of Accounts and Reports, that Sedgwick County is carrying the sum of \$40,907.14 in an account styled state general account. This money is reported to constitute the proceeds of delinquent intangibles tax payments which were collected to the credit of the state prior to 1972, and remained in the account due to uncertainty as to the proper disposition thereof.

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As you advise, no intangibles tax levy has been extended for the benefit of the state since 1963. G.S. 1949 79-3115 provided for the disposition of the tax thus:

"Upon collection the tax upon money, notes, and other evidence of debt shall be apportioned one-sixth to the state general fund, one-sixth to the county general fund, one-third to the general fund of the city or township, and one-third to the general fund of the school district in which such property was assessed."

State participation in the proceeds of the tax was terminated by the 1963 legislature. See ch. 482, L. 1963.

The question is raised whether the money in question may be disposed of by transfer of the surplus balance to another tax account. K.S.A. 79-2918 states thus:

"When by virtue of the foregoing provisions any county shall have paid into the state treasury the full amount of state tax levied for any particular year, all moneys thereafter collected on such tax shall be applied to the payment of any state tax theretofore levied and unpaid, and any balance remaining shall be applied to the payment of the state tax for succeeding years."

Thus, the question is raised whether the remaining balance in the state general account may be transferred to any of the three state tax funds, the state educational building fund, the state institutions building fund, or the correctional institutions building fund. K.S.A. 76-6b01 authorizes an annual levy for the use and benefit of state institutions of higher learning, the proceeds of which under K.S.A. 76-6b02 are to be credited to the Kansas educational building fund, to be appropriated by the legislature as needed for the construction, reconstruction, equipment and repair of buildings and grounds at state educational institutions under the control and supervision of the State Board of Regents. K.S.A. 76-6a04 authorizes an annual levy for the use and benefit of state institutions caring for persons who are mentally ill, retarded, visually handicapped, tubercular, handicapped

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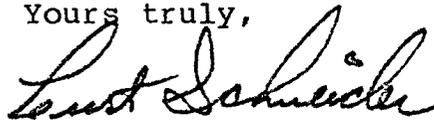
by a hearing loss, and certain others, and under K.S.A. 76-6b05, all proceeds of the levy are to be credited to the state institutions building fund. The state correctional institutions levy authorized by K.S.A. 76-6b09 is likewise to be credited to the correctional institutions building fund.

The delinquent intangibles property tax payments in question here were collected under a statute which directed the deposit of those funds in the state 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."

Obviously, while monies in the state general fund may be applied to the construction of buildings at state educational institutions, at those institutions within K.S.A. 76-6b04, and at state correctional institutions, the intangibles tax, to the extent that it was levied for the state, was not levied for any one of these purposes singly or together, but was levied for the state general fund. In my judgment, the monies now held in the state general account by the Sedgwick County treasurer and derived from delinquent tax payments of intangibles tax collected pursuant to G.S. 1949 79-3115 prior to its amendment in 1963 are constitutionally committed to the state general fund, and may not properly be transferred to any state tax account holding monies which are statutorily dedicated to any other fund. Thus, in my opinion, the monies in question should be transmitted forthwith to the Director of Accounts and Reports to be credited to the state general fund.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj