



STATE OF KANSAS

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May 1, 1979

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ATTORNEY GENERAL OPINION NO. 79-74

The Honorable Merridy Pratt
Treasurer of Edwards County
Kinsley, Kansas 67547

Re: Registration of Vehicles--Collection of Fees--
Disposition of Moneys from Special Fund of
County Treasurer

Synopsis: The county treasurer may not pay bonuses to employees from the special motor vehicle registration fund. In addition, the county treasurer may not pay additional compensation from the special fund to employees above and beyond their respective salaries except for overtime work of such employees which bears a relationship to the actual work of motor vehicle registration. Of course, the county treasurer is free to expend moneys from the special fund to hire additional personnel on a full or part-time basis, pay that portion of any employee's salary actually attributable to the work of motor vehicle registration, purchase equipment or supplies or perform other functions necessary to administer the motor vehicle registration act, and such expenditures are not subject to the supervision of the board of county commissioners.

* * *

Dear Ms. Pratt:

You request the opinion of this office regarding expenditures from the county treasurer's special fund established pursuant to K.S.A. 8-145. In making this request, you advise that a difference of opinion has arisen between your office and the board of county commissioners concerning the propriety of paying bonuses to employees of the treasurer's office who work additional time performing functions relating to motor vehicle registration. You further advise that the board of county commissioners stopped payment on certain checks drawn on the special treasurer's motor vehicle fund. Such checks

The Honorable Merridy Pratt
Page Two
May 1, 1979

were written to employees of your office, and as a result of this action of the county commission, the employees of your office were not paid in accordance with your wishes.

Pursuant to K.S.A. 8-145, Kansas law permits the county treasurer to retain a prescribed portion of motor vehicle registration fees. Such funds must be deposited by the treasurer

"in a special fund, which fund is hereby appropriated for the use of the county treasurer in paying for necessary help and expenses incidental to the administration of duties in accordance with the provisions of this law and extra compensation to the county treasurer for the services performed in administering the provisions of this act, which compensation shall be in addition to any other compensation provided by any other law" (Emphasis added.)

Regarding the question of the payment of bonuses to employees of the county treasurer's office, Attorney General Schneider declared in Opinion No. 77-48 that annual bonuses to all employees of the county treasurer were not properly payable from the motor vehicle registration fund created pursuant to K.S.A. 8-145. That conclusion was predicated on a finding that the expenditure of moneys from this special fund must bear a reasonable relationship to the purposes for which the fund was created, namely the "necessary help and expenses" of the treasurer's office incidental to the administration of the motor vehicle registration act. We affirm that opinion.

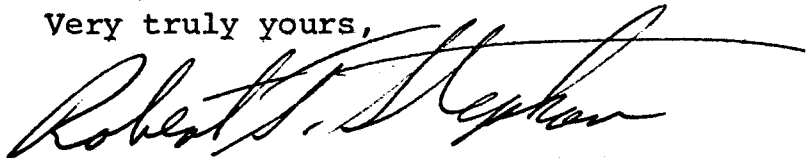
However, to the extent that the treasurer incurs costs to administer the state motor vehicle registration act, all such costs are payable from the special fund. More importantly, the supervision and control of expenditures incidental to the duties imposed upon the treasurer for motor vehicle registration rest with the treasurer and not with the board of county commissioners. This conclusion was established in Wyandotte County Comm'rs v. Ferguson, 159 Kan. 80 (1944), where the court also concluded that money in the "special" motor vehicle registration fund does not constitute part of the general funds of the county.

The Honorable Merridy Pratt
Page Three
May 1, 1979

We are, therefore, at a loss to know under what authority the board of county commissioners stopped payment on checks issued by the county treasurer. If those checks were believed to be improper, the appropriate legal recourse was the filing of an action in district court to restrain and enjoin the payment thereof. Normally, such an action could be filed by the county attorney or a taxpayer.

Thus, the county treasurer may not pay bonuses to employees from the special motor vehicle registration fund. In addition, the county treasurer may not pay additional compensation from the special fund to employees above and beyond their respective salaries except for overtime work of such employees which bears a relationship to the actual work of motor vehicle registration. Of course, the county treasurer is free to expend moneys from the special fund to hire additional personnel on a full or part-time basis, pay that portion of any employee's salary actually attributable to the work of motor vehicle registration, purchase equipment or supplies or perform other functions necessary to administer the motor vehicle registration act. Such necessary expenses may totally exhaust the special fund, but if funds remain after the payment of costs and any additional compensation paid the treasurer, such funds pass to the county general fund. Only then does the county commission have supervision and control of such funds.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Bradley J. Smoot
Deputy Attorney General

RTS:BJS:gk