

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 79-147

The Honorable Michael Hayden
State Representative, 120th District
406 State
Atwood, Kansas 67730

The Honorable Wint Winter
State Senator, Eleventh District
Box 8
Ottawa, Kansas 66067

Re: Legislature--Legislative Post Audit--Audit
Requirements Under Federal Revenue Sharing
Act

Synopsis: The Office of Revenue Sharing of the United States Treasury Department has the authority to prescribe the type of audit which must be performed by a state in order to maintain its eligibility to receive revenue sharing funds. If these requirements are not met, federal statutes provide the Secretary of Treasury the authority to withhold payment of these funds.

* * *

Dear Representative Hayden and Senator Winter:

As Chairman and Vice Chairman, respectively, of the Legislative Post Audit Committee, you have asked us to review the federal revenue sharing act, as it applies to the entitlement of the State of Kansas to receive further funds under that act. Specifically, you have asked whether: (1) there are any legal grounds to challenge the imposition of specific audit requirements upon the revenue sharing funds received by the state; and (2) there are legal grounds to challenge the proposed withholding of revenue sharing funds if the audit requirements are not met by the date prescribed by the Office of Revenue Sharing.

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The federal government's authority regarding revenue sharing is prescribed by 31 U.S.C. §§1221 et seq. The provisions thereof that address your specific questions are 31 U.S.C. §1243. Subsection (a)(5)(A) thereof requires that to qualify for revenue sharing payments, a state government must "use fiscal, accounting, and audit procedures which conform to guidelines established therefor by the Secretary [of Treasury]." These audit requirements have been established, requiring that

"the audit be of the financial and compliance type described in the Standards for Audit of Governmental Organizations, Programs, Activities and Functions as issued in 1972 by the Comptroller General of the United States and as described further in the Audit Guide and Standards for Revenue Sharing Recipients published by the Office of Revenue Sharing." 31 C.F.R. §51.106.

An audit opinion also is to be included pursuant to 31 C.F.R. §51.105.

The State of Kansas has submitted an audit performed by the Legislative Division of Post Audit to the Office of Revenue Sharing, but was informed by said Office that the audit did not comply with the foregoing guidelines. It is our understanding that said audit was of the performance type and did not include the disclosures that would be made under the financial type of audit required by the regulation. Of particular importance, the State of Kansas did not submit an audit opinion.

Under the federal revenue sharing act, when a state fails to comply with the Secretary's regulations, the Secretary of Treasury has the power to withhold future payments, and 31 U.S.C. §1243(b) provides the guidelines on implementation of the procedure therefor:

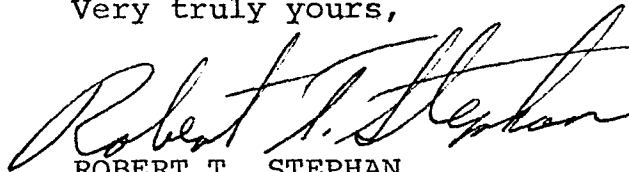
"(b) If the Secretary determines that a State government or unit of local government has failed to comply substantially with any provision of subsection (a) of this section or any regulations prescribed thereunder, after giving reasonable notice and opportunity for a hearing to the Governor of the State or the chief executive officer of the unit of local government, he shall notify the State government or unit of local government that if it fails to take corrective action within 60 days from the date of receipt of

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such notification further payments to it will be withheld for the remainder of the entitlement period and for any subsequent entitlement period until such time as the Secretary is satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts."

In conclusion, it is our opinion that the specific audit requirements imposed on the state's revenue sharing funds represent a valid, justifiable exercise of authority by the Secretary of the Treasury. Furthermore, even though §1243(b) prescribes a procedure for challenging the Secretary's decision that the audit provided by the State does not meet the necessary requirements, we would not anticipate that such challenge would be very productive in this instance. Based on our understanding of the facts you have presented, it does not appear that the audit of federal revenue sharing funds provided by Legislative Post Audit satisfies federal requirements.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk