



STATE OF KANSAS

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July 27, 1979

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ATTORNEY GENERAL OPINION NO. 79-162

Mr. William L. Frost
City Attorney
City Hall
11th and Poyntz
Manhattan, Kansas 66502

Re: Motor-Fuel Taxes--Special City and County Highway
Fund--Use

Synopsis: The provisions of subsection (c) of K.S.A. 1978 Supp. 79-3425c, which designates the permissible usage of a city's distributive share of the Special City and County Highway Fund, permits the purchase of equipment which is to be used in connection with the construction, reconstruction, alteration, repair and maintenance of the streets and highways of such city.

* * *

Dear Mr. Frost:

You have requested our opinion as to the permissible usage of a city's distributive share of the moneys in the Special City and County Highway Fund. Specifically, you have asked whether subsection (c) of K.S.A. 1978 Supp. 79-3425c permits the purchase of equipment with such moneys. You point out in your letter that the Division of Accounts and Reports of the Department of Administration relies on an opinion of this office, dated August 4, 1969, to disallow such usage.

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In 1969 (the year 79-3425c was enacted), the following language was contained in subsection (b) of this statute:

"[T]he city treasurer of each city shall credit the same to a separate fund to be used for streets and highways of such city. Money in said fund shall be used only for the construction, reconstruction, alteration and repair of main traffic ways and traffic way connections established pursuant to K.S.A. 12-685 and 12-686, through highways established pursuant to K.S.A. 8-568 and major streets or highways established pursuant to K.S.A. 1968 Supp. 12-705c."
(Emphasis added.)

The foregoing language provided the basis for the prior opinion of this office, and while we believe that the prior opinion was sound at the time it was written, we hasten to note that the relevant language has been amended several times since that opinion was issued. In both the 1970 and 1972 sessions, the legislature effected substantive changes in the foregoing language. Since the latter amendment, however, the clause in question has remained substantially unchanged. (In 1976, a provision was added whereby certain cities could divert not to exceed 10% of the fund to be used for foot paths and bicycle trails, but such amendment has no effect on the issue presented for our consideration.) As a result of these amendments, the pertinent portion of said statute now requires that a city treasurer credit the city's distributive share of the Special City and County Highway Fund moneys to a separate fund, "to be used for the construction, reconstruction, alteration, repair and maintenance of the streets and highways of such city." We find nothing in this language to prohibit the use of these moneys for the purchase of equipment to be used in connection with the designated street and highway functions.

In support of this conclusion, we believe that considerable emphasis should be placed on the 1970 amendment deleting the restrictive reference to certain designated streets and highways for which the moneys could be expended. The language contained in the statute as originally enacted strictly limited the use of the funds to only those designated streets and highways. Elimination of these restrictions gave an entirely new context to this subsection, permitting a city to use the fund for all of the streets and highways located within its boundaries. Further, there was no longer the problem identified in the prior opinion

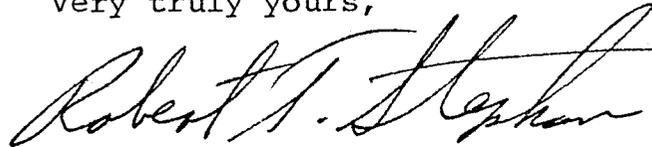
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of this office of trying to apportion the cost of equipment purchased for street work between projects which were specifically allowed by this statute and other projects of the city.

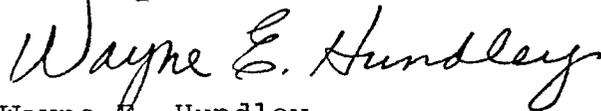
Equally important to our consideration is the 1972 amendment which added the word "maintenance" to the activities for which expenditures could be made. With this amendment, an additional implied restriction on the use of these funds was removed, and they now can be used for all phases of a city street program.

Therefore, it is our opinion that, under the provisions of subsection (c) of K.S.A. 1978 Supp. 79-3425c, a city may use its distributive share of moneys from the Special City and County Highway Fund for the purchase of equipment to be used in connection with the construction, reconstruction, alteration, repair and maintenance of the streets and highways of such city.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Wayne E. Hundley
Deputy Attorney General

RTS:WEH:gk

cc: James R. Cobler
Director of Accounts and Reports