



STATE OF KANSAS

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October 19, 1979

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ATTORNEY GENERAL OPINION NO. 79-236

Mr. Phillip C. Lacey
McPherson City Attorney
P. O. Box 1143
McPherson, Kansas 67460

Re: Federal Revenue Sharing Funds--Expenditure of
by Local Government

Synopsis: Federal revenue sharing moneys received by a
local government may be expended for any programs
or projects which are authorized by either state
statute or local ordinance, as long as procedural
requirements established by the State and Local
Fiscal Assistance Act, 31 U.S.C. §1221 et seq.,
are also met.

* * *

Dear Mr. Lacey:

You have requested an opinion from this office regarding permissible expenditures of Federal revenue sharing funds received by the City of McPherson. Specifically, you inquire whether revenue sharing funds may be used for a variety of programs for the elderly, the handicapped and those in need of family counseling.

The State and Local Fiscal Assistance Act was enacted by the United States Congress in 1972, and appears in the statutes at 31 U.S.C. §1221 et seq. More commonly known as revenue sharing, the act authorized the making of thousands of grants to state and local units of government, and initially contained definite restrictions on the use of such funds. These restrictions appeared at 31 U.S.C. §1222(a), which read as follows:

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"(a) Funds received by units of local government under this subchapter may be used only for priority expenditures. For purposes of this chapter, the term 'priority expenditures' means only--

"(1) ordinary and necessary maintenance and operating expenses for--

"(A) public safety (including law enforcement, fire protection, and building code enforcement),

"(B) environmental protection (including sewage disposal, sanitation, and pollution abatement),

"(C) public transportation (including transit systems and streets and roads),

"(D) health,

"(E) recreation,

"(F) libraries,

"(G) social services for the poor or aged, and

"(H) financial administration; and

"(2) ordinary and necessary capital expenditures authorized by law."

The subcategories themselves were further subdivided by administrative regulation so that it was often difficult to determine which programs were eligible and which were not. For example, day care centers for the children of "poor" individuals could be funded, while those for the children of non-poor persons could not, even though the need for both may have been equal.

Perhaps because of this confusion and inconsistency, the act was amended in 1976 so as to remove §1222, thus eliminating all substantive restrictions on the types of programs which could be funded through revenue sharing moneys. However, this does not mean that any and every kind of project may now be funded. In addition to Federal procedures (such as the non-discrimination provisions of 31 U.S.C. §1242), the individual

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program must not be prohibited by state statutes or, when applicable, local ordinances. This is provided for by 31 U.S.C. §1243(a)(4), which requires each recipient unit of government to insure that "it will provide for the expenditure of amounts received under subchapter I of this chapter only in accordance with the law and procedures applicable to the expenditure of its own revenues." (Emphasis added.) This latter term has been interpreted by the Kansas Attorney General to mean moneys of non-federal origin, so revenue sharing funds are to be treated in every respect as part of the funds available to a local government, including the requirement that provisions for any expenditure thereof be included in the budget. Attorney General Opinion No. 74-244. We concur in that opinion.

Therefore, the question becomes one of whether state statutes or local ordinances provide authority for the expenditure of the revenue sharing funds received by a local government such as the City of McPherson. As you noted in your inquiry, there do not appear to be relevant statutes for any of the programs about which you have inquired. It would be our opinion, however, that the lack of a state statute is not fatal. From what you have told us, it would appear that the programs involved are those which involve a public purpose. The city could accordingly use the home rule powers granted to it by Article 12, Section 5 of the Kansas Constitution to adopt an ordinance authorizing the use of revenue sharing funds for the desired programs. These procedures would seem to deal with the situation herein, and would allow the city to authorize the expenditure of moneys for the purposes you enumerated.

You have indicated to us that the budget of the city for the coming year has already been set, with the above-mentioned items receiving no funding. We note that an Attorney General's opinion of last year, No. 78-65, dealt with the same problem as may be involved here, i.e., the amendment of a budget which has already been adopted. Specifically, at page 9 of that opinion, it was held:

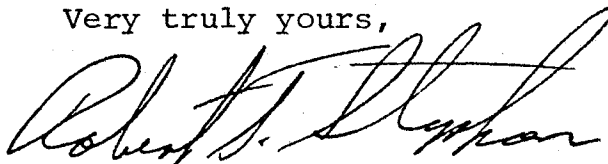
"When the budget is proposed to be amended in order to provide for the expenditure of revenues which are not derived from ad valorem property taxes, such as those involved here, which derive, indeed, entirely from a non-tax source, . . . [there is] no reason why the budget law should be construed to prohibit the adoption of such amendments at any time during the fiscal year, so long as the procedures

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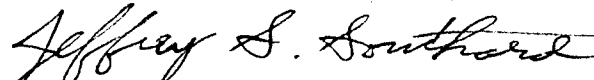
are followed which are provided for the protection of the taxpayer, i.e., published notice of and opportunity for participation in a public hearing upon such proposed amendments Amendment of a budget in order to provide for the expenditure of revenues derived from a source other than taxes which are levied on November 1 of each year can, consistent with this procedure, be performed as well in January as in August of any year, because the additional revenues are derived independently from property tax sources, and entail no duty on the part of the county clerk in the levy of taxes on November 1."

We would concur in this opinion, and believe it governs the situation faced by the city. We also note that the expenditure of revenue sharing funds does require a public hearing, pursuant to 31 U.S.C. §1241, following the publication of a notice. See 51 CFR §51.15.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:gk