



STATE OF KANSAS

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July 28, 1980

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ATTORNEY GENERAL OPINION NO. 80-170

Mr. Donald D. Good
Wilson, Beard & Good
148 N. Fowler
Meade, Kansas 67864

Re: Townships and Township Officers--Hospitals Districts
of Third-Class Cities and Townships--Use of Moneys
Derived from Tax Levy for Maintenance and Operation
of Hospital

Synopsis: K.S.A. 1979 Supp. 80-2125 authorizes the board of directors of a hospital district organized pursuant to K.S.A. 80-2113 et seq. to levy a tax for the purpose of maintaining and operating the district hospital and for the payment of the general expenses of the district. The board has no authority to transfer moneys from such operation and maintenance fund to the district building fund, authorized by K.S.A. 1979 Supp. 80-2127, to be used for a building construction project or other such capital improvements. Cited herein: K.S.A. 79-2925, as amended by L. 1980, ch. 89, §4, 79-2927, 79-2934, 80-2113, K.S.A. 1979 Supp. 80-2125, 80-2127, K.S.A. 80-2128, Kan. Const., Art. 11, Sec. 5.

* * *

Dear Mr. Good:

As attorney for the board of directors of the Meade County Hospital District, a hospital district organized pursuant to K.S.A. 80-2113 et seq., you request our opinion whether the board of directors may transfer moneys in the district's operation and maintenance fund to its building fund for purposes of a new construction project contemplated in the next year. You advise that the district presently has approximately \$205,000 in its building fund and approximately \$350,000 in its operation

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and maintenance fund. The board wants to transfer the \$350,000 to the district's building fund.

In our opinion, such a transfer would not be permissible. K.S.A. 1979 Supp. 80-2125 authorizes the board of directors of the hospital district to levy a tax "for the purpose of maintaining and operating the hospital and the payment of the general expenses of the hospital district." (The statute also empowers the board of directors to levy a tax for maintenance and operation of a home for the aged.) By virtue of the express language of the statute, the Board has no authority to expend moneys derived from the tax levy authorized by K.S.A. 1979 Supp. 80-2125 except for expenses incurred for maintaining and operating the hospital, and other general expenses of the district. No provision is made for expenditures of such moneys for new building construction projects or other such capital improvements.

Importantly, K.S.A. 1979 Supp. 80-2127 empowers the board of directors to levy an annual tax, for not more than five years,

"for the purpose of creating a special building fund to be used to reconstruct, build an addition to or improve or equip the existing hospital or for the purpose of acquiring a site and the construction and equipping of a new or additional hospital building, or for the purpose of acquiring a site for an addition to the existing hospital, or for the purpose of acquiring and equipping an existing privately-owned hospital."

The levy of such tax is subject to the approval of a majority of the district electorate, as further provided by the statute. In addition, again subject to the approval of the voters of the district, the board of directors may issue bonds for the purpose of providing funds to be used for any of the above-listed construction, reconstruction or other capital improvement projects, pursuant to K.S.A. 80-2128.

In our judgment, the legislature clearly distinguished the above-described funds, as provided by K.S.A. 1979 Supp. 80-2125 and 80-2127, and the purposes for which the moneys in such funds may be used. We conclude that the operation and maintenance fund authorized by 80-2125 and the building fund authorized by 80-2127, and the purposes for which each may be established, are mutually exclusive.

Moreover, it is our opinion that the board's proposed transfer of moneys from one fund to another would violate the provisions of K.S.A. 79-2925 et seq., the Budget Law. As a taxing subdivision, the hospital

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district is subject to the Budget Law. K.S.A. 79-2925, as amended by L. 1980, ch. 89, §4. Under K.S.A. 79-2927, all taxing subdivisions or municipalities of the state are required each year to prepare a budget "properly itemized and classified by funds." Upon compliance with the statutory procedure for adoption of the budget, K.S.A. 79-2934 provides, in pertinent part, that

"[t]he budget . . . shall constitute and shall hereafter be declared to be an appropriation for each fund, and the appropriation thus made shall not be used for any other purpose. . . .

"No part of any fund shall be diverted to any other fund, whether before or after the distribution of taxes by the county treasurer, except as provided by law." (Emphasis added.)

In Shouse v. Cherokee County Commissioners, 151 Kan. 458 (1940), affirmed on rehearing 152 Kan. 41 (1940), the Kansas Supreme Court considered the language of K.S.A. 79-2934 stating, in pertinent part:

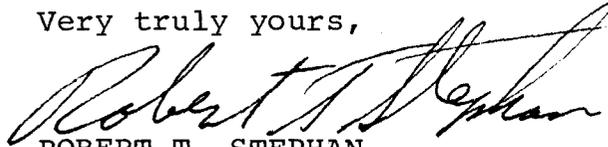
"Under section 79-2934 the appropriation for each individual fund as set forth in the budget 'shall not be used for any other purpose.' The board [of county commissioners] therefore was without authority to borrow from one budgeted item to pay for items not budgeted, or which should have been budgeted in some other item. Under the budget law each of the budgeted items is separate and distinct--in effect a trust fund earmarked for a particular purpose. Clearly it is contrary to the letter and spirit of the law for the board to borrow from one item fund to pay the obligations chargeable to another item fund, or to pay an obligation not budgeted at all." (Emphasis added.) 151 Kan. at 465-466.

Simply stated, under the Budget Law, the board of directors shall adopt a budget which establishes "an appropriation for each fund." K.S.A. 79-2934. The term "fund" refers to "those funds which are authorized by statute to be established." K.S.A. 79-2925(b), as amended by L. 1980, ch. 89, §4. Once so established, "the appropriation . . . shall not be used for any other purpose." K.S.A. 79-2934. Thus, the board's proposed use of money in the fund established under K.S.A. 1979 Supp. 80-2125 for a purpose other than those purposes specified

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in that statute would be improper. Indeed, it appears that such an expenditure may also run afoul of Article 11, Section 5 of the Kansas Constitution, which provision commands that "[n]o tax shall be levied except in pursuance of a law, which shall distinctly state the object of same; to which object only such tax shall be applied." (Emphasis added.) To use the tax moneys derived from the levy under 80-2125 for capital construction purposes may constitute, in our judgment, the application of such tax revenues for an object other than that for which the tax is authorized. This the Kansas Constitution does not permit.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:pf