



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

September 23, 1980

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ATTORNEY GENERAL OPINION NO. 80- 206

Mr. Robert H. Gale, Jr.  
Hamilton County Attorney  
211 N. Main  
Syracuse, Kansas 67878

Re: Counties and County Officers--County Treasurer--  
Disbursement of Money by County Treasurer

Synopsis: As a general rule, the county treasurer may only pay money out of the county treasury on orders of the board of county commissioners. However, where "special provision" for the payment of money out of the county treasury is made, the general rule is not applicable, and the county treasurer must make such payments out of the treasury as required by such special provision of the law. Subsection (c) of section 1 of 1980 House Bill No. 3283 [L. 1980, ch. 326, §1(c)] is such a "special provision." Cited herein: K.S.A. 1979 Supp. 19-506, 79-5107 (as amended by L. 1980, ch. 325, §4, and as further amended by L. 1980, ch. 326, §1).

\* \* \*

Dear Mr. Gale:

You have asked for the opinion of this office concerning the provisions of 1980 House Bill No. 3283 (L. 1980, ch. 326). Specifically, you inquire about the language of subsection (c) of section 1 of the act (further amending K.S.A. 1979 Supp. 79-5107, as amended by L. 1980, ch. 325, §4), which provides:

"(c) Whenever the tax imposed under this act has been paid upon any motor vehicle and title to such vehicle is transferred and no replacement vehicle is substituted therefor such taxpayer shall be entitled to a refund in an amount equal to one-twelfth (1/12) of the tax due upon such motor vehicle for the full registration year, multiplied by the number of full calendar months remaining in such registration year. Whenever the tax imposed under this act upon any replacement motor vehicle for the remainder of the registration year is less than the tax paid on the motor vehicle replaced for the remainder of such registration year, the taxpayer shall be be entitled to a refund in the amount by which the tax paid upon the vehicle replaced exceeds the tax due upon the replacement vehicle. All refunds shall be paid by the county treasurer from the county general fund. No refund shall be made under the authority of this section for a sum less than ten dollars." (Emphasis added.)

You advise that it is your opinion that the county treasurer has no authority to disburse money from the county treasury except upon the orders of the board of county commissioners.

We invite your consideration of K.S.A. 1979 Supp. 19-506, which section provides, in pertinent part:

"It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source they may be derived, and all other moneys which are by law directed to be paid to him or her. . . . All money received by him or her for the use of the county shall be paid out by him or her only on the orders of the board of commissioners, according to law, except where special provision for the payment thereof is or shall be otherwise made by law." (Emphasis added.)

As you have correctly noted, as a general rule, the county treasurer may pay money out of the county treasury only on orders of the board of county commissioners. However, where "special provision" for the payment of money out of the county treasury is made, the general rule is not applicable, and the county treasurer must make such payments out of the treasury as required by such special provision of the law. In our opinion, the section of 1980 House Bill No. 3283 in question is such a "special provision" contemplated in K.S.A. 1979 Supp. 19-506, and by authority of that provision, the county treasurer

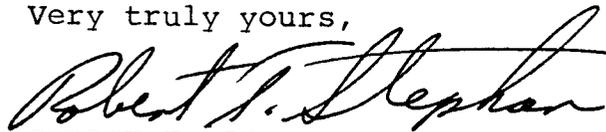
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is empowered to make payments of refunds to taxpayers out of the county general fund without any order or authorization of the board of county commissioners, and indeed, is directed to do so as prescribed by the act.

In Wyandotte County Comm'rs. v. Ferguson, 159 Kan. 80 (1944), the Kansas Supreme Court declared that G.S. 1943 Supp., 8-145 (now K.S.A. 1979 Supp. 8-145, as amended by L. 1980, ch. 31, §6), which section creates a special fund appropriated for the use of the county treasurer to pay for necessary help and expenses incidental to the treasurer's duties in the registration of motor vehicles, is a "special provision" within the meaning of G.S. 1935 (now K.S.A. 1979 Supp.) 19-506. The Court said "if we . . . consider as 'county funds' the portion of the fees [collected pursuant to 8-145] retained by the treasurer for administrative expenses . . . [c]learly section 8-145 makes 'special provision' for payment of expenses by the treasurer out of the special fund." 159 Kan. at 86. Accordingly, the court decided that the fees collected and payments made out of the special fund for the treasurer's administrative expenses are not subject to the control and supervision of the board of county commissioners. While it is generally true that the county treasurer may make payments out of the county general fund only as directed by the board of county commissioners, it is clear that where the legislature makes a "special provision" for payments out of the county general fund or other county funds, as it has in the act in question under the circumstances prescribed by the act, the treasurer shall make such payments without prior authorization from the board of county commissioners.

With attention to your request for general guidelines on county expenditures, enclosed please find a copy of Attorney General Opinion No. 80-69 on that subject.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steven Carr  
Assistant Attorney General

RTS:BJS:SC:pf  
Enclosure