



STATE OF KANSAS

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February 5, 1982

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ATTORNEY GENERAL OPINION NO. 82- 26

Thomas J. Burgardt
City Attorney
Garden City Administrative Center
301 North Eighth
Garden City, Kansas 67846

Re: Taxation -- Sales of Liquor By Clubs -- Local
Alcoholic Liquor Fund; Use of Revenues for Special
Alcohol Programs

Synopsis: Pursuant to K.S.A. 1980 Supp. 79-41a04, a city is entitled to receive certain moneys from the local alcoholic liquor fund, which fund is disbursed by the state after having been collected by private clubs located in the city. One-third of the moneys so distributed shall be credited to a special alcohol programs fund, and may be expended only for specified purposes set out by subsection (d) of K.S.A. 1980 Supp. 79-41a04. Accordingly, a city is without the authority to use a portion of the fund for the enforcement of prescribed substances statutes. Cited herein: K.S.A. 1980 Supp. 79-41a02, 79-41a03, 79-41a04.

* * *

Dear Mr. Burgardt:

As City Attorney for Garden City, you request our opinion on a matter regarding the local alcoholic liquor fund established pursuant to K.S.A. 1980 Supp. 79-41a04. Specifically, you wish to know whether moneys from the special alcohol programs fund may be used for the salary of an individual who will have duties in the areas of alcohol and drug-related programs and enforcement.

The local alcoholic liquor fund is created by K.S.A. 1980 Supp. 79-41a04, which statute is a portion of an act enacted in 1979 (L. 1979, ch. 152). Section 12 of that act (now K.S.A. 1980 Supp. 79-41a02) imposes a ten percent tax upon

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the gross receipts derived from the sale of alcoholic liquor by private clubs in this state. Moneys thus collected are paid to the secretary of revenue (K.S.A. 1980 Supp. 79-41a03, deposited in the local alcoholic liquor fund, and then dispensed to cities and counties according to K.S.A. 1980 Supp. 79-41a04(b). For a city such as Garden City, the local alcoholic liquor fund receives that amount which is collected and paid-in by clubs located in the city. It is the uses to which such moneys may be put that prompts your opinion request.

Requirements for the expenditure of moneys distributed from the local alcoholic liquor fund are imposed by subsection (d) of K.S.A. 1980 Supp. 79-41a04, which states:

"Each city treasurer, upon receipt of any moneys distributed hereunder, shall deposit the full amount thereof in the city treasury and shall credit one-third (1/3) of the deposit to the general fund of the city, one-third (1/3) to a special parks and recreation fund in the city treasury and one-third (1/3) to a special alcohol programs fund in the city treasury. Moneys in such special funds shall be under the direction and control of the governing body of the city. Moneys in the special parks and recreation fund shall be expended only for the purchase, establishment, maintenance or expansion of park and recreational services, programs and facilities. Moneys in the special alcohol programs fund shall be expended only for the purchase, establishment, maintenance or expansion of services or programs of alcoholism prevention and education, alcohol detoxification, intervention in alcohol misuse or treatment of persons who are alcoholics or are in danger of becoming alcoholics." (Emphasis added.)

As may be seen from the above-underscored provisions, the Legislature has placed explicit restrictions on the use of that one-third of the tax moneys earmarked for special alcohol programs. Each of the purposes which are set out therein are expressly linked with alcoholism or alcohol misuse. While the linkage of alcohol abuse with drug abuse in general is a reasonable one to make, it is not contemplated by this section, the intent of which is clear and therefore controlling. State ex rel. v. Lane, 228 Kan. 379 (1980).

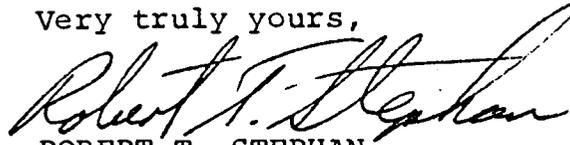
Accordingly, the city could fund that fraction of an employee's salary and expenses which corresponds to the portion of his or her job which is related to alcohol programs and use general funds for the other portion of his salary which concerns

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drug-related duties. However, a city cannot fund both functions with moneys from this source. Additionally, we note that as the act is uniformly applicable to all cities, the city is unable to employ home rule to amend the list of permissible uses for the fund.

In conclusion, pursuant to K.S.A. 1980 Supp. 79-41a04, a city is entitled to receive certain moneys from the local alcoholic liquor fund, which fund is disbursed by the state after having been collected by private clubs located in the city. One-third of the moneys so distributed shall be credited to a special alcohol programs fund, and may be expended only for specified purposes set out by subsection (d) of K.S.A. 1980 Supp. 79-41a04. Accordingly, a city is without the authority to use a portion of the fund for the enforcement of prescribed substances statutes.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle