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ATTORNEY GENERAL OPINION NO. 82-140

Mr. James R. Cobler
Director of Accounts and Reports
Department of Administration
First Floor, State Office Building
Topeka, Kansas

Re: Counties and County Officers--General Provisions--
Establishment of Tax Levy Funds

Synopsis: Generally, items of expense incurred by a county in providing basic governmental services are to be paid from the county general fund. The expense of providing basic law enforcement services is such an expense. Therefore, payment of that expense must be made from the county general fund. Cited herein: K.S.A. 19-241, 79-5001.

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Dear Mr. Cobler:

You explain that members of the staff in the Municipal Accounting Section of the Division of Accounts and Reports are having difficulty in determining whether the budgets of certain counties are in compliance with the law, in light of Attorney General Opinion No. 81-168. In that opinion, we concluded a county could exclude, from the calculation of its aggregate levy amount limit, under K.S.A. 79-5001 et seq., a sum of money equal to the costs to be incurred by the county in providing law enforcement services. However, we also concluded the county could not deposit that same sum of money in a special fund, instead of depositing it in the county general fund. You explain the Municipal Accounting Division

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believes the conclusion to be reached from the prior opinion is that a county may not establish a special fund for a particular item of expense, unless a statute authorizes the creation of such a special fund.

Such was not the thrust or intent of the previous opinion. Instead, that opinion recognizes that an item of expense either is an item to be paid from the general fund, or it is not. The Court, on numerous occasions, has had to determine whether a particular item of expense should be paid from the general fund or some special fund. For example, in A.T. & S.F. Rld. Co. v. Wilhelm, 33 Kan. 206 (1885), the Court concluded that the expense incurred by a county to support the poor was an expense that had to be paid from, and included in, the county general fund. Likewise, in Comm'rs of Osborne Co. v. Blake, 25 Kan. 356 (1881), the Court said that the payment of a judgment rendered against a county was an expense of the county which had to be paid from the general fund.

On the other hand, the Court, in State, ex rel., v. Comm'rs of Marion County, 21 Kan. 419 (1879), held that the expense of constructing county buildings was not an expense to be included in, and paid from, the county general fund. Also, in State v. Cowley County, 86 Kan. 201 (1911), the Court concluded that the expense incurred by a county in maintaining county roads was not an expense to be paid from the general fund.

A county's general fund is established pursuant to K.S.A. 19-241. Under that statute, it is the county's duty to levy a tax sufficient to cover the ordinary, usual and current expenses of the county. See Smith v. Haney, 73 Kan. 506, 509 (1906). As indicated by the cases cited above, whether an item of expense is to be paid from the general fund as a usual and ordinary expense of the county must be determined on a case by case basis, where the law authorizing such expense is silent in this regard.

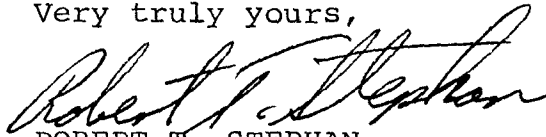
The conclusion in our prior opinion, that the expenses incurred by a county for law enforcement services are to be paid from the county general fund, was predicated upon our determination that such expenses are ordinary and usual expenses of the county. That conclusion requires little discussion. Historically, counties have been statutorily established as the basic jurisdictional units for the enforcement of state laws, and as a consequence, it is inevitable that counties will incur expenses in providing the necessary law enforcement services. Although our research has not been exhaustive, suffice it to state that for a significant portion of our state's history these expenses have been regarded as ordinary and usual expenses of the county, payable from its general fund.

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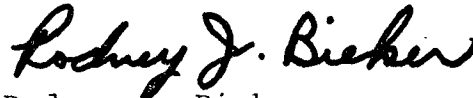
A county has no option in the levying of a tax to defray the expenses attributable to the general fund. K.S.A. 19-241 is mandatory and is uniformly applicable to all counties. Hence, it is not susceptible of alteration through a county's home rule powers.

Consequently, if the specific conclusion stated in Attorney General Opinion No. 81-168 is to be generalized, the general rule is that items of expense incurred by a county in providing basic governmental services are to be paid from the general fund. The expense of providing basic law enforcement services is such an expense. Thus, payment of that expense must be made from the county general fund.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm