



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 82-160

The Honorable John Carlin
Governor of Kansas
2nd Floor, State Capitol
Topeka, Kansas 66612

Re: State Departments; Public Officers, Employees --
Department of Administration -- Application of
Allotment System

Synopsis: K.S.A. 75-3722 provides for an allotment system to assure that expenditures for any particular fiscal year will not exceed the available resources of the general fund or any special revenue fund for that fiscal year. In determining whether an allotment system is to be imposed, the secretary of administration may utilize the revenue estimates of the director of the budget.

An allotment system may be imposed on any appropriation from any fund for which the allotment system is established, including appropriations to fund statutorily-prescribed state aid programs, and it need not be applied equally or on a pro rata basis to all such appropriations. However, an allotment system has no application to a statutorily-prescribed transfer of money from one fund in the state treasury to another fund in the state treasury, since such transfer does not constitute an appropriation. Nor may an allotment system be imposed in any fiscal year for the purpose of increasing the estimated ending balance of any such fund for that fiscal year or for the purpose of controlling temporary cash shortages.

At the point in time the secretary of administration notifies a state agency as to the imposition of an allotment system on such agency's appropriations, such agency is to be regarded as subject

to the allotment system, for purposes of K.S.A. 75-3723, and the director of the budget is thereby empowered under K.S.A. 75-3723(1) to require such agency to furnish information regarding its estimated revenues and expenses. Cited herein: K.S.A. 75-3715, K.S.A. 1981 Supp. 75-3718, K.S.A. 75-3722, 75-3723, 75-3724, 75-3725a, 77-136, Kan. Const., Art. 2, §24.

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Dear Governor Carlin:

You have requested our response to several specific questions regarding the provisions of K.S.A. 75-3722 to 75-3725a, inclusive. In general, you have requested our opinion regarding the "management prerogatives and procedures available to assure fiscal integrity of the State General Fund" pursuant to these statutes.

Particularly pertinent to your inquiry is K.S.A. 75-3722, which provides for an allotment system applicable to legislative appropriations from the state general fund and special revenue funds. It states as follows:

"An allotment system will be applicable to the expenditure of the resources of any state agency, under rules and regulations established as provided in K.S.A. 75-3706, only if in the opinion of the secretary of administration on the advice of the director of the budget, the use of an allotment plan is necessary or beneficial to the state. In making this determination the secretary of administration shall take into consideration all pertinent factors including (1) available resources, (2) current spending rates, (3) work loads, (4) new activities, especially any proposed activities not covered in the agency's request to the governor and the legislature for appropriations, (5) the minimum current needs of each agency, (6) requests for deficiency appropriations in prior fiscal years, (7) unexpended and unencumbered balances, and (8) revenue collection rates and prospects.

"Whenever for any fiscal year it appears that the resources of the general fund or any special revenue fund are likely to be insufficient to cover the appropriations made against such general fund or special revenue fund, the secretary of administration, on the advice of the

director of the budget, shall, in such manner as he or she may determine, inaugurate the allotment system so as to assure that expenditures for any particular fiscal year will not exceed the available resources of the general fund or any special revenue fund for that fiscal year. The allotment system shall not apply to the legislature or to the courts or their officers and employees. Agencies affected by decisions of the secretary of administration under this section shall be notified in writing at least thirty (30) days before such decisions may become effective and any affected agency may, by written request addressed to the governor within ten (10) days after such notice, ask for a review of the decision by the finance council. The finance council shall hear appeals and render a decision within twenty (20) days after the governor receives requests for such hearings."

All of the questions you have submitted for our consideration require an interpretation of various provisions of the above-quoted statute. Our interpretations, of course, must be guided by established principles of statutory construction, the cardinal rule of which is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357, 367 (1978). It also is an accepted rule that "[t]he historical background and changes made in a statute are to be considered by the court in determining legislative intent for the purpose of statutory construction." Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973).

With these principles in mind, and before considering your specific questions, it is appropriate to review the legislative history and background of K.S.A. 75-3722. It was enacted as section 22 of 1953 Senate Bill No. 68 (L. 1953, ch. 375, §22), which created various state agencies (including the state department of administration) and provided for coordinating their respective functions and duties with respect to "administering public finance." Other than the editorial changes made by the Revisor of Statutes (see K.S.A. 77-136), primarily as a consequence of the 1972 act reorganizing the department of administration (L. 1972, ch. 332), this statute has remained unchanged since its enactment. However, we note that the provisions of this statute conferring powers upon the state finance council were held unconstitutional as a violation of the separation of powers doctrine in State, ex rel., v. Bennett, 219 Kan. 285, 295, 298 (1976), where it also was determined that such powers devolved upon the governor. Id. at 301.

1953 Senate Bill No. 68 was originally Legislative Council Bill No. 13, which was submitted to the 1953 Legislature to implement, in part, the Kansas Legislative Council's recommendations emanating from a two-year study of consolidating the state's "fiscal, accounting, purchasing, personnel and budget affairs into a single state administrative department." Report and Recommendations of the Kansas Legislative Council, Part I -- Regular, submitted to the 1953 Legislature (Proposal No. 21), pp. 108-189. Section 22 of the 1953 enactment was identical to the corresponding section of the Council's bill and, as previously indicated, is identical for all substantial purposes to K.S.A. 75-3722.

With its report and recommendations to the 1953 Legislature on Proposal No. 21, the Legislative Council submitted other "available information" to the appropriate legislative committees. *Id.* at 111. Of pertinence is Fiscal Reorganization, Publication No. 183 of the Kansas Legislative Council's Research Department, which was prepared at the direction of the Legislative Council committee to which Proposal No. 21 was assigned. Among other things, this publication provides an analysis of the provisions of Legislative Council Bill No. 13, including the allotment system authorized by section 22 thereof. Hence, considering the identity of section 22 and K.S.A. 75-3722, this publication's analysis is pertinent to our consideration of the legislative intent and purpose underlying the current statute. Our reliance on this publication in providing insight as to legislative intent is appropriate in light of the following statement in Harris v. Shanahan, 192 Kan. 629 (1964):

"In 1933 the legislature created the legislative council to deal with questions of state-wide interest and to prepare a legislative program in the form of bills for the consideration of the legislature. To assist it in carrying out its duties, the council established its own research department. (G. S. 1949, 46-308.) The research department of the council is an arm of the legislature itself. In assisting in the legislative work, the research department is akin to the function of a legislative or a code revision commission, reports of which may be considered in construing a statute. (State, ex rel., v. Davis, Governor, 116 Kan. 663, 229 Pac. 757; 82 C.J.S., Statutes, §356, p. 757.)" *Id.* at 637.

Regarding the proposed allotment system, the Legislative Council's Research Department stated:

"An allotment system means that appropriations made by the legislature do not become available to a state agency until that agency submits to the central department a work program for the three months of the ensuing quarter, explaining how much of its appropriation is needed in that period and justifying the request. This request must be approved by the central agency before any expenditures are authorized thereunder. The central agency may raise questions concerning the program and may decrease the amount requested.

"Under the current bill, such a system would be applied only if, in the opinion of the executive director on the advice of the budget director, the use of such allotment plan is deemed necessary or beneficial to the state. The bill specifies the factors which must be taken into consideration, including, among others, the rate of spending, to ascertain that the agency will have enough money for the remaining quarters; the history of the agency on requests for deficiency appropriations in prior years; and consideration as to whether the revenue collections are meeting the estimates and whether any deficit might be expected because of inadequate revenues. In the latter event, in any fiscal year, the bill instructs the executive director to inaugurate an allotment system to be sure expenditures for that year will not exceed available resources of the general fund or of any special revenue fund. Each agency affected by such a system would have written notice at least 30 days in advance and could ask for review of its situation and requests by the finance council."
(Emphasis added.) Fiscal Reorganization, supra at 33, 34.

With respect to the functions and duties of the budget division of the department of administration proposed by Legislative Council Bill No. 13, the Research Department's publication also addresses the allotment system, as follows:

"Allotment System. Most states with a reorganized fiscal agency provide that the appropriations made by the legislature must be allotted to the agencies from quarter to quarter, on statements from the agencies of their work programs showing what portion of the appropriation they will need during the coming

quarter. Under the proposed Kansas plan no allotment system is required except under special conditions. It would be permissible, under regulations approved by the finance council, only when deemed necessary and [or] beneficial by the executive director on advice of the budget director.

"In any fiscal year where it appeared that the resources of the general fund or any special revenue fund were likely to be insufficient to cover the appropriations, the executive director, to prevent deficits and keep the expenditures within the amount of money actually available, is required to inaugurate an allotment system. It might also be used where agencies appear to be expending at a more rapid quarterly rate than the appropriation would permit or where the agency has had a history of requests for deficiency appropriations in prior years, to show that such agencies will be able to keep within the funds available to them on an annual basis.

"Agencies affected would have a 30-day notice and opportunity for review of the decision by the finance council. No appropriation made to a state agency subject to an allotment system would become available for expenditures until the allotment had been approved, increased or decreased under the procedure indicated above." (Emphasis added.) Fiscal Reorganization, supra at 22, 23.

We believe the foregoing excerpts from Fiscal Reorganization, supra, provide a general context for the consideration of your inquiries, and will assist in specific instances in ascertaining the legislature's intended purpose.

One further general comment is necessary. We note that K.S.A. 75-3722 contemplates the use of an allotment system under two general circumstances. The first paragraph of the statute addresses the permissive use of an allotment system when it is "necessary or beneficial to the state," whereas the first portion of the statute's last paragraph requires inauguration of the allotment system "[w]henever for any fiscal year it appears that the resources of the general fund or any special revenue fund are likely to be insufficient to cover the appropriations made against such general fund or special revenue fund." Although your letter does not specifically so state, it is apparent from the context of your inquiry that your

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questions regarding an allotment system pertain, for the most part, to the latter type, i.e., an allotment system which is required to be inaugurated because of an estimated deficiency in the state's financial resources. Hence, our responses to your inquiries will be framed within this context, unless otherwise indicated to the contrary.

Your first question regarding K.S.A. 75-3722 is whether the allotment system may be applied "only to the extent necessary to avoid a potential deficit ending balance or may it be applied in a manner that increases the estimated State General Fund ending balance to a level deemed necessary or beneficial to the State."

In our judgment, an allotment system may not be applied for the purpose of increasing the estimated ending balance of the general fund for the current fiscal year. The allotment system required to be instituted is of limited duration, being applicable only during a particular fiscal year, and in the language of the statute, it is intended "to assure that expenditures for any particular fiscal year will not exceed the available resources of the general fund . . . for that fiscal year." We believe this plain and unambiguous language evidences a clear legislative intent that such required allotment system is intended only to insure there is an equation between the resources of the general fund and the authorized expenditures from said fund in a particular fiscal year. As noted in Fiscal Reorganization, supra, it is intended "to prevent deficits."

We are cognizant that this statute vests rather broad discretionary powers in the secretary of administration. However, the authority to determine what is "necessary or beneficial to the state" does not, in our judgment, permit the secretary of administration to deviate from the statutory purposes of an allotment system. Rather, such language provides discretion as to "the use of an allotment system," i.e., it provides discretion as to when it is "necessary or beneficial to the state" to impose an allotment system on one or more state agencies. As will be discussed more fully with respect to your inquiry concerning K.S.A. 75-3725a, we believe that, even where an allotment system is instituted at the discretion of the secretary of administration, its only purpose is to insure that the affected state agencies operate within the fiscal constraints of appropriations made to such agencies in a particular fiscal year. It is toward the achievement of this objective that the statute provides discretion regarding the implementation of an allotment system.

It must be recognized that, when the secretary of administration establishes an allotment system pursuant to K.S.A. 75-3722,

he is exercising a delegated legislative function. Without question, "the appropriation of money and the setting of limitations on expenditures by state executive agencies constitutes [sic] an exercise of legislative power." State, ex rel., v. Bennett, supra at 300. Of course, "the legislature may delegate a legislative function when constitutional authority for the delegation is present and the statutory delegation is circumscribed by sufficient legislative guidelines to cover the nature and extent of the legislative function intended to be delegated." State, ex rel., v. State Board of Education, 215 Kan. 551, 554 (1974).

These principles are extremely pertinent in evaluating the extent of the secretary of administration's authority under the statute. If such authority is construed as including the discretion to determine the purposes for which an allotment system may be used in addition to the purposes stated therein, we believe such delegation of authority would be overbroad, since there are no parameters prescribed by this statute to circumscribe the exercise of such authority.

Hence, we are constrained from implying any such authority. Not only would the implication of such a broad, unfettered power raise serious constitutional questions as to the propriety of such delegated authority, but we are also mindful that a power not expressly granted should not be implied unless it is clearly necessary for the exercise of the powers expressly granted. As stated in Murray v. State Board of Regents, 194 Kan. 686, 689, 690 (1965):

"Governmental agencies are creatures of the legislature, and can exercise only such powers as are expressly conferred by law and those necessary to make effective the powers expressly conferred. (State, ex rel., v. City of Kansas City, 181 Kan. 870, 317 P.2d 806; State, ex rel., v. City of Overland Park, 192 Kan. 654, 391 P.2d 128)."

In our judgment, the authority conferred by K.S.A. 75-3722, to establish an allotment system to assure that expenditures from the general fund will not exceed the general fund's available resources for a particular fiscal year, does not carry with it the implication of authority to apply the allotment system for the purpose of increasing the general fund's ending balance for that fiscal year to a level deemed necessary or beneficial to the state. Such implied power is not necessary to the exercise of the power expressly conferred. It is unnecessary for the protection of the general fund's resources for the fiscal year in which the allotment system is imposed.

The "resources" of the general fund for a particular fiscal year consist of the receipts of the general fund during that year, plus the moneys remaining in said fund at the end of the preceding fiscal year. Accordingly, moneys remaining in the general fund at the end of the fiscal year in which an allotment system is instituted are resources of the general fund for the next ensuing fiscal year. Thus, if an allotment plan were designed to increase the projected ending balance of the general fund at the close of the fiscal year in which the allotment system is applied, it would be enhancing the resources of the general fund for the next ensuing fiscal year, rather than protecting that fund's resources for the current fiscal year, as the statute requires.

Therefore, it is our opinion that an allotment system, which is required under K.S.A. 75-3722 in a particular fiscal year, cannot be instituted for the purpose of increasing the estimated ending balance of the general fund for that fiscal year to a level which the secretary of administration deems necessary or beneficial to the state.

You next inquire:

"May allotments to the various executive branch agencies be applied equally to each State General Fund appropriation or may the allotments vary as to percentages of reductions among the various state agency General Fund appropriation or otherwise selectively applied to certain agencies?"

We find nothing in K.S.A. 75-3722 which would compel the conclusion that an allotment system must be applied equally or on a pro rata basis to all appropriations from the general fund. To the contrary, when an allotment system is initiated at the discretion of the secretary of administration, the language of the statute clearly permits the selective application of the allotment system. The statute authorizes its application "to the expenditure of the resources of any state agency," which we believe permits the use of an allotment system that is applicable only to the appropriations made to a single state agency. And from information provided us by the Legislative Research Department, we are aware of two prior instances in which an allotment plan has been so applied.

Similarly, even where an allotment system is mandated to protect the fiscal integrity of the general fund, the statute provides that such system be inaugurated by the secretary of administration "in such manner as he or she may determine . . . so as to assure that expenditures for any particular fiscal year will not exceed the available resources of the general

fund . . . for that fiscal year." By this plain and unambiguous language the legislature has vested the secretary of administration with the authority and responsibility for determining the manner in which an allotment system can best be applied. As long as such discretion is not abused and the allotment system achieves the statute's overriding purpose of insuring the equation of the general fund's resources and authorized expenditures therefrom, the details of such system are to be prescribed by the secretary of administration.

You also have asked whether the revenue estimates of the director of the budget are to be used "in determining whether the resources of the State General Fund are likely to be insufficient to cover the appropriations made for the fiscal year." This question apparently is prompted by the fact that, since 1974, "consensus" estimates of general fund revenues have been made by a selected group of state officers and employees. This group was convened at the request of the Legislative Budget Committee at the conclusion of its consideration of 1974 Interim Study Proposal No. 55 -- General Fund Appropriations. (See Reports of Special Committees to the 1975 Kansas Legislature, pp. 1073, 1074.) We understand that such consensus estimates have been accepted and generally relied upon by the governor and legislative leaders alike. Nonetheless, there is no statutory basis for such consensus estimates, and we must premise our response on the provisions of K.S.A. 75-3722 which require that the secretary of administration obtain "the advice of the director of the budget" in determining whether to initiate an allotment system. In light of the director of the budget's statutory responsibilities regarding the estimation of revenues [K.S.A. 75-3715(1), K.S.A. 1981 Supp. 75-3718(a)], we believe K.S.A. 75-3722 permits the secretary of administration to utilize the revenue estimates developed by the director of the budget in determining the necessity of an allotment system.

Your fourth question concerns the provisions of K.S.A. 75-3723 and the requirement in K.S.A. 75-3722 that

"[a]gencies affected by decisions of the secretary of administration under this section shall be notified in writing at least thirty (30) days before such decisions may become effective"

K.S.A. 75-3723 provides in pertinent part as follows:

"The director of the budget shall obtain from each state agency when subject to the allotment system as provided in this act [L. 1953, ch. 375], and it shall be the duty of the administrative head of such agency, to furnish

upon forms prescribed by the director of the budget and in such detail and with such supplemental and supporting information as the director of the budget may require, the following:

"(1) Thirty (30) days (or at such other time as requested by the director of the budget) before the beginning of the fiscal year, or before the effective date the agency is required to come under the allotment system, if it is different than the fiscal year, a statement of the funds estimated to become available, together with classifications of anticipated expenditures by month, quarter, semi-annual or annual periods as determined." (Emphasis added.)

In light of the foregoing requirements of these two statutes, you ask:

"May the thirty day requirement (or such other time period requested by the Director of the Budget) provided for in K.S.A. 75-3723 run concurrently with time requirements provided for in K.S.A. 75-3722 or does the procedure prescribed in K.S.A. 75-3723 follow only after an allotment system is established under the provisions of K.S.A. 75-3722?"

The decision to impose an allotment system is to be made by the secretary of administration pursuant to K.S.A. 75-3722. However, any decision made by the secretary of administration pursuant to that section will not be effective unless agencies affected thereby have received at least 30 days' written notice of such decision. On the other hand, the emphasized portion of the first paragraph of the above-quoted provisions of K.S.A. 75-3723 restrict the application of this statute to state agencies which are "subject to the allotment system." The thrust of your inquiry, then, is whether a state agency, which has been notified of the secretary of administration's decision to impose an allotment system on that agency's appropriations, is "subject to the allotment system" until the decision to impose such system has become effective.

In our judgment, the legislature intended that an agency be regarded as subject to the allotment system, for the purposes of K.S.A. 75-3723, at the point in time the agency is notified of the secretary of administration's decision to impose the allotment system on that agency. To ascertain such legislative intent, we have utilized the well-established principle

of statutory construction that, in determining legislative intent, statutes in pari materia should be construed together so as to harmonize their respective provisions, if reasonably possible to do so. Callaway v. City of Overland Park, 211 Kan. 646, 650 (1973). It deserves no discussion to note that K.S.A. 75-3722 and 75-3723 are statutes in pari materia. Thus, we have considered their respective objectives in concert for the purpose of reconciling any inconsistencies, if reasonably possible to do so.

Under K.S.A. 75-3722, the decision to impose an allotment system on a state agency does not become effective for at least thirty days after the agency is notified of such decision. Prior to such decision becoming effective, this statute provides for an appeal of such decision as follows:

"[A]ny affected agency may, by written request addressed to the governor within ten (10) days after such notice, ask for a review of the decision by the . . . [governor]. The . . . [governor] shall hear appeals and render a decision within twenty (20) days after the governor receives requests for such hearings." (Deletions and bracketed material reflect decision in State, ex rel., v. Bennett, supra, that these powers devolve upon the governor.)

Obviously, any decision by the governor regarding an agency's appeal pursuant to the foregoing provisions must take into consideration that agency's estimated revenues and expenses during the time the allotment system will be in effect. Such information is required to be furnished the director of the budget pursuant to the previously-quoted provisions of K.S.A. 75-3723(1). Thus, an unreasonable result would obtain if it were determined that these requirements are not applicable to an agency until the decision to impose the allotment system had become effective, i.e., until after the time for an appeal of this decision had passed.

In addition, we note that K.S.A. 75-3723(1) contemplates that information regarding the agency's budgeted revenues and expenses be provided "[t]hirty (30) days (or at such other time as requested by the director of the budget) . . . before the effective date the agency is required to come under the allotment system." (Emphasis added.)

For these reasons, then, it is our opinion that, at the point in time the secretary of administration notifies a state agency as to the imposition of an allotment system on such agency's appropriations, such agency is to be regarded as subject to the allotment system, for purposes of K.S.A. 75-3723.

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At that point in time, therefore, the director of the budget is empowered under K.S.A. 75-3723(1) to require such agency to furnish information regarding its estimated revenues and expenses.

Next, you inquire whether an allotment system may be applied to statutorily prescribed state aid programs. In framing your inquiry, you have cited several examples of statutorily prescribed state aid programs, including school district equalization act payments, local ad valorem tax reduction fund payments, city-county revenue sharing fund payments and others, all of which depend upon general fund resources. The examples you cited are only a few of the host of similar local government aid programs which the legislature has established. According to information provided this office by the Legislative Research Department, there are 34 such local aid programs which will distribute approximately 693.3 million dollars to various units of local government during Fiscal Year 1983. All such aid is derived directly or indirectly from resources of the general fund.

Considering the number of these local aid programs, it is apparent that we cannot, in this opinion, evaluate the application of an allotment system to each of these statutory programs. Of necessity, our response must be limited to a general consideration of the scope and extent of an allotment system.

In our judgment, when an allotment system is required to be inaugurated by K.S.A. 75-3722, such allotment system may be imposed on any appropriation from any fund for which the allotment system is established. As previously noted, this statute requires that an allotment system be established "[w]hensoever for any fiscal year it appears that the resources of the general fund or any special revenue fund are likely to be insufficient to cover the appropriations made against such general fund or special revenue fund." (Emphasis added.) We also note that K.S.A. 75-3724 provides as follows:

"No appropriations to any state agency subject to the allotment system as provided in this act shall become available for expenditure until an allotment has been applied for on forms prescribed by the budget director and has been approved, increased or decreased and funds allotted as hereinbefore or hereinafter provided." (Emphasis added.)

It is clear from these statutes the legislature has required the establishment of a system for allotting the appropriations made to an agency from any fund, when it is determined that

the resources of such fund in any fiscal year will likely be insufficient to cover such appropriations. In our judgment, the allotment system so established may apply to any such appropriation made to that agency. The allotment system statutes make no distinction as to the types of appropriations which are subject to allotment, and we find nothing in the previously-quoted statements of the Legislative Council Research Department in Fiscal Reorganization, supra, to indicate that the 1953 Legislature intended any such distinction. Hence, we must conclude that an allotment system may be made applicable to a general fund appropriation of moneys which are to be distributed to units of local government.

An appropriation, of course, is an authorization to expend moneys from a fund in the state treasury. Before any moneys may be withdrawn from the state treasury, there must be a "specific appropriation made by law." Kan. Const., Art. 2, §24. This constitutional provision was defined in State, ex rel., v. Fadely, 180 Kan. 652 (1957), as follows:

"The term 'specific appropriation made by law' may be defined as an authority of the legislature, given at the proper time and in legal form to the proper officials, to apply a distinctly specified sum from out of the state treasury, in a given period, for a specified objective or demand against the state. In general terms a 'specific appropriation made by law' is the act of setting money apart formally or officially for a special use or purpose by the legislature in clear and unequivocal terms in a duly enacted law (42 Am. Jur. Public Funds, §43, p. 747; 81 C.J.S., States, §163, p. 1207, §164b, p. 1215 and §164c, p. 1217)."
Id. at 661.

The foregoing discussion is pertinent to your inquiry for two reasons. First, it adds further support to our conclusion that appropriations of moneys for aid to local governments may be subject to an allotment system. Even though the appropriated funds are distributed to units of local government, they are appropriated first, as noted in Fadely, supra, "to the proper officials," i.e., they are appropriated to a state agency. For this reason, and absent any limiting statutory language, we find no basis for narrowly construing the allotment system statutes as having application only to appropriations made to an agency for the operations of that agency.

The second reason for discussing the nature of an appropriation is that it is our opinion there are certain local aid programs creating claims upon the resources of the general

fund that are immune from an allotment system. These programs are immune because their claims against general fund moneys are not made pursuant to appropriations. Rather, they are made by virtue of statutorily-prescribed transfers of money from the general fund to another fund. Such "demand transfers" do not constitute appropriations. An appropriation is an authorization granted by the legislature to designated public officials to withdraw from the state treasury, within a particular period of time, a stated sum of money for a specific purpose. Thus, a transfer of money from one fund in the state treasury to another fund in the state treasury does not satisfy this definitional criteria. Accordingly, we adhere to the conclusion we reached in Attorney General Opinion No. 81-82, that "[a] transfer of moneys within the treasury lacks the essential withdrawal authorization and does not, in our judgment, constitute an appropriation." Id. at 6.

The Legislative Research Department has identified for us six funds in the state treasury which, in whole or in part, are used to provide aid to local governments and are funded in whole or in part by demand transfers from the general fund, viz., the Local Ad Valorem Tax Reduction Fund, Kansas Public Employees Retirement Fund, School District Income Tax Fund, County and City Revenue Sharing Fund, Solar Energy Property Tax Refund Fund and County Inheritance Tax Fund. In our judgment, therefore, even though each of these is funded by a transfer of general fund moneys, the claim made by each of these funds upon the general fund's resources is not subject to restriction by an allotment system. These statutory demand transfers do not constitute appropriations which are subject to allotment.

Finally, you have asked whether an allotment system may be "invoked to reduce State General Fund expenditures in order to allay a temporary cash shortage." As you note, K.S.A. 75-3725a addresses this matter directly, providing in pertinent part as follows:

"Whenever it shall appear that the estimated resources for any fiscal year in the state general fund are sufficient to meet in full the estimated expenditures for that fiscal year, but that the estimated resources in the state general fund in any month or months of such fiscal year are insufficient to meet in full the estimated expenditures for such month or months, the director of the budget shall so inform the secretary of administration. Unless such secretary finds that the estimates of the director of the budget are grossly incorrect, such secretary shall inform the governor of the report of the director of the

budget, and thereupon the governor shall call a meeting of the state finance council within forty-eight (48) hours after receiving such notice for the sole purpose of implementing provisions of this act. At such meeting the director of the budget shall inform the state finance council of the facts which caused the meeting to be called and together with the director of accounts and reports shall report upon the finances of the state relevant to the call of such meeting, including the availability of cash in state bank accounts to meet all the obligations of the state as the same become due. Thereupon the state finance council may by unanimous vote order the pooled money investment board to issue a written certificate of indebtedness subject to redemption from the state general fund not later than sixty (60) days after the date of issuance thereof or on the June 30 next following the issuance of such certificate of indebtedness, whichever is the sooner." (Emphasis added.)

We agree with your observation that this statute is designed "to treat extraordinary cash flow demands on the State General Fund." The emphasized portion of the above-quoted provisions thereof clearly restrict the application of this section to those times when the resources of the general fund "are sufficient to meet in full the estimated expenditures for that fiscal year." Thus, at those times when this section may be utilized, K.S.A. 75-3722 would not require the inauguration of an allotment system, since such requirement is effectual only when general fund resources are insufficient to cover appropriations. Thus, we assume the thrust of your inquiry is whether, under the discretionary authority vested in the secretary of administration by K.S.A. 75-3722, an allotment system for the purpose of alleviating general fund cash flow problems might be established.

The secretary of administration is authorized by K.S.A. 75-3722 to apply an allotment system whenever, in his opinion and on the advice of the director of the budget, "the use of an allotment plan is necessary or beneficial to the state." In formulating his opinion, the secretary of administration is required to "take into consideration all pertinent factors," including the eight factors listed in the statute. Our review of these statutorily prescribed considerations reveals an overriding legislative purpose that the allotment system be used to insure that a specified state agency or agencies operate within the fiscal constraints of appropriations made to such agencies

in a particular fiscal year. This conclusion is consistent with the explanation of these provisions offered in Fiscal Reorganization, supra, which indicated that an allotment system might be used --

"where agencies appear to be expending at a more rapid quarterly rate than the appropriation would permit or where the agency has had a history of requests for deficiency appropriations in prior years, to show that such agencies will be able to keep within the funds available to them on an annual basis." (Emphasis added.) Id. at 23.

Thus, we do not believe that an allotment system may be imposed for the purpose of controlling cash flow. A "temporary cash shortage," as you have described the problem, presupposes that sufficient moneys will be available to fully fund the appropriation over the duration of the fiscal year, but that the resources of the fund are less than the anticipated expenditures from the fund during a particular portion of the fiscal year. However, as previously noted, an allotment system is intended to insure an equation of the fund's resources and appropriations from the fund on an annual basis. It is intended to prevent a deficit in the fund at the end of the fiscal year. This objective is separate and distinct from the objective of controlling cash flow, and it is our opinion, therefore, that an allotment system may not be imposed for the purpose of alleviating a temporary cash shortage.

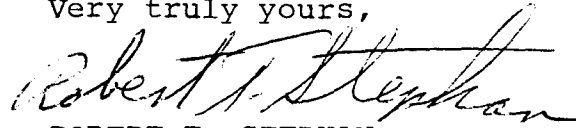
We are supported in this conclusion by the enactment of K.S.A. 75-3725a (L. 1970, ch. 363, §1). It was enacted subsequent to K.S.A. 75-3722, and provides a specific remedy for temporary cash shortages. We think it fair to suggest that the enactment of K.S.A. 75-3725a reflects legislative recognition that the allotment procedure does not provide a means for controlling cash flow.

In passing, it should be noted that the provisions of K.S.A. 75-3725a cannot be utilized simultaneously with the inauguration of an allotment system, because of the contradictory premises necessary for implementing these extraordinary remedies. However, once an allotment system is in place and it can be determined that the resources of the general fund will be

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"sufficient to meet in full the estimated expenditures for that fiscal year" under the allotment system, we believe the provisions of K.S.A. 75-3725a may be invoked to alleviate temporary cash shortages.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:hle