



STATE OF KANSAS

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October 26, 1982

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ATTORNEY GENERAL OPINION NO. 82- 229

Ms. Trudy Jacobsen, Chairman
Seward County Economic Development
Advisory Committee
2033 Windsor
Liberal, Kansas 67901

Re: Counties and County Officers -- Economic Develop-
ment Programs -- Use of Funds

Synopsis: K.S.A. 19-4103 authorizes expenditure of county moneys for programs related to economic development. The only constraints in this regard are that such expenditures have a demonstrable and rational relation to programs of economic development and that they satisfy the public purpose doctrine. Cited herein: K.S.A. 19-4101, 19-4102, 19-4103.

* * *

Dear Ms. Jacobsen:

As chairman of the Seward County Economic Development Committee you have requested an opinion from this office regarding whether county moneys raised pursuant to a tax levy authorized by K.S.A. 19-4102 may be used for various purposes specified in your opinion request. Your opinion request states, in relevant part, as follows:

"[W]e seek your opinion as to whether we can use these funds [raised pursuant to K.S.A. 19-4102] for the following purposes:

"1. Payment to architect for preparing preliminary plans for proposed multi-purpose/convention center facility.

"2. Cost to prepare a first class presentation selling Seward County/Liberal to prospective industrial developers (Booklet, film presentation).

"3. Advertisements in Site Locaters Magazines and other publications - promoting Liberal through greater circulative means.

"4. Dues for memberships to Economic/Industrial Development Organizations - encouraging on-going exchange of information and ideas.

"5. Travel expenses, including transportation, dining, and accomodations, for potential industrial development prospects.

"6. Educational expenses for member/members of Economic Development Committee to attend Industrial Development seminars, schools, workshops. Expenses would include travel, room and board, tuitions, registration fees.

"7. Contributions to county-wide promotional campaign billboard signs, license plates, placemats, radio spots, t-shirts - with the intent of promoting Liberal to the people of Liberal, as well as attracting others to Liberal to live, work, and shop.

"8. Allocation of funds for tokens and gestures of appreciation to existing industries to demonstrate appreciation for their existence in the community: gifts, periodic luncheons represented by individuals from local companies and Committee members.

"9. Funds to be used for hiring of individual/individuals for part-time administration duties, as well as supplies to be used for administering Economic Development program (stationery, postage, copying, etc.)."

K.S.A. 19-4103 outlines how moneys raised pursuant to the tax levy authorized by K.S.A. 19-4102 may be utilized. K.S.A. 19-4103 states:

"Any such county establishing an economic development program under this act may utilize the funds herein authorized to conduct studies and prepare comprehensive plans for its future

economic growth and development; to inventory the services, facilities and resources of the entire county; to promote, stimulate and encourage the growth and development of the agriculture, commerce and industry of the county as a whole, in order to achieve maximum utilization of its human, economic and natural resources and tourist attractions; and to otherwise promote the general economic welfare and prosperity of the area."

The language utilized in K.S.A. 19-4103 grants very broad discretion to counties vis a vis utilization of moneys raised pursuant to K.S.A. 19-4102. We believe that the only constraints on such expenditure of moneys is that there be a rational and demonstrable relationship to the uses specified in K.S.A. 19-4103 and that such expenditures satisfy the public purpose doctrine.

It is well-settled that a unit of local government, in exercising powers conferred on it by a state legislature, may expend funds only for public purposes. Loan Association v. Topeka, 20 Wall. 655 (1875), Green v. Frazier, 235 U.S. 233 (1920), State ex rel., Ferguson v. City of Pittsburg, 188 Kan. 612 (1961), Kan. Att'y Gen. Op. No. 82-191. In 64 C.J.S. Municipal Corporations, §1835 (1950), the general law governing judicial scrutiny in the application of the "public purpose" doctrine is stated thus:

"Each case must be decided in the light of the existing conditions, with respect to the objects sought to be accomplished, the degree and manner in which that object affects the public welfare, and the nature and character of the thing to be done; but the court will give weight to a legislative determination of what is a municipal purpose, as well as widespread opinion and general practice which regard as city purposes some things which may not be such by absolute necessity, or on a narrow interpretation of constitutional provisions. Where an appropriation of public funds is primarily for public purposes, it is not necessarily rendered violative of constitutional provisions against gifts and loans of public credit by an incidental result which may be of private benefit. On the other hand, if the result is chiefly that of private benefit, an incidental or even ostensible public purpose will not save its constitutionality. A purpose may be a public one so as to be within a municipal power to appropriate funds

therefor, even though it is not a necessary purpose. It has been laid down as a general rule that the question whether the performance of an act or the accomplishment of a specific purpose constitutes a 'public purpose' for which municipal funds may be lawfully disbursed rests in the judgment of the municipal authorities, and the courts will not assume to substitute their judgment for that of the authorities unless the latter's exercise of judgment or discretion is shown to have been unquestionably abused." (Footnotes omitted.) Id. at 334-335. [Excerpt relied upon by the Supreme Court of Ohio in State ex rel., McClure v. Hagerman, 155 Ohio St. 320, 98 N.E.2d 835 (1951).]

We are constrained to defer to the legislature's policy determination that government financed programs of economic development serve a valid public purpose. However, this deference does not necessarily validate every expenditure by a public body under the Economic Development Programs Act. Therefore, it is necessary to analyze each of the proposed expenditures to determine whether any prohibition exists which would preclude same.

1. "Payment to architect for preparing preliminary plans for proposed multi-purpose convention center facility."

K.S.A. 19-4103 specifically authorizes expenditures by a county to "prepare comprehensive plans for its future economic growth and development . . . and to promote the general economic welfare and prosperity of the area." We cannot say, as a matter of law, that an architect's fee for plans for a proposed "multi-purpose convention center facility" does not, in some way, fall within the allowable uses specified in K.S.A. 19-4103. Furthermore, it has been held that a valid public purpose is served by the building of a public auditorium or convention center. See: Wilkerson v. Lexington, 222 S.W. 74 (Ky. 1920), Bernstein v. Pittsburgh, 77 A.2d 452 (Pa., 1951), State v. Tampa, 146 So. 2d 100 (Fla. 1962).

2. "Cost to prepare a first class presentation selling Seward County/Liberal to prospective industrial developers (Booklet, film presentation)."

3. "Advertisements in Site Locaters Magazines and other publications - promoting Liberal through greater circulative means."

K.S.A. 19-4103 specifically authorizes the expenditure of moneys raised pursuant to K.S.A. 19-4102 "to promote, stimulate and encourage the development of the agriculture, commerce and industry of the county as a whole." It is well-recognized that where the statutory power exists, courts have permitted local units of government to advertise their advantages in order to attract commercial enterprises to the community. See: Sacramento Chamber of Commerce v. Stephens, 2998.728 (Cal. 1931); Fernandina v. State, 197 So. 454 (Fla. 1940); Dennis v. Raleigh, 116 S.E.2d 923 (N.C. 1960). We believe that the proposed "presentation" and "advertisements" are within the scope of the uses specified in K.S.A. 19-4103.

4. "Dues for memberships to Economic/Industrial Development organizations - encouraging ongoing exchange of information and ideas."

According to Rhyne, The Law of Local Government Organizations, §31.6, p. 1027, "[i]t is the unanimous rule, that payment by a municipality . . . for the cost of membership in associations of municipal officials is for a public purpose." To the extent that such membership will serve to "encourage growth and development" of the Seward County economy such would be an expenditure authorized by K.S.A. 19-4103. See also: Louisville and Jefferson Co. Bd. of Health v. Steinfeld, 215 S.W. 2d 1011 (Ky. 1948) and Cf. Beauchamp v. Snider, 185 S.W. 368 (Ky. 1916).

5. "Travel expenses, including transportation, dining, and accomodations for potential industrial development prospects."

The legislative intent embodied in K.S.A. 19-4101 et seq. is to allow local units of government to expend public moneys to facilitate economic growth. To the extent that the payment of travel expenses for "potential industrial development prospects" will serve such purpose, then same would be authorized by K.S.A. 19-4103. See also: State ex rel., v. City of Pittsburg, 188 Kan. 612 (1961), and Attorney General Opinion No. 82-191 and authorities cited therein.

6. "Educational expenses for member/members of Economic Development Committee to attend Industrial Development seminars, schools, workshops. Expenses would include travel, room and board, tuitions, registration fees."

According to Rhyne, supra, the recent cases have held that the traveling expenses of government officials on official business are for a valid public purpose. Again, to the extent that such expenses bear a reasonable relationship to the economic development of Seward County, same would be an authorized use of moneys pursuant to K.S.A. 19-4103. See

also: Frohmler v. Bd. of Regents; 171 P.2d 356 (1946), Gardner v. Industrial Comm'n., 233 P.2d 833 (1951); and Louisville and Jefferson County Bd. of Health v. Steinfeld, supra.

7. "Contributions to county-wide promotional campaign billboard signs, license plates, placemats, radio spots, t-shirts, with the intent of promoting Liberal to the people of Liberal, as well as attracting others to Liberal to live, work, and shop."

Rhyne, supra, at p. 1026 states:

"Besides procuring the materials, supplies and direct labor it requires, municipalities, like businesses, must expend moneys for purposes that only indirectly affect their daily operations. These purposes include advertising, promotion, publicity, and the support of municipally related organizations and conventions."

We believe that such promotional activities as listed in your inquiry are within the scope of the uses specified in K.S.A. 19-4103. However, the above-listed activities are aimed at promoting the city of Liberal. We believe that the moneys raised pursuant to K.S.A. 19-4102 must be expended to promote the county's economic development as distinguished from any particular city within the county. We realize that Liberal is the major population center in Seward County. However, the tax levied pursuant to K.S.A. 19-4102 is intended to promote the county as a whole. Therefore, any promotional activities conducted pursuant to K.S.A. 19-4101 et seq. must be intended to promote and benefit the county as a whole.

8. "Allocation of funds for tokens and gestures of appreciation to existing industries to demonstrate appreciation for their existence in the community: gifts, periodic luncheons represented by individuals from local companies and Committee members."

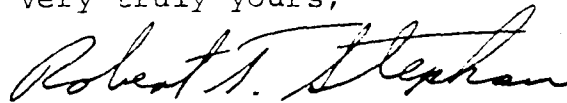
Unless specific statutory authority exists, the general rule is that a municipality has no power to make a gift or donation to any person. See: Rhyne, §31.7, p. 1027, McQuillin, Municipal Corporations, §39.30, §39.25, §28.43 and authorities cited therein. We find no authority either in K.S.A. 19-4101 et seq. or in the statutory or case law governing local units of government in Kansas that would permit the moneys raised by the tax levy authorized by K.S.A. 19-4102 to be used for gifts or other "tokens and gestures of appreciation." See, also, Attorney General Opinion No. 80-19.

9. "Funds to be used for hiring of individual/individuals for part time administration duties, as well as supplies to be used for administering Economic Development program (stationery, postage, copying, etc.)."

We believe that such necessary and proper administrative overhead expenses are within the scope of the uses specified in K.S.A. 19-4103.

In conclusion, K.S.A. 19-4103 permits expenditure of county moneys for programs related to economic development. The only constraints in this regard are that such expenditures have a demonstrable and rational relation to programs of economic development and that they satisfy the public purpose doctrine.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye
Assistant Attorney General

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