



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 26, 1983

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

ATTORNEY GENERAL OPINION NO. 83- 159

Robert G. Suelter
Hagen, Bates and Suelter
2018 Forest Avenue
P. O. Box 2026
Great Bend, Kansas 67530

Re: Public Health -- Community Mental Health and
Retardation Assistance; State Participation in
Financing

Taxation -- Sales of Liquor by Clubs -- Disposition
of Revenues

Synopsis: Money received by a community mental health center pursuant to a tax imposed by K.S.A. 1982 Supp. 79-41a01 et seq., on the gross receipts derived from the sale of alcoholic liquor by clubs is income received from state government within the meaning of K.S.A. 65-4403. Such income cannot be the subject of the matching fund provisions of K.S.A. 65-4403. Cited herein: K.S.A. 65-4403, K.S.A. 1982 Supp. 79-41a01, 79-41a02(b), 79-41a03, as amended by L. 1983, ch. 315, 79-41a04.

* * *

Dear Mr. Suelter:

As attorney for the Center for Counseling and Consultation in Great Bend, Kansas, you have requested an opinion from this office on the question of whether the funds supplied to the Center under K.S.A. 1982 Supp. 79-41a01 et seq., constitute income which should be matched by the state government under the provisions of K.S.A. 65-4403.

You point out that the Center, a community mental health center organized under Kansas law, is funded in part by the state of Kansas, in part by federal funds, and in part by taxes levied in Barton, Pawnee, Rice and Stafford counties.

You indicate that the county funds are subject to the provisions of K.S.A. 65-4403, and are thus matched by the state. That section, part of the Kansas community mental health assistance act, provides in parts relevant here:

"For the purpose of insuring that adequate community mental health and mental retardation services are available to all inhabitants of the state of Kansas, the state shall participate, from and after January 1, 1975, in the financing of the operation of mental health centers and facilities for the mentally retarded in the following manner: Each mental health center and each facility for the mentally retarded applying for state financial assistance shall receive assistance in an amount not to exceed fifty percent (50%) of the total estimated income of such mental health center or such facility for the mentally retarded for the next fiscal year after subtracting from such total estimated income the following: (a) Income received from the state or federal government;"
(Emphasis added.)

Although this section clearly demonstrates an intent to insure adequate funding of local mental health centers through state participation in funding, in an effort to prevent duplication of funding, the statute further provides that income matched by the state cannot include "[i]ncome received from the state or federal government."

The state funds at issue here are acquired by the city and county pursuant to K.S.A. 1982 Supp. 79-41a01 et seq., which establishes a tax at the rate of 10% of the gross receipts derived from the sale of alcoholic liquor by any club. K.S.A. 1982 Supp. 79-41a02(b) provides that "[e]ach club collecting the tax imposed hereunder shall be responsible for paying over the same to the state department of revenue . . . and the state department of revenue shall administer and enforce the collection of the tax."

K.S.A. 1982 Supp. 79-41a03, as amended by L. 1983, ch. 315, prescribes the methodology for collection and enforcement of the tax and, in subsection (e), provides:

"The secretary of revenue shall remit daily to the state treasurer all revenue collected under the provisions of this act. The state treasurer shall deposit the entire amount of each remittance in the state treasury subject

to the maintenance requirements of the local alcoholic liquor refund fund created under section 4, 25% of the remittance shall be credited to the state general fund and the balance shall be credited to the local alcoholic liquor fund created by K.S.A. 1982 Supp. 79-41a04 and amendments thereto."

The act further provides for the disposition of revenues collected under provisions in K.S.A. 1982 Supp. 79-41a04, which states in pertinent part:

"(a) There is hereby created, in the state treasury, the local alcoholic liquor fund. Moneys credited to such fund pursuant to this act or any other law shall be expended only for the purpose and in the manner provided by this act.

"(b) All moneys credited to the local alcoholic liquor fund shall be allocated to the several cities and counties of the state
. . . .

"(c) The state treasurer shall make distributions from the local alcoholic liquor fund in accordance with the allocation formula prescribed by subsection (b) on March 15, June 15, September 15 and December 15 of each year. The director of accounts and reports shall draw warrants on the state treasurer in favor of the several county treasurers and city treasurers on the dates and in the amounts determined under this section. Such distributions shall be paid directly by mail to the several county treasurers and city treasurers." (Emphasis added.)

In the case of the City of Great Bend and Barton County, the city treasurer and the county treasurer, upon receiving money as distributed from the fund, must credit 1/3 of the deposit to the city or county general fund, 1/3 to a special parks and recreation fund in the city or county treasury, and 1/3 to a special alcohol and drug programs fund in the city or county general fund. The latter fund apparently is the source of the income at issue here.

The act authorizing the special alcohol and drug programs fund further provides:

"Moneys in the special alcohol and drug programs fund shall be expended only for the purchase, establishment, maintenance or expansion of services or programs of alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers." K.S.A. 1982 Supp. 79-41a04(d).

K.S.A. 1982 Supp. 79-41a04(d) also provides that special funds established in a local treasury under the terms of the act shall be under the control of the city or county governing body.

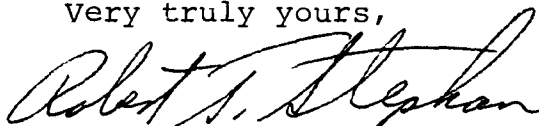
You indicate that the Center for Counseling and Consultation receives approximately \$30,000 per year from the city of Great Bend and Barton County as provided in K.S.A. 1982 Supp. 79-41a04. You also inform us that the Center has been told by the State Department of Social and Rehabilitation Services that matching state funds, as established by K.S.A. 65-4403, will not be provided for income derived from K.S.A. 1982 Supp. 79-41a01 et seq. You ask whether "the funds supplied to local mental health centers and authorized to be spent by municipalities under the provisions of K.S.A. 1982 Supp. 79-41a01 et seq., [are] state funds or local funds?" (Emphasis supplied.) The question of the proper definition of state funds, in contrast to city or county funds, has rarely been the subject of legal decision. Some courts have held that payment of funds into the state treasury does not necessarily make those funds "state" funds and that "public funds" are not those of which the state is a mere custodian or conduit. See State v. Yelle, 31 Wash. 2d 87, 201 P.2d 172 (1948); Navajo Tribes v. Arizona Dept. of Administration, 528 P.2d 623 (1974). Other courts have held that funds appropriated by the state and paid to a county to be used for a specific purpose become county funds. State v. Lucas, 39 Oh. Op. 519, 85 N.E.2d 154 (1949); Monticello House v. County of Calhoun, 20 Mich. App. 169, 173 N.W. 2d 759 (1970). These decisions, although contextually and legally remote from the issue addressed here, arguably may support the conclusion that money the Center receives through the provisions of K.S.A. 1982 Supp. 79-41a01 et seq., constitutes a "local fund" which may be matched by the state under K.S.A. 65-4403.

It is the opinion of this office, however, that a distinction between state and local funds is not necessary to respond to your inquiry. K.S.A. 65-4403 provides that the state will not match "income received from the state or federal government." In the case of moneys received by the Center from

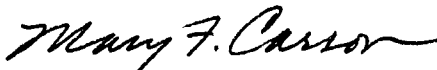
Robert G. Suelter
Page Five

the city and county special alcohol and drug programs fund, it is important to reemphasize several aspects of K.S.A. 1982 Supp. 79-41a01 et seq. The tax which supplies the revenue for the fund is levied by the state government, paid to the state, and administered and enforced solely by the state government. In addition, the state government distributes the funds and, most importantly, establishes limitations upon the use of the fund which ultimately allows the income to be paid to the Center. As noted above, the state requires that a certain amount of the money raised by the tax be paid into a special alcohol and drug programs fund and that the money be expended only for programs designed to combat problems of alcohol and drug abuse. Once the money is in the special fund, the city or county is granted the authority to determine which drug and alcohol programs will receive the money. This final step is the single discretionary act of local government in the entire process. Although the money, once paid to the county or city, arguably loses its status as "state money" and becomes "local money," the actual income distributed to the mental health center is derived almost entirely from the state government and the actions of state government. If the state were to match income received under K.S.A. 1982 Supp. 79-41a01 et seq., it would be duplicating income derived from state government. This is contrary to the provisions of K.S.A. 65-4403 designed to avoid such duplication. Thus, it is appropriate to conclude that money received by the Center for Counseling and Consultation, through the provisions of K.S.A. 1982 Supp. 79-41a01 et seq., is income received from the state government and not available for state matching funds under K.S.A. 65-4403.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General

RTS:BJS:MFC:hle