



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

March 7, 1984

ATTORNEY GENERAL OPINION NO. 84- 22

Bob Sones, Clerk
Junction Township
Rt. 1, Box 23A1
Overbrook, Kansas 66524

Re: Townships and Township Officers -- Establishment of
Funds -- Transfer of Money Between Funds

Cities and Municipalities -- Investment of Public
Moneys -- Active and Idle Accounts; Permissible Forms
of Investment

Synopsis: A township is a taxing body subject to the Kansas Budget Law, K.S.A. 77-2925 et seq., including the provisions concerning expenditures from various funds and the transfer of money from one fund to another. In the absence of a statute so authorizing a transfer, money cannot be taken from one fund and placed into another, even if it has accrued over a period of time and is not budgeted to be spent. Such action would be in violation of the provisions of K.S.A. 79-2934, and would subject the officials involved to proceedings to remove them from office under K.S.A. 79-2936.

Townships may deposit their active funds in a variety of accounts in which there is no minimum maturity and withdrawals are allowed on demand with no penalty. Investment of idle funds under K.S.A. 1983 Supp. 12-1675 must be made in the ways prescribed therein, each of which limits accessibility to the funds or sets a pen-

alty for early withdrawal. Joint investment of idle funds with other townships (in order to maximize yield) is permissible, and should be done through the provisions of the Inter-local Agreement Act, K.S.A. 12-2901 et seq.

Cited herein: K.S.A. 1983 Supp. 12-1675, K.S.A. 12-2904, K.S.A. 1983 Supp. 79-2925, K.S.A. 79-2927, K.S.A. 1983 Supp. 79-2934, K.S.A. 79-2936, K.S.A. 80-404, 80-1406b, 80-2021.

* * *

Dear Mr. Sones:

As Clerk for Junction Township, Osage County, Kansas, you request our opinion on behalf of the township board, which is composed of yourself, the township trustee and the township treasurer. You inquire as to two different questions, the first having to do with the expenditure, the other with the investment, of township funds.

Your first question concerns the permissibility of transferring money which has accrued in various township funds but which has not been budgeted. Although you do not specify the funds involved, we presume they include the road and bridge fund and the township general fund, with perhaps other funds present as well for purposes such as noxious weeds, revenue sharing, and so forth. The township board wishes to know if a method exists for transferring such excess moneys into the road and bridge fund, for the purpose of making additional payments on equipment which the township has purchased. This would save the township a considerable amount of money, in that 15% interest charges are currently being paid.

In our opinion, such a transfer would not be permissible under the provisions of K.S.A. 79-2925 et seq., the Budget Law. As a taxing subdivision, Junction Township is subject to the limitations contained in the law, including that of K.S.A. 79-2927 which requires an annual budget "properly itemized and classified by funds." After adoption, K.S.A. 1983 Supp. 79-2934 provides in pertinent part that:

"[t]he budget . . . shall constitute and shall hereafter be declared to be an appropriation for each fund, and the appropriation thus made shall not be used for any other purpose. . . .

"No part of any fund shall be diverted to any other fund, whether before or after the distribu-

tion of taxes by the county treasurer, except as provided by law." (Emphasis added.)

In Shouse v. Cherokee County Commissioners, 151 Kan. 458 (1940), affirmed on rehearing 152 Kan. 41 (1940), the Kansas Supreme Court considered the language of K.S.A. 79-2934 stating, in pertinent part:

"Under section 79-2934 the appropriation for each individual fund as set forth in the budget 'shall not be used for any other purpose.' The board [of county commissioners] therefore was without authority to borrow from one budgeted item to pay for items not budgeted, or which should have been budgeted in some other item. Under the budget law each of the budgeted items is separate and distinct--in effect a trust fund earmarked for a particular purpose. Clearly it is contrary to the letter and spirit of the law for the board to borrow from one item fund to pay the obligations chargeable to another item fund, or to pay an obligation not budgeted at all." (Emphasis added.) 151 Kan. at 465-466.

Simply stated, under the Budget Law the township board shall adopt a budget which establishes "an appropriation for each fund." The term "fund" refers to "those funds which are authorized by statute to be established." K.S.A. 1983 Supp. 79-2925(b). Once so established, the appropriation shall not be used for any other purpose, with diversion of funds possible only if provided by statute. Although some statutes do provide for transfer of township funds, it does not appear that they would apply in your situation. For example, K.S.A. 80-2021 allows excess funds held by a township sewer district to be transferred to the general fund or the road fund, while K.S.A. 80-1406b provides for general fund money to be transferred, but only in cases where no levy was made in the preceding year after such general fund.

Your second inquiry regards the investment of township funds. The general statute dealing with this activity is K.S.A. 80-404, which states:

"In all townships the township treasurer shall deposit all public money coming into his or her hands in an official capacity in a bank which is a member of the Federal Deposit Insurance Corporation or a savings and loan association which is a member of the Federal Savings and Loan Insurance Corporation within the county, the same to be designated by the

township board. Such deposits shall be made in the name of such treasurer as such officer. Township moneys not immediately required for the purposes for which such moneys were collected or received may be invested in the manner provided by K.S.A. 1977 Supp. 12-1675."

A recent opinion of this office, No. 83-88, concluded that governmental units could place their active funds in a variety of accounts, including checking accounts, demand deposit accounts, negotiable order of withdrawal (NOW) accounts, savings accounts and money market deposit accounts, all of which have no minimum maturity date and are payable in full upon demand, without penalty.

Investment of idle funds (i.e. those funds "not immediately required for the purposes for which [they] were collected or received") is governed by K.S.A. 1983 Supp. 12-1675, which sets out the permissible ways in which townships can act. As set out in subsection (b), these methods include the township's own temporary notes; time deposit, open accounts or certificates of deposit; time certificates of deposit; repurchase agreements; and United States treasury bills or notes. If the township wished to take advantage of higher interest rates paid on the so-called "jumbo" certificates of deposit, in our opinion it could enter into agreements with other governmental entities whereby idle funds from each could be pooled to reach the minimum amount required by law. This should be accomplished through the provisions of K.S.A. 12-2901 et seq., the Inter-local Agreement Act. Depending on how the agreement was drafted, details of the investment could be handled by a designated administrator, by a joint committee or by one of the participating units of government. K.S.A. 12-2904(d).

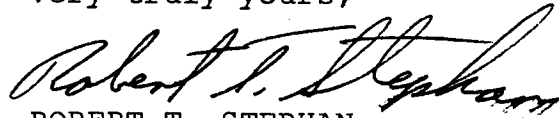
In conclusion, a township is a taxing body subject to the Kansas Budget Law, K.S.A. 77-2925 et seq., including the provisions concerning expenditures from various funds and the transfer of money from one fund to another. In the absence of a statute so authorizing a transfer, money cannot be taken from one fund and placed into another, even if it has accrued over a period of time and is not budgeted to be spent. Such action would be in violation of the provisions of K.S.A. 79-2934, and would subject the officials involved to proceedings to remove them from office under K.S.A. 79-2936.

Townships may deposit their active funds in a variety of accounts in which there is no minimum maturity and withdrawals are allowed on demand with no penalty. Investment of idle funds under K.S.A. 1983 Supp. 12-1675 must be made in the ways prescribed therein,

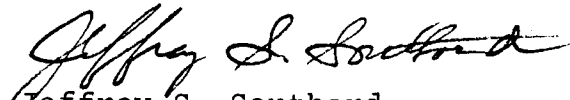
Bob Sones
Page Five

each of which limits accessibility to the funds or sets a penalty for early withdrawal. Joint investment of idle funds with other townships (in order to maximize yield) is permissible, and should be done through the provisions of the Inter-local Agreement Act, K.S.A. 12-2901 et seq.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:crw