



STATE OF KANSAS

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June 1, 1984

ATTORNEY GENERAL OPINION NO. 84- 46

Robert E. Davis  
County Attorney  
County Courthouse  
4th & Walnut Street  
Leavenworth, Kansas 66048

Re: Public Health--Local Boards of Health--Joint  
Board by Cities and Counties; Agreement

Synopsis: The city of Leavenworth and Leavenworth County may, through the exercise of their respective home rule powers and amendment of the agreement establishing the Leavenworth city-county board of health, exert control over the expenditure of moneys paid to the credit of the board. However, subsequent to approval of the budget of the joint board of health, and the levy and collection of a tax to fund the budget operations, the city and county are required, under the provisions of K.S.A. 65-206, to pay over all such moneys (but not exceeding the amount budgeted by each municipality for health, mental health and sanitation purposes) to the city-county board of health. Cited herein: .  
K.S.A. 65-205, 65-206.

\* \* \*

Dear Mr. Davis:

You request our opinion as to whether the Leavenworth County Commission may withhold moneys in the county health fund from the Leavenworth city-county board of health. Said moneys

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represent the proceeds of a tax which was included in the county's 1984 budget for the purpose of funding the operations of the joint board of health. You advise that the proceeds of the tax levy have not been paid to the joint board because of an "accumulation of funds" controlled by the joint board of health.

In Kansas Attorney General Opinion No. 84-3, we considered the aforementioned "accumulation of funds" in relation to the county's authority to reject the proposed budget of the joint board of health. Specifically, we opined therein that the county could

"withhold budget approval, and . . . refuse to fund the Leavenworth city-county board of health, where the board's proposed budget does not take into account accumulated funds under the control of the board, or where the budget includes expenditures which the county . . . determines are not necessary for public health activities of the board."

We were not asked and did not consider, in the previous opinion, whether the county commission could, after approving the budget of the joint board and levying a tax to fund its operations, withhold from the joint board the proceeds of said tax levy after said proceeds have been collected, because of an "accumulation of funds." We now consider that question for the first time.

The Leavenworth city-county board of health was established pursuant to the provisions of K.S.A. 65-205 et seq. K.S.A. 65-206 provides, in part, as follows:

"All money provided for health, mental health, and sanitation purposes by the contracting municipalities shall, when collected, be paid over to the treasurer of said board in an amount not exceeding that budgeted by the municipalities for such purposes. The joint board of health shall have the exclusive control over the expenditure of all moneys paid to the credit of its treasurer for health, mental health, and sanitation purposes, and the treasurer shall receive and pay out all the moneys under the control of said board as ordered by it."  
(Emphasis added.)

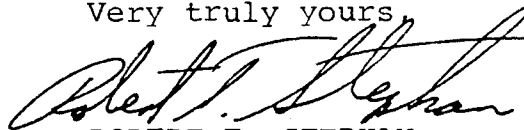
In our judgment, the underscored portion of the above-quoted statutory provision prohibits the city and the county from withholding (from the city-county board of health) moneys which have

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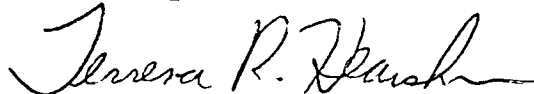
been included within their respective budgets for operation of the joint board of health and which have been collected. Although the city and county may refuse to levy a tax to support the joint board where its proposed budget includes expenditures not necessary for public health purposes (see Kansas Attorney General Opinion No. 84-3), the approval of the board's budget, and the levy and collection of tax proceeds to fund its operations, obligates the participating municipalities to pay over all such proceeds of the tax levy (but not exceeding the amount budgeted by each municipality for health, mental health and sanitation purposes) to the joint board of health.

Although the above is dispositive of the question which has been posed, we are impelled to note that K.S.A. 65-206 is subject to charter ordinance of the city and charter resolution of the county. See Kansas Attorney General Opinion No. 84-3. Therefore, the city of Leavenworth and Leavenworth County may, through the exercise of their respective home rule powers and amendment of the agreement establishing the Leavenworth city-county board of health, exert control over the expenditures of moneys paid to the credit of the joint board of health.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm