



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

June 24, 1985

ATTORNEY GENERAL OPINION NO. 85-68

The Honorable Robert A. Thiessen  
Administrative Judge  
Municipal Court  
City Hall, Third Floor  
455 North Main Street  
Wichita, Kansas 67202

Re: Automobiles and Other Vehicles -- Driving Under  
Influence of Alcohol and Other Drugs -- Alcohol and  
Drug Safety Action Fund; Under Control of Municipal  
Court

Synopsis: K.S.A. 1984 Supp. 8-1008, as amended by 1985 House Bill  
No. 2614, creates an alcohol and drug safety action  
fund in each court which enforces the provisions of  
K.S.A. 1984 Supp. 8-1567 or a municipal ordinance  
which is patterned after that statute. In the case of  
a municipal court, the fund is not subject to the  
provisions of the Cash Basis Law, K.S.A. 10-1101 et  
seq., or the Budget Law, K.S.A. 79-2925 et seq., even  
though the court is a department of a city which is  
subject to the two acts. Further, in that K.S.A.  
1984 Supp. 8-1009(e), as amended, gives the  
administrative judge of the municipal court control of  
the fund in making the limited expenditures allowed by  
the statute, a city may not impose additional limits  
or requirements in regard to such fund. Cited herein:  
K.S.A. 1984 Supp. 8-1008, as amended by 1985 House  
Bill No. 2614; K.S.A. 1984 Supp. 8-1567; K.S.A.  
10-1101; 79-2925.

\*

\*

\*

Dear Judge Thiessen:

As Administrative Judge for the Municipal Court for the City of Wichita, you request our opinion on a question concerning the alcohol and drug safety action fund created by K.S.A. 1984 Supp. 8-1008(e), as amended by 1985 House Bill No. 2614. Specifically, you inquire whether expenditures from the fund, which is made up of assessments imposed on persons convicted of or diverted from violations of K.S.A. 1984 Supp. 8-1567 (i.e. driving while under the influence of alcohol or drugs), are subject to the Cash Basis Law, K.S.A. 10-1101 et seq., and the Budget Law, K.S.A. 79-2925 et seq. You also inquire whether the city may impose policies or guidelines on the use of the fund beyond those found in the statute.

The fund in question is established by K.S.A. 1984 Supp. 8-1008(e), as amended by 1985 House Bill No. 2614. In pertinent part, it states:

"In addition to any fines, fees, penalties or costs levied against a person who is convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, or who enters a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of that statute or such an ordinance, \$110 shall be assessed against the person by the sentencing court or under the diversion agreement. The \$110 assessment may be waived by the court or, in the case of diversion of criminal proceedings, by the prosecuting attorney, if the court or prosecuting attorney finds that the defendant is an indigent person. Except as otherwise provided in this subsection, the clerk of the court shall deposit all assessments received under this section in the alcohol and drug safety action fund of the court, which fund shall be subject to the administration of the judge having administrative authority over that court. If the secretary of social and rehabilitation services certifies the community-based alcohol and drug safety action program for the judicial district in which the court is located, the clerk of the court shall remit, during the four-year period for which the program is certified, 15% of all

assessments received under this section to the secretary of social and rehabilitation services. Moneys credited to the alcohol and drug safety action fund shall be expended by the court, pursuant to vouchers signed by the judge having administrative authority over that court, only for costs of the services specified by subsection (a) or otherwise required or authorized by law and provided by community-based alcohol and drug safety action programs, except that not more than 10% of the money credited to the fund may be expended to cover the expenses of the court involved in administering the provisions of this section. In the provision of these services the court shall contract as may be necessary to carry out the provisions of this section. (Emphasis added.)

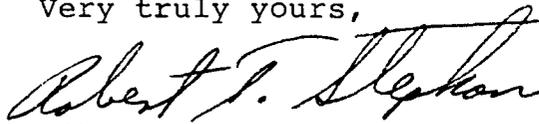
Initially, it may be noted that the alcohol and drug safety action fund created by K.S.A. 1984 Supp. 8-1108(e), as amended, is under the control of the municipal court, and not the city. There can be no question but that the city is subject to the provisions of both the Cash Basis Law [as a "municipality" as defined by K.S.A. 10-1101(a)] and the Budget Law [as a taxing subdivision or municipality under K.S.A. 79-2925(a)]. However, the municipal court is not a taxing subdivision or a municipality, and cannot be included under these acts merely because it is a public agency or receives money from the public. See, e.g. Board of Public Utilities v. City of Kansas City, 227 Kan. 194, 198-199 (1980). While municipal court employees and officers are employees and officers of the city, with the court having a place in the city's budget, the fund created by K.S.A. 1984 Supp. 8-1008(e), as amended, is entirely separate from the other funds which make up the city's budget. Therefore, we would conclude that the municipal court does not fall under the requirements of either of the two above-cited acts in the administration of this special fund. See, e.g., State, ex rel. v. Board of Education, 137 Kan. 451, 452 (1933) and State, ex rel. v. Republic County Commissioners, 148 Kan. 376, 381 (1938). (As a practical matter, however, in that the municipal court lacks the power to tax or to issue no-fund warrants, it may only spend that money from the fund which is present therein.)

The plain wording of the statute provides an answer to your second inquiry, namely whether the municipal court is subject to policies and restrictions of the city in expending moneys which are contained in the fund, in addition to those limits which are expressed in the statute. In our opinion, the statute clearly

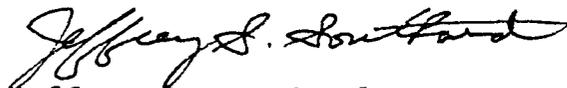
indicates that the fund is subject to the control of the administrative judge of the municipal court and that moneys therein shall be expended by the court upon the completion of vouchers signed by such judge. Further, authority to contract for the specified services for which the money may be used is vested in the court, not the city, with the court allowed to use 10% of the fund to cover its expenses in administering the duties imposed by statute. The plain intention of the legislature was to permit control of this fund to rest with those courts, whether district or municipal, which enforce the DUI statutes, and we can discern no intent to allow other units of government to impose additional requirements beyond those which are already expressly set forth in subsection (e).

In conclusion, K.S.A. 1984 Supp. 8-1008, as amended by 1985 House Bill No. 2614, creates an alcohol and drug safety action fund in each court which enforces the provisions of K.S.A. 1984 Supp. 8-1567 or a municipal ordinance which is patterned after that statute. In the case of a municipal court, the fund is not subject to the provisions of the Cash Basis Law, K.S.A. 10-1101 et seq., or the Budget Law, K.S.A. 79-2925 et seq., even though the court is a department of a city which is subject to the two acts. Further, in that K.S.A. 1984 Supp. 8-1009(e), as amended, gives the administrative judge of the municipal court control of the fund in making the limited expenditures allowed by the statute, a city may not impose additional limits or requirements in regard to such fund.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Deputy Attorney General