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ATTORNEY GENERAL OPINION NO. 86- 14

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. 1985 Supp. 8-1008 creates an alcohol and
drug safety action fund for each court which
enforces the provisions of K.S.A. 1985 Supp. 8-1567
or a municipal ordinance patterned after the
statute. In the case of the municipal court of the
City of Wichita, the fund is administered by the
administrative judge. Insofar as the court itself
has been designated as a community-based alcohol
and drug safety action program by the
administrative judge of the Eighteenth Judicial
District [pursuant to K.S.A. 1985 Supp. 8-1008(b)],
money from the fund may be expended by the court
for personnel, equipment and facilities necessary
to carrying out the provisions of this statute. In
the absence of such designation by the
administrative judge of the judicial district, the
municipal court would be limited to the ten percent
expenditure limit included in subsection (e) of the
statute, as noted in Attorney General Opinion No.
85-68. Cited herein: K.S.A. 1985 Supp. 8-1008,
8-1567.

* * *

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. 1985 Supp. 8-1008(e). Specifically, you inquire whether money from the fund may be used to provide facilities and equipment necessary to carry out the provisions of the statute. Such expenditures would be in excess of the 10% limit which is imposed by K.S.A. 1985 Supp. 8-1008(e) for expenses incurred by the court in administering the statute.

The fund in question is created by K.S.A. 1985 Supp. 8-1008(e), which in pertinent part states as follows:

"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. . . . 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.)

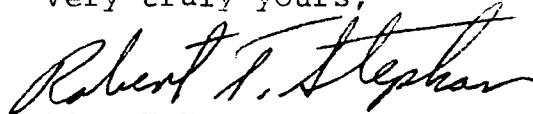
Additionally, it may be noted that this fund is under the control of the municipal court, which is authorized to spend money credited to the fund in one of two ways. Ten percent of the money may be used to cover the expenses of the court in administering the provisions of the statute. The remainder is required to be expended for "costs of the services specified by subsection (a)" which are provided by community-based alcohol and drug safety action programs. In most cities and counties across the state, district and municipal courts contract with such local programs for the furnishing of their required services. Such services include pre-sentence evaluations, pre-diversion evaluations, and supervision and monitoring of both those persons who have been convicted of a violation of the driving under the influence statute, K.S.A. 1985 Supp. 8-1567 or a comparable municipal ordinance, or who have entered into a diversion program lieu of further criminal proceedings on such violation. Under such circumstances, we would not be able to conclude that the municipal court would be able to expend moneys from the fund in excess of the 10% figure for the types of expenditures which are set forth herein above. See Attorney General Opinion No. 85-68.

However, we are informed that the municipal court of the City of Wichita has itself been designated as a community-based alcohol and drug safety action program by the administrative judge of the 18th Judicial District, pursuant to K.S.A. 1985 Supp. 8-1008(b). As a result, court services personnel perform the evaluations, supervision and monitoring which would otherwise be provided by a separate program under subsection (a). Accordingly, as the court is given the authority by subsection (e) to contract "as may be necessary to carry out the provisions" of the statute, it is our opinion that the court may, upon a showing that such expenditures are so related, authorize the use of moneys from the fund for equipment and facilities used as part of the alcohol and drug safety action program. It is already our understanding that moneys from the fund are being used to provide a part of the salaries for parole officers who actually perform the

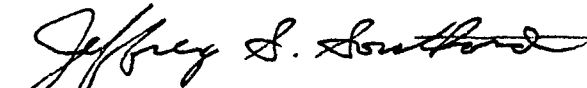
evaluations, supervision and monitoring, as well as for support personnel such as data entry personnel and secretarial staff. In view of the special designation given to the Wichita Municipal Court, such expenditures, as well as those for equipment and facilities, would be proper under the statute.

In conclusion, K.S.A. 1985 Supp. 8-1008 creates an alcohol and drug safety action fund for each court which enforces the provisions of K.S.A. 1985 Supp. 8-1567 or a municipal ordinance patterned after the statute. In the case of the municipal court of the City of Wichita, the fund is administered by the administrative judge. Insofar as the court itself has been designated as a community-based alcohol and drug safety action program by the administrative judge of the Eighteenth Judicial District [pursuant to K.S.A. 1985 Supp. 8-1008(b)], money from the fund may be expended by the court for personnel, equipment and facilities necessary to carrying out the provisions of this statute. In the absence of such designation by the administrative judge of the judicial district, the municipal court would be limited to the ten percent expenditure limit included in subsection (e) of the statute, as noted in Attorney General Opinion No. 85-68.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General