



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 18, 1987

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

ATTORNEY GENERAL OPINION NO. 87-30

Mr. Philip H. Alexander
City Attorney
P. O. Box 1567
Hutchinson, Kansas 67504-1567

Mr. Joe O'Sullivan
Reno County Counselor
P.O. Box 1567
Hutchinson, Kansas 67504-1567

Re: Taxation--Miscellaneous Provisions--Amended Budget

Synopsis: In order for a political subdivision to be entitled to receive its proportionate share of Local Ad Valorem Tax Reduction Fund (LAVTRF) moneys pursuant to K.S.A. 79-2961(b), it must certify a tax levy for each fund which is to receive a distribution of LAVTRF moneys, and the amount produced by the levy certified for each such fund must be equal to or greater than the amount of LAVTRF moneys distributed to such fund.

(Attorney General Opinion No. 83-24 is affirmed.)
Where a city budget inadvertently credits LAVTRF moneys to a fund for which no tax is levied, the city may amend its budget pursuant to K.S.A. 79-2929a so as to transfer the LAVTRF moneys to a fund meeting the criteria set forth in Attorney General Opinion No. 83-24. However, the amended budget may not include an increase in expenditures (in the amount of the LAVTRF moneys) for the fund to which the LAVTRF moneys are transferred, since said moneys do not constitute a previously unbudgeted increase in revenue. Cited herein: K.S.A. 79-2927; 79-2929a; 79-2961.

*

*

*

Mr. Philip H. Alexander
Mr. Joe O'Sullivan
Page 2

Dear Messrs. Alexander and O'Sullivan:

You request our interpretation of K.S.A. 79-2929a. Specifically, you advise that the 1987 budget of the City of Hutchinson credited a distribution of \$188,607 in Local Ad Valorem Tax Reduction Fund (LAVTRF) moneys to the city general fund. As no tax was levied for that fund, you acknowledge that the city unintentionally became ineligible to receive the LAVTRF distribution. (See Attorney General Opinion No. 83-24.) Accordingly, you ask whether the city may amend its budget so as to transfer the LAVTRF moneys to its employee benefit fund, a fund for which 10.16 mills was levied (producing tax revenues of approximately \$1,100,000).

K.S.A. 79-2929a prescribes the procedure whereby a taxing subdivision may amend its current budget:

"The governing body of any taxing subdivision or municipality which is subject to the budget law provisions of K.S.A. 79-2925 to K.S.A. 79-2936, inclusive, and amendments thereto, which proposes to amend its adopted current budget during the year in which such budget is in effect, shall be subject to the same publication, notice and public hearing requirements as is required by K.S.A. 79-2929, and amendments thereto, for the adoption of the original budget and, in addition thereto, such published budget shall show any proposed changes in the amount of expenditures, by fund. Any proposed increase in expenditures shall be balanced by previously unbudgeted increases in revenue other than ad valorem property taxes. A copy of the adopted amended budget shall be filed with the county clerk and with the director of accounts and reports."

As the underscored language in the above-quoted statute indicates, an amended budget must show any proposed changes in the amount of expenditures, by fund, and any proposed increase in expenditures must be balanced by previously unbudgeted increases in revenue other than ad valorem property taxes. Applying these requirements to the budget amendment you have proposed, the city's budget would have to show a decrease in its general fund expenditures in the amount of the LAVTRF

Mr. Philip H. Alexander

Mr. Joe O'Sullivan

Page 3

distribution (thereby balancing that fund's revenues and expenditures in accordance with K.S.A. 79-2927). Additionally, it is our opinion that although the LAVTRF distribution may be transferred to the city's employee benefit fund, the amended budget may not show an increase in expenditures (in the amount of the LAVTRF distribution) for that fund. This restriction follows from our conclusion that the City of Hutchinson's 1987 LAVTRF distribution does not constitute a "previously unbudgeted" increase in revenue other than ad valorem property taxes.

In summary, it is our opinion that in order for a political subdivision to be entitled to receive its proportionate share of Local Ad Valorem Tax Reduction Fund (LAVTRF) moneys pursuant to K.S.A. 79-2961(b), it must certify a tax levy for each fund which is to receive a distribution of LAVTRF moneys, and the amount produced by the levy certified for each such fund must be equal to or greater than the amount of LAVTRF moneys distributed to such fund. (Attorney General Opinion No. 83-24 is affirmed.) Where a city budget inadvertently credits LAVTRF moneys to a fund for which no tax is levied, the city may amend its budget pursuant to K.S.A. 79-2929a so as to transfer the LAVTRF moneys to a fund meeting the criteria set forth in Attorney General Opinion No. 83-24. However, the amended budget may not include an increase in expenditures (in the amount of the LAVTRF moneys) for the fund to which the LAVTRF moneys are transferred, since said moneys do not constitute a previously unbudgeted increase in revenue.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm