



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 75

Charles A. Peckham
Rawlins County Attorney
Atwood, Kansas 67730

Re: Agriculture -- Wind-Blown Dust and Soil Erosion
-- Use of Funds for the Prevention of Soil Erosion

Synopsis: Article 11, § 5 of the Kansas Constitution requires that a tax be used for the purpose for which it was levied. The Kansas Supreme Court has determined that a general revenue tax is levied to cover the usual, ordinary current expenses of the county. Since Rawlins County expenses related to the prevention of soil erosion must be classified as special or extraordinary, rather than usual or ordinary, the prevention of soil erosion is not a matter which falls within the purposes for which the general tax levy is made. Accordingly, use of general fund revenue to finance the prevention of soil erosion would violate Article 5, § 11 of the Kansas Constitution. Such a use would also violate the provisions of K.S.A. 2-2001 et seq., the statutes which deal with wind-blown dust and soil erosion. Cited herein: K.S.A. 2-2004; 2-2007; 19-241; Ks. Const., Art. 11, § 5.

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Dear Mr. Peckham:

As Rawlins County Attorney, you request our opinion on the manner in which the Rawlins County Board of County Commissioners is authorized to finance the prevention of soil

erosion. You inform us that a "soil-drifting fund" was never established in Rawlins County pursuant to K.S.A. 2-2007. Consequently, faced with a soil erosion problem, the county commissioners have inquired whether they may use general fund revenue to pay for the cultivation of land to prevent soil erosion. The legal issue you raise is whether use of the general fund for this purpose would violate relevant provisions of the Kansas Constitution and/or the Kansas statutes.

Article 11, § 5 of the Kansas Constitution provides:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied."

Thus, the constitution requires that a tax be used for the purpose for which it was levied. Accordingly, funds raised under K.S.A. 19-241 as general fund monies must be spent for appropriate general fund expenses.

Two early Kansas Supreme Court decisions established a standard for guidance in determining what items of expense incurred by the county can legally be paid out of the county general fund. In Smith v. Haney, 73 Kan. 506, 509 (1906), the court was asked to decide whether the building of a courthouse could be financed by general fund revenue. The court stated:

"The phrase 'general fund', as applied to the fiscal management of a Kansas county, has a definite and well-recognized meaning. It covers the proceeds of a tax levied to provide for the usual current expenses." (Emphasis added).

The Haney court determined that the building of a courthouse was a special or extraordinary matter, and therefore was not one included in the purposes for which the general tax levy was made. In the court's words:

"To permit the diversion to that use . . . of any part of the unexpended proceeds of a general revenue tax would be a violation of the spirit and letter of the constitution." p. 509.

Accordingly, the court concluded that general fund revenue could not be used for the construction of a courthouse, as this was not a usual current expense of the county.

In Railway Co. v. City of Topeka, 95 Kan. 747 (1915), the Supreme Court reiterated its standard for determining when general fund revenue can be used to cover county expenses. Upholding numerous earlier Kansas decisions, the court stated that general revenue should be considered applicable to "the usual ordinary, running, and incidental expenses of a given municipality." (p. 749).

As previously mentioned, Article 5, § 11 of the Kansas Constitution requires that a tax be used for the purpose for which it was levied. The Supreme Court has stated that a general revenue tax is levied to cover the usual and ordinary expenses of the county. See Smith v. Haney; Railway Co. v. City of Topeka, supra.

You inform us that Rawlins County has encountered a soil erosion problem only twice in the past thirty years. Thus, in our judgment, Rawlins County expenses related to the prevention of soil erosion must be classified as special or extraordinary, rather than usual and ordinary. Since such expenses are not usual current expenses incurred by the county, the prevention of soil erosion is not a matter which falls within the purposes for which the general tax levy is made. Accordingly, in our opinion, a board of county commissioners may not use general fund revenue to finance the prevention of soil erosion, as such a use of the general fund would violate Article 5, § 11 of the Kansas Constitution.

We note also the provisions of K.S.A. 2-2001 et seq., the statutes which deal with wind-blown dust and soil erosion. K.S.A. 2-2004, which addresses the duties of the county commissioners in regard to soil erosion, provides that warrants to pay the cost of work necessary to prevent soil erosion shall be paid "from the fund hereinafter provided." K.S.A. 2-2007 authorizes each board of county commissioners to create a "soil-drifting fund," and to levy a tax in the county which, when collected, will be credited to the "soil-drifting fund" "to pay for the cost of work done, or hired to be done, by the board of county commissioners. . . ." The statute goes on to provide:


"To pay persons employed by them to do such work ordered to be done on any property the county shall issue its

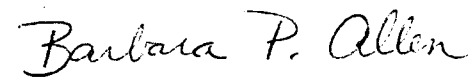
warrants upon the 'soil-drifting fund',
and such warrants shall be paid from that
fund." (Emphasis added).

In light of these statutory provisions, it is clear that the legislature intended that expenses related to the prevention of soil erosion be paid out of the "soil-drifting fund" rather than out of the county general fund. This conclusion is supported by Attorney General Opinion No. 82-140, which emphasized that a decision regarding whether an expense may be paid from the county general fund is necessary "only when the law authorizing such expense is silent in this regard." (p. 2). We therefore conclude that the aforementioned Kansas statutes, as well as the Kansas Constitution, require that expenses related to the prevention of soil erosion be paid from a specially created "soil-drifting fund," rather than from the county general fund.

In summary, Article 11, § 5 of the Kansas Constitution requires that a tax be used for the purpose for which it was levied. The Kansas Supreme Court has determined that a general revenue tax is levied to cover the usual, ordinary current expenses of the county. Since Rawlins County expenses related to the prevention of soil erosion must be classified as special or extraordinary, rather than usual or ordinary, the prevention of soil erosion is not a matter which falls within the purposes for which the general tax levy is made. Accordingly, use of general fund revenue to finance the prevention of soil erosion would violate Article 5, § 11 of the Kansas Constitution. Such a use would also violate the provisions of K.S.A. 2-2001 et seq., the statutes which deal with wind-blown dust and soil erosion.

Very truly yours,


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Barbara P. Allen
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