ATTORNEY GENERAL OPINION NO. 88-17

Jim Pringle  
Cowley County Attorney  
Courthouse  
Winfield, Kansas  67156

Re: Taxation—Liquor Drink Tax—Local Alcoholic Liquor Fund; Distribution of Moneys

Synopsis: Moneys in a special alcohol and drug programs fund established pursuant to K.S.A. 1987 Supp. 79-41a04 may not be used to finance drug law enforcement operations. Cited herein: K.S.A. 1987 Supp. 79-41a02; 79-41a03; 79-41a04.

Dear Mr. Pringle:

As Cowley County Attorney, you request our opinion regarding the appropriate use of moneys in a special alcohol and drug programs fund created pursuant to K.S.A. 1987 Supp. 79-41a04(e). Specifically, you question whether the county may use these moneys for drug law enforcement, particularly in the area of undercover operations.

The local alcoholic liquor fund is created by K.S.A. 1987 Supp. 79-41a04 and is funded by a ten percent tax upon the gross receipts derived from the sale of alcoholic liquor by clubs, drinking establishments and caterers in this state. See K.S.A. 1987 Supp. 79-41a02. Moneys thus collected are paid to the Secretary of Revenue, K.S.A. 1987 Supp. 79-41a03, with seventy percent thereof credited to the local alcoholic
liquor fund. Moneys in that fund are then disbursed to cities
and counties according to K.S.A. 1987 Supp. 79-41a04(b).

K.S.A. 1987 Supp. 79-41a04(e) provides, in part, that each
county treasurer, upon receipt of any moneys distributed under
subsection (b), shall deposit the full amount in the county
treasury, crediting to a special drug and alcohol programs
fund 23 1/3% of the amount collected from clubs, drinking
establishments or caterers located in the county and within a
city that has a population of 6,000 or less. Subsection (e)
restricts expenditures from this special alcohol and drug
programs fund as follows:

"Moneys in the special alcohol and drug
programs fund shall be expended only for
the purchase, establishment, maintenance
or expansion of services or programs whose
principal purpose is alcoholism and drug
abuse prevention and education, alcohol
and drug detoxification, intervention in
alcohol and drug abuse or treatment of
persons who are alcoholics or drug abusers
or are in danger of becoming alcoholics or
79-41a04(e).

In Attorney General Opinion No. 85-155 we opined that the
language used in the above-quoted statutory excerpt indicates
a legislative intent to restrict expenditures from the fund to
"rehabilitation and treatment of alcohol and drug problems."
It was therefore concluded that moneys in a special alcohol
and drug programs fund could not be expended to treat other
than alcohol and drug related conditions or to pay the costs
of incarceration of prisoners who have been arrested for
driving under the influence of alcohol, "since incarceration,
in and of itself, does not have a sufficient nexus to
treatment and rehabilitation of alcohol and drug problems."

Subsequent research has revealed no reason to deter from our
opinion that the legislature intended to restrict expenditures
to rehabilitation and treatment of alcohol and drug problems.
Indeed, the following language in the minutes of the 1982
legislative committee studying this statutory provision
bolster our conclusion:

"Moneys in the local alcoholic liquor fund
are to be distributed quarterly to cities
on the basis of the amount collected from the establishments in those cities, as follows:

... 

"3. 40% to special drug and alcohol fund for education and treatment programs, (in counties w/ less than 50,000 population this portion would be distributed to the county treasury for such programs)." House Committee on Ways and Means, April 4, 1982. (Emphasis added.) See also Attachment VI, House Committee on Ways and Means, April 4, 1982.

We therefore conclude that moneys from the special alcohol and drug programs fund may not be used to finance drug law enforcement as its primary purpose is not the treatment and rehabilitation of alcohol and drug abuse problems, but rather crime detection and criminal law enforcement.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Julene L. Miller
Deputy Attorney General

RTS:JLM:jm