



STATE OF KANSAS

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April 12, 1988

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ATTORNEY GENERAL OPINION NO. 88- 55

Mr. Willis K. Musick
Ellis County Attorney
P.O. Box 725
Hays, Kansas 67601

Re: Taxation -- Miscellaneous Provisions -- Local Ad
Valorem Tax Reduction Fund; Distribution to
Political Subdivisions

Synopsis: A county treasurer who has received local ad
valorem tax reduction fund moneys pursuant to
K.S.A. 79-2959 et seq. may properly receive
them under K.S.A. 19-506 but may not distribute
them to political subdivisions unless or until that
subdivision has originally, or through amendment
processes, adopted a budget that complies with
procedures and requirements mandated by K.S.A.
79-2961(b). Cited herein: K.S.A. 10-1101; 19-506;
79-2925; K.S.A. 1987 Supp. 79-2959; K.S.A.
79-2960; 79-2961; 79-2962; 79-5001.

* * *

Dear Mr. Musick:

As Ellis County Attorney you request our interpretation of
the procedures required by K.S.A. 79-2959 et seq.
Specifically, your inquiry concerns the handling of any excess
local ad valorem tax reduction fund (LAVTRF) moneys
distributed by the state treasurer to county treasurers and
the handling of LAVTRF moneys when a municipality budgets an
amount that is different than the estimate of the county
treasurer. We understand that these questions arise because

of the likelihood that this year's actual distributed amounts will exceed previous estimates. Moreover, there appears to be a state-wide question as to how to handle LAVTRF moneys that are not budgeted for by political subdivisions when those political subdivisions would otherwise qualify to receive such moneys. We note that both of your questions concern the proper handling of LAVTRF moneys that are received by a county but have not been properly budgeted for by a political subdivision in that county.

K.S.A. 79-2959 creates the local ad valorem tax reduction fund and sets forth the procedures for apportionment and distribution. Prior to apportionment and distribution, and acting pursuant to K.S.A. 79-2960, the state treasurer estimates the amount of LAVTRF moneys that each county can expect to receive. The county treasurer then estimates the amount each political subdivision of the county will receive and notifies each political subdivision's treasurer of the estimated amount. Once the funds are actually apportioned and distributed, as set forth in K.S.A. 1987 Supp. 79-2959 and K.S.A. 79-2962, and received by the county treasurer, the provisions of K.S.A. 79-2961 dictate the procedure whereby the county makes distributions to the local subdivisions.

K.S.A. 79-2961(b) states:

"(b) No political subdivision shall be entitled to participate in the distribution of any money appropriated to carry out K.S.A. 79-2960 and amendments thereto and this section unless and until such political subdivision has adopted and certified a budget for the ensuing year which shows as a separate item the amount of the distribution to one or more tax levy funds of general application within such subdivision except bond and interest funds and has certified a tax levy for each such fund that will produce a sum of money less than the amount which a maximum levy would produce for each such fund, in an amount equal to or in excess of the amount of such distribution. The budget of each political subdivision also shall show that the aggregate levies made by such tangible property tax-levying political subdivisions will produce a sum less than the amount which the aggregate

levy would produce in an amount equal to or in excess of the aggregate amount of the budget items of such distribution shown in the aggregate levy." (Emphasis added).

As discussed in Attorney General Opinions No. 83-24 and 87-30, in order for a political subdivision to be entitled to receive its proportionate share of LAVTRF moneys it must comply with K.S.A. 79-2961 procedures. Your questions address the problem of what to do with funds received by a county treasurer that either exceed the estimates and the tax levy amounts produced or are otherwise not budgeted for by the political subdivision.

Budgetary laws (K.S.A. 79-2925 et seq.), cash-basis laws (K.S.A. 10-1101 et seq.), and aggregate tax levy limitations (K.S.A. 79-5001 et seq.) help insure that a political subdivision carefully makes and observes its budget. See Shouse v. Cherokee County Commissioners, 151 Kan. 458, 465 (1940). Additionally, the provisions contained in K.S.A. 79-2959 et seq. help to insure that a political subdivision budgets correctly. It is clear from the language contained in K.S.A. 79-2961(b) that a political subdivision is not entitled to the funds unless and until the budget properly complies. However, allocation and distribution by the state treasurer to the county is not similarly restricted by K.S.A. 79-2959. Thus, the ultimate issue is how to handle funds that the county treasurer receives which are allocated for ultimate use by another political subdivision, but which may not be distributed to that political subdivision because of procedural irregularities in that subdivision's budget. K.S.A. 79-2959 et seq. apparently does not address or contemplate such a situation.

K.S.A. 19-506 states:

"It shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source they may be derived, and all other moneys which are by law directed to be paid to him or her. . . ." (Emphasis added).

Thus, the county treasurer is authorized to receive moneys that the law directs be paid to him. K.S.A. 79-2959 et seq. directs that LAVTRF moneys be paid to county

treasurers though K.S.A. 79-2961(b) restricts disbursement of these funds to political subdivisions until properly budgeted for.

It is therefore our opinion that a county treasurer who has received LAVTRF moneys pursuant to K.S.A. 79-2959 et seq. may properly receive them under K.S.A. 19-506 but may not distribute them to political subdivisions unless and until that political subdivision has originally, or through amendment processes, adopted a budget that complies with procedures and requirements mandated by K.S.A. 79-2961(b). Unless and until a proper budget is adopted, the county treasurer has been authorized to receive and retain the funds.

Very truly yours,



ROBERT T. STEPHAN
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