



STATE OF KANSAS

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May 9, 1988

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ATTORNEY GENERAL OPINION NO. 88-65

Mr. Leonard Dix
Rooks County Attorney
Rooks County Courthouse
Stockton, Kansas 67669

Re: Taxation--Limitation on Tax Levies--Limit on Levies
for County General Expenses

Counties and County Officers--County
Commissioners--Powers of Board of Commissioners

Synopsis: County general funds, collected pursuant to the tax levy authorized by K.S.A. 79-1946, may be properly expended only "to meet and defray the current general expenses of the county and to pay a portion of the principal and interest on bonds. . . ." However laudable the purpose, funding a privately owned non-profit corporation that offers horsemanship therapy to the disabled cannot be characterized as a current general expense of the county. It is therefore our opinion that such an enterprise cannot receive tax moneys collected pursuant to the general fund tax levy authorized by K.S.A. 79-1496. Cited herein: K.S.A. 12-1740, 19-212, 19-2698, 79-1946, and 79-2934.

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Dear Mr. Dix:

As Rooks County Attorney you request our opinion on a proposed expenditure of county general funds. These funds are collected pursuant to the tax levy authorized by K.S.A.

79-1946. The proposed expenditure would be to Sandyland Therapeutic Horsemanship Program, Inc. We understand that this program is a privately owned and operated non-profit corporation exclusively devoted to "charitable, religious, educational, and scientific purposes." Sandyland "is dedicated to strengthening and rehabilitating individuals with physical, mental, emotional and other developmental disabilities, through teaching horsemanship. . . ." (Sandyland's By-Laws, Articles II and III). You inform us that in 1985 the Rooks county electorate defeated a proposed K.S.A. 19-2698 tax levy that would have raised moneys to support county services for the physically handicapped. The issue you present is whether the Rooks county board of county commissioners may properly expend county general funds in order to help support the aforementioned horsemanship program.

County general funds are collected pursuant to the tax levy authorized by K.S.A. 79-1946:

"The board of county commissioners of each of the several counties is hereby authorized to fix a rate of levy annually to meet and defray the current general expenses of the county and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by any city located in such county, subject to limitations prescribed according to the assessed tangible valuation or a total population as follows:

Less than \$13,000,000 or having a population of less	6.50 mills
\$13,000,000 to \$30,000,000	4.25 mills
Over \$30,000,000 to \$140,000,000	3.50 mills
Over \$140,000,000	4.25 mills"

(Emphasis added.)

The levy authorized by K.S.A. 79-1946 provides funds "to meet and defray the current general expenses of the county." In order to qualify for receipt of these funds Sandyland must represent a current general expense of the county.

Kansas case law discusses what expenses can be properly paid from the general fund:

"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. The building of a court-house is a special or extraordinary matter, and not one included in the purposes for which the general tax levy is made. To permit the diversion to that use, therefore, of any part of the unexpended proceeds of a general revenue tax would be a violation of the spirit and letter of the constitution. (National Bank v. Barber, Treas., &c., 24 Kan. 534 ; A. T. & S. F. Rld. Co. v. Woodcock, Treasurer, 18 Kan. 20; The State, ex rel., v. Comm'rs of Marion Co., 21 Kan. 19.)" Smith v. Haney, 73 Kan. 506, 509 (1906).

"The principal purposes of the county general fund are well understood. It is the fund out of which the ordinary current expenses of conducting the county government are met. (Railway Co. v. City of Topeka, 95 Kan. 747, 749). . . . Incidental expenses pertaining thereto are likewise properly paid out of this fund, subject of course to statutory mandates and inhibitions. Of necessity, some discretion touching what are incidental expenses is vested in the county commissioners, since they are the financial and business managers of the county." State ex rel., v. Thomas County Comm'rs, 122 Kan. 501, 504 (1927).

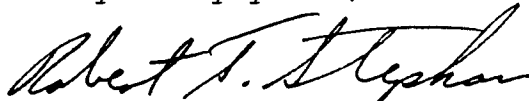
K.S.A. 19-212 sets forth the powers of the board of county commissioners and, under the First and Sixth provisions, allows the board to care for, manage and make orders affecting county business and property. This considerable discretion allows the board much authority when approving expenditure of county funds. See e.g., Ulrich v. Board of County Comm'rs of Thomas County, 234 Kan. 782 (1984); State ex rel Fatzner v. Board of Comm'rs of Lyons County, 173 Kan. 544 (1953). However, this discretion has limitations.

As a general rule, public moneys cannot be used to aid a private purpose, however laudable. 63 C.J.S. Municipal Corporations, §958 (1950). Statutorily approved tax levies give rise to a presumption that the purpose for which the tax is levied is a public purpose. All expenditures of public moneys must be for a public purpose. Ulrich, supra at 789. See also Attorney General Opinion No. 80-19, 84-116 and 87-164.

Another limitation placed upon the board's discretionary expenditure of public moneys is the well established rule that moneys raised pursuant to a specific tax levy for a certain fund cannot be diverted to another fund or use. K.S.A. 79-2934; Gridley v. Woodson County Comm'rs, 155 Kan. 407, 411 (1942); State ex rel. Schneider v. City of Topeka, 227 Kan. 115, 120 (1980). K.S.A. 79-1946 clearly authorizes a tax levy in order to provide a fund for payment of "current general expenses of the county." Current expenses is defined as "[the] ordinary, regular, recurring, and continuing expenditures for the maintenance of property, the carrying on of a business, an office, municipal government, etc." Black's Law Dictionary, 345 (5th ed. 1979). Public purposes include all governmental purposes. Id. at 1107. Thus, "current expenses" represents a more narrow category than "public purposes expenses". Southern Railroad Co. v. Gordon County, 161 S.E. 824, 825 (Ga. 1931).

In our opinion, the Sandyland program cannot be considered an ordinary incidental, current, regular, continuing or usual expense incurred by Rooks county. K.S.A. 19-2698 evidences recognition that a special tax levy fund is necessary to support such services for the handicapped. Payment to Sandyland does not maintain county property or help to carry on the everyday business of the county. It is therefore our opinion that, however laudable its goals and purposes, a privately owned and operated non-profit corporation, established to help the disabled, cannot be funded from general fund tax moneys collected pursuant to K.S.A. 79-1946.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Teresa M. Nuckolls
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