



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 106

The Honorable Paul Wright
Municipal Judge
Municipal Court
P.O. Box 117
Clay Center, Kansas 67432

Re: Automobiles and Other Vehicles--Driving Under
Influence of Alcohol or Drugs; Related Provisions
--Alcohol and Drug Safety Action Program; Fees,
Disposition

Synopsis: Moneys credited to the alcohol and drug safety
action fund pursuant to K.S.A. 1987 Supp.
8-1008(e) may not be used to pay for a training
course on drug and alcohol abuse attended by a
municipal court judge. Cited herein: K.S.A. 1987
Supp. 8-1008.

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Dear Judge Wright:

As Municipal Court Judge in the City of Clay Center, you request our opinion on a question concerning the alcohol and drug safety action fund created by K.S.A. 1987 Supp. 8-1008(e). Specifically, you ask whether money from that fund may be properly expended for the purpose of paying for a training course on drug and alcohol abuse.

K.S.A. 1987 Supp. 8-1008(e) creates the fund in question and states:

"In addition to any fines, fees, penalties or costs levied against a person who is convicted of a violation of K.S.A. 8-1567 and amendments thereto, or the ordinance of a city in this state which prohibits the acts prohibited by that statute, or who enters a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of that statute or such an ordinance, \$110 shall be assessed against the person by the sentencing court or under the diversion agreement. The \$110 assessment may be waived by the court or, in the case of diversion of criminal proceedings, by the prosecuting attorney, if the court or prosecuting attorney finds that the defendant is an indigent person. Except as otherwise provided in this subsection, the clerk of the court shall deposit all assessments received under this section in the alcohol and drug safety action fund of the court, which fund shall be subject to the administration of the judge having administrative authority over that court. If the secretary of social and rehabilitation services certifies the community-based alcohol and drug safety action program for the judicial district in which the court is located, the clerk of the court shall remit, during the four-year period for which the program is certified, 15% of all assessments received under this section to the secretary of social and rehabilitation services. Moneys credited to the alcohol and drug safety action fund shall be expended by the court, pursuant to vouchers signed by the judge having administrative authority over that court, only for costs of the services specified by subsection (a) or otherwise required or authorized by law and provided by community-based alcohol and drug safety action programs, except that no more than 10% of the money credited to the fund may be expended to cover the expenses of the court involved in administering the provisions of this

section. In the provision of these services the court shall contract as may be necessary to carry out the provisions of this section." (Emphasis added.)

Thus, K.S.A. 1987 Supp. 8-1008(e) permits moneys credited to this fund to be expended by the court "only for costs of the services specified by subsection (a) or otherwise required or authorized by law [or] . . . to cover the expenses of the court involved in administering the provisions of this section." The question thus is whether paying for drug and alcohol training courses for a judge is (1) a cost of a service specified by subsection (a) or otherwise required or authorized by law or (2) an expense of the court involved in administering the provisions of subsection (e). See Attorney General Opinion No. 85-68.

Subsection (e) allows moneys in the fund to be expended to pay for specified services under subsection (a). The services set forth under subsection (a) are the evaluation, supervision and monitoring of persons convicted, on diversion, or eligible for diversion. See Attorney General Opinion No. 86-14. These services can only be provided by a community-based alcohol and drug safety action program that has been properly certified in accordance with subsection (b). Unless the court has been so certified, the court does not provide the services described by subsection (a).

As only certified programs may provide those services, the costs for providing those services will be incurred only by the certified service provider. If the court does not provide such services it should not receive moneys from the fund in order to pay for them.

Even if the court or court personnel are certified to provide services described in K.S.A. 1987 Supp. 8-1008(a), none of those services are at any time performed by a municipal court judge. Thus, in our judgment, the costs of sending a judge to a training course on drug and alcohol abuse are not considered costs of services specified under subsection (a).

K.S.A. 1987 Supp. 8-1008(e) alternatively permits expenditures in order "to cover the expenses of the court in administering the provisions of this section." Subsection (b) allows an administrative judge to make decisions on which programs should be certified. While attending a drug or alcohol training course could conceivably facilitate such a determination, we do not believe expenditures from the alcohol

and drug safety action fund may be made on this basis alone. Certification determinations require a decision on the factors set forth under subsection (b). Determining who should be certified does not require courses on drug and alcohol abuse. Moreover, we find no provision contained in K.S.A. 1987 Supp. 8-1008 or elsewhere that requires or authorizes training courses on drug and alcohol abuse for municipal judges. The alcohol and drug safety action program can be, and often is, administered by judges who do not receive drug and alcohol abuse course training. Thus, administration of this section does not require training courses on drug and alcohol abuse for municipal court judges.

It is therefore our opinion that, while such courses may provide helpful information, K.S.A. 1987 Supp. 8-1008(e) does not permit expenditure of these funds for the purpose of paying for training courses on drug and alcohol abuse attended by municipal court judges.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Theresa Marcel Nuckolls
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RTS:JLM:TMN:jm