



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 117

Mr. John F. Bosch  
Clay County Attorney  
2nd Floor, Courthouse  
P.O. Box 62  
Clay Center, Kansas 67432

Re: Taxation--Liquor Drink Tax--Local Alcoholic Liquor  
Fund; Use of Money in Fund

Synopsis: Money in a special alcohol and drug programs fund created pursuant to K.S.A. 1989 Supp. 79-41a04 may not be used as matching funds for the Toward a Drug-Free Kansas Grant Program if the grant money is to be used solely for drug law enforcement. To the extent Attorney General Opinion No. 87-37 is inconsistent with the conclusions stated herein, that opinion is withdrawn. Cited herein: K.S.A. 65-4060; K.S.A. 1988 Supp. 79-41a04.

\* \* \*

Dear Mr. Bosch:

As Clay County Attorney you request our opinion regarding whether Clay County may use money in its special alcohol and drug programs fund, created pursuant to K.S.A. 1988 Supp. 79-41a04, as matching funds for the Toward a Drug-Free Kansas Grant Program.

K.S.A. 1988 Supp. 79-41a04(e) provides in part:

"Each county treasurer, upon receipt of any moneys distributed under this section,

shall deposit the full amount in the county treasury and shall credit to a special alcohol and drug programs fund in the county treasury 23 1/3% of the amount which is collected pursuant to this act from clubs or drinking establishments located in the county and within a city that has a population of 6,000 or less, or from caterers whose principal place of business is so located, and which is paid into the state treasury during the period for which the allocation is made; of the remainder, the treasurer shall credit 1/3 to the general fund of the county, 1/3 to a special parks and recreation fund in the county treasury and 1/3 to the special alcohol and drug programs fund. . . . 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 drug abusers."

Previously this office has interpreted this language as disallowing use of money in a special alcohol and drug programs fund for purposes of financing drug law enforcement operations. Attorney General Opinion No. 88-17. This opinion is consistent with other opinions establishing that use of money in special alcohol and drug programs funds is restricted to expenditures to establish, maintain or expand services or programs which provide rehabilitation and treatment of alcoholism and drug abuse. See Attorney General Opinions No. 85-155; 83-159; 88-133. It is therefore our opinion that money in the county's special alcohol and drug programs fund may be used as match money for the Toward a Drug-Free Kansas Grant Program only to the extent that the grant money will be used for programs and services providing drug and alcohol abuse treatment and rehabilitation. [We should note that the Governor's office prefers that money in a special alcohol and drug programs funds not be used as match money unless the county has no other use for it.]

You point out that Attorney General Opinion No. 88-17 appears to be in conflict with Attorney General Opinion No. 87-37 which concluded that D.U.I. enforcement is "a program the principal purpose of which is related to the treatment and/or prevention of alcohol or drug abuse." In Opinion No. 87-37 we were interpreting K.S.A. 65-4060 rather than K.S.A. 79-41a04. However, the language of the two statutes dealing with the permissible uses of money in each fund is virtually identical. We therefore believe it necessary to withdraw Attorney General Opinion No. 87-37 to the extent it conflicts with Opinion No. 88-17 and the other above-cited opinions.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm