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October 23, 1989

ATTORNEY GENERAL OPINION NO. 89- 128

Mr. Joel Kriss
Colby City Attorney
585 N. Franklin
Colby, Kansas 67701-2390

Re: Cities and Municipalities--Public Utilities; Any
City--Waterworks, Fuel, Power and Lighting Plants;
Use, Disposition and Investment of Revenues

Synopsis: A surplus in the operating fund of a city electric department may be transferred and merged into the city general revenue fund or any other fund or funds of the city. K.S.A. 12-825d. However, as K.S.A. 79-2934 proscribes the diversion of any part of one fund to another fund, a city may not transfer such a surplus in the electric department to the street and/or special street fund and require that the street fund reimburse the electric utility fund through annual payments made over a period of eight years. Cited herein: K.S.A. 12-825d; KS.A. 79-2934.

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Dear Mr. Kriss:

You request our interpretation of K.S.A. 12-825d. Specifically, you question the legality of a procedure "whereby the council would declare a surplus in their electric utility fund pursuant to K.S.A. 12-825(d), transfer this surplus to the street and/or special street fund, use the funds to pay off the cost of a street improvement project just

completed and, further, require that the street and/or special street fund reimburse the electric utility fund through annual payments made over the next eight years."

K.S.A. 12-825d provides, in part, as follows:

"Except as otherwise hereinafter provided, in any city of the first, second or third class owning a waterworks, fuel, power or lighting plant, the revenue derived from the sale and consumption of water, fuel, power or light shall not be paid out or disbursed except for the purpose of operating, renewing, or extending the plant or distribution system from which such revenue was derived, the payment of interest on outstanding bonds issued for the construction, extension or purchase thereof, and the payment of the salaries of the employees. At any time that there may be a surplus of such fund, it shall, if needed to redeem bonds be quarterly placed in a sinking fund, which shall only be used for the purpose of redeeming bonds that may have been issued for acquiring, renewing, or extending said plant or distribution system, or making renewals or extensions thereto. When any surplus of either the operating fund or sinking fund is not needed for any of the above-stated purposes, said surpluses:

"(a) May be transferred and merged into the city general revenue fund or any other fund or funds of such city. . . ."

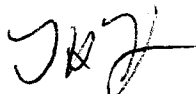
The underscored portion of the above-quoted statutory excerpt indicates that any transfer thereunder becomes merged into the fund or funds to which the transfer is made. In this regard, K.S.A. 79-2934 provides, in part, that "no part of any fund shall be diverted to any other fund, whether before or after the distribution of taxes by the county treasurer, except as provided by law." When a transfer is made under K.S.A. 12-825d, it becomes merged into and part of the subject fund. Accordingly, it may not be diverted to the electric department fund or any other fund except as provided by law. As we are unaware of any law which would authorize a city to "reimburse" the electrical department fund for moneys transferred under

K.S.A. 12-825d we must conclude that the procedure which you propose is proscribed by K.S.A. 79-2934.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm