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ATTORNEY GENERAL OPINION NO. 90- 87

John B. Klenda
McPherson County Counselor
Karstetter & Klenda
500 E. Main, P.O. Box 225
Marion, Kansas 66861-0225

Re: Cities and Municipalities -- Emergency Telephone
Services -- Emergency Telephone Tax; Use of Proceeds

Synopsis: Equipment used to receive and record emergency calls, or used to relay or dispatch emergency information to response units may be purchased with funds raised pursuant to K.S.A. 1989 Supp. 12-5304. Items such as office furniture or equipment which do not interact with the system as a whole and which do not directly contribute to the common purpose of the 911 system may not be purchased with such funds. Cited herein: K.S.A. 12-5301; 12-5302, as amended by L. 1990, ch. 78, § 1; K.S.A. 1989 Supp. 12-5304.

* * *

Dear Mr. Klenda:

As county counselor for McPherson County you request our opinion concerning the types of expenditures for which emergency telephone tax funds may be used pursuant to K.S.A. 12-5301 et seq. Specifically, you ask whether the tax funds may be used to purchase the following items: telephone lines and hardware; 911 monitors and printers; three-station console; base station and repeaters; antennas and

installation; pagers for response units; mobile radios for response units; recording equipment; and office furniture and equipment.

K.S.A. 1989 Supp. 12-5304(b) sets forth the permissible uses of the emergency telephone moneys:

"Funds collected from tax imposed pursuant to K.S.A. 12-5302, and amendments thereto, shall be spent solely to pay for (1) the monthly recurring charges billed by the service supplier for the emergency telephone service, (2) initial installation, service establishment, nonrecurring startup charges billed by the service supplier for the emergency telephone service, (3) charges for capital improvements and equipment or other physical enhancements to the emergency telephone system, or (4) any combination thereof." (Emphasis added).

The spending authority granted by this statute appears to be fairly broad. Tax funds may be used to pay for monthly recurring charges, installation charges, service establishment charges, and nonrecurring startup charges billed by the service supplier, as well as capital improvements, equipment and other physical enhancements, which may be purchased from vendors other than the service supplier. Many of the items you wish to purchase from these funds may fit the description of equipment or physical enhancement set forth in K.S.A. 1989 Supp. 12-5304(b)(3). The primary issue is therefore whether these purchases will be used "for the emergency telephone service" or for improvements "to the emergency telephone system."

K.S.A. 12-5301(a) defines "emergency telephone service" as:

"a telephone system utilizing a single three digit number '911' for reporting police, fire, medical or other emergency situations." (Emphasis added).

The statute does not define the term "emergency telephone system", nor the term "telephone system". Such definitions would appear to be crucial to a proper interpretation of the statute.

When the meaning of a statute is unclear or ambiguous, the rules of statutory construction must be applied. One such rule is that words and phrases should be construed according to their context, and words in common use should be given their natural and ordinary meaning. J.A. Tobin Const. Co., Inc. v. Kemp, 239 Kan. 430 (1986). To determine the natural and ordinary meaning of the terms "telephone system" and "emergency telephone system", it is helpful to consider standard dictionary definitions. Webster's Third New International Dictionary (1986) defines "system" as:

"a complex unity formed of many often diverse parts subject to a common plan or serving a common purpose; an aggregation or assemblage of objects joined in regular interaction or interdependence; a set of units combined . . . to form an integral, organic or organized whole; . . . a group of devices or artificial objects forming a network or used for a common purpose. . . ."
(Emphasis added).

When this definition is combined with the definition of "emergency telephone service" contained in the statute, the meaning of the terms "telephone system" and "emergency telephone system" becomes a little clearer. The terms contemplate a network or aggregation of parts joined in regular interaction to form an integral or organized whole serving a common purpose. In this case, the common purpose is to provide a means of reporting emergency situations by using a single three-digit telephone number ("911").

In applying this interpretation to the items listed above, the primary questions appear to be whether the items to be purchased constitute part of a network or organized whole, and if so, whether they contribute to the common purpose of providing a "911" emergency telephone number. Several of the items clearly satisfy both of these tests. The actual telephone lines and hardware, 911 monitors and printers, three-station console and recording equipment are all linked together electronically and have regular interaction with one another. Moreover, they are items necessary to receive and record emergency telephone calls at a central location. Office furniture and equipment, on the other hand, fails to satisfy either of the tests. It does not interact regularly with the other components of the system, nor does it

contribute in any meaningful sense to the common purpose of the system.

The remaining items present a less clear-cut case. The base station and repeaters, antennas, pagers and mobile radios all interact regularly with the rest of the system. However, these items are used not to receive and record emergency telephone calls, but rather, to relay or dispatch the information from those calls to appropriate response units (i.e. police, fire, medical, etc.). It is not apparent from the face of the statute whether the legislature intended this "dispatching" function to be included within the scope of the emergency telephone system. The purpose of the system is to allow emergency situations to be reported by dialing a "911" telephone number. Unfortunately, the statute does not define the term "report." We must therefore determine if the legislature intended the tax funds to cover only the components of the "system" used to receive emergency telephone calls, or if it also intended to cover the components used to relay information to emergency response units.

To answer this question, it is necessary to consider the legislative history of the statute. When K.S.A. 12-5304(b) was originally enacted in 1980, the statute limited emergency telephone tax expenditures to payment of "the monthly recurring charges billed by the service supplier." L. 1980, ch. 179, § 4(b). In 1984, the legislature broadened the statute to allow expenditures not only for the monthly recurring charges, but also for initial installation, service establishment and nonrecurring startup charges, and for capital improvements and enhancements to the system billed by the service supplier. L. 1984, ch. 79, § 1(b). The minutes of the 1984 Senate Transportation and Utilities Committee show that this amendment was intended to remove most of the restrictions on local governments' use of the tax funds, with the exception that the funds could not be used to pay for personnel costs and could only be used to purchase items directly from the service supplier. The amendment was drafted by officials of Sedgwick county and its service supplier in order to allow the county to purchase a "computer aided dispatch system" which would significantly increase emergency response time. Senate Comm. on Transportation and Utilities, Minutes of March 27, 1984.

In 1988, the legislature amended the statute to its current form by adding "equipment" to the list of permitted expenditures, by modifying the word "enhancements" to read "other physical enhancements", and by removing the requirement

that "capital improvements, equipment and other physical enhancements" be purchased from the service supplier. L. 1988, ch. 81, § 1(b). Once again, legislative committee minutes show that the purpose of the amendment was to give local governments greater freedom in spending the tax funds. Sedgwick county sought the amendment in order to obtain the "computer aided dispatch system" mentioned above, since this equipment was no longer available directly from the service supplier. Senate Comm. on Transportation and Utilities, Minutes of February 4, 1988; House Comm. on Local Govt., Minutes of March 23, 1988.

This legislative history is significant in two respects. First, it shows that the legislature has steadily increased the discretion of local governments in spending emergency telephone tax funds. Second, it shows that the legislature specifically intended to allow the purchase of a "computer aided dispatch system" from an entity other than the service supplier. Based on these observations, we believe other "dispatch" equipment, such as base stations, repeaters and antennas is also within the intended meaning of "emergency telephone system" and may be purchased with emergency telephone tax funds. Like the "computer aided dispatch system" mentioned above, these items are linked electronically to the other components of the system and comprise part of the central base station where calls are received and disseminated to other units.


A final question arises with regard to the pagers and mobile radios included in your list. Although these items can be considered part of the dispatch function of the system, and they are needed to receive information relayed to response units from the base station, they differ from the dispatch-related equipment mentioned above in that they are physically separated from the rest of the system and are not located at the central base station. An issue becomes whether these items are sufficiently integrated with the other components so as to be considered part of the emergency telephone system.


Neither the language of the statute nor the legislative history speaks to this issue. However, it is our opinion that these items may be purchased with emergency telephone tax funds. The common meaning of the term "emergency telephone system" would seem to include any item which has regular interaction with the other components of the system and which contributes to the common purpose of the system. Our review of legislative history has convinced us that relaying

information from the base station to emergency response units is part of the common purpose of the system. Pagers and mobile radios may be necessary in order to maintain communication with the base station and receive this information. Therefore, a strong argument can be made that these items are as much a part of the overall emergency telephone system as the dispatch equipment housed at the base station. Furthermore, there is nothing in the language of the statute or the legislative history to suggest that the legislature intended to prohibit the purchase of such items, or to limit use of funds to situations wherein equipment is physically linked to the system.

We conclude that equipment used to receive and record "911" emergency calls, such as telephone lines and hardware, 911 monitors and printers, three-station consoles and recording equipment is within the meaning of "emergency telephone system" intended by the legislature. Therefore, these items may be purchased with emergency telephone tax funds under K.S.A. 1989 Supp. 12-5304(b). Items used to relay or dispatch emergency information to response units, such as computer aided dispatch systems, base stations and repeaters, antennas, pagers and mobile radios are also within the intended scope of the term "emergency telephone system" and may be purchased with the funds, if those items interact with the system as a whole and contribute directly to the common purpose of the system. Such items as office furniture and equipment are clearly not part of the emergency telephone system and may not be purchased with the tax funds.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Theresa Marcel Nuckolls
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