



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

September 17, 1991

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91- 110

The Honorable Betty Jo Charlton  
State Representative, Forty-Sixth District  
1624 Indiana Street  
Lawrence, Kansas 66044

Re: Cities and Municipalities--Miscellaneous  
Provisions--Promotion of Tourism and Conventions;  
Collection, Payment and Disposition of Transient  
Guest Tax

Synopsis: A city may expend revenues from the transient guest tax to upgrade handicapped accessibility on public property in a downtown shopping area where the city governing body, in its legislative judgment, determines that such expenditure will encourage either conventions or tourism. Cited herein: K.S.A. 1990 Supp. 12-1697; 12-1698.

\* \* \*

Dear Representative Charlton:

You inquire concerning the proper use of moneys collected by the city of Lawrence pursuant to K.S.A. 12-1696 et seq. Specifically, you ask whether a city may expend revenues from the transient guest tax to upgrade handicapped accessibility on public property in a downtown shopping area.

Subsection (a) of K.S.A. 1990 Supp. 12-1697 authorizes the levy of a transient guest tax, and provides as follows:

"In order to provide revenues to promote tourism and conventions, the governing

body of any county or the governing body of any city is hereby authorized to levy a transient guest tax not to exceed the rate of 2% upon the gross receipts derived from or paid by transient guests for sleeping accommodations, exclusive of charges for incidental services or facilities, in any hotel, motel or tourism court. The percentage of such tax shall be determined by the board of county commissioners or the city governing body and shall be specified in the resolution or ordinance authorizing the same."

Subsection (e) of K.S.A. 1990 Supp. 12-1698 restricts expenditure of transient guest tax moneys as follows:

"All such moneys received by the county or city treasurer from disbursements from the county or city transient guest tax fund shall be credited to the tourism and convention promotion fund of such county or city and shall only be expended for convention and tourism promotion."  
(Emphasis added).

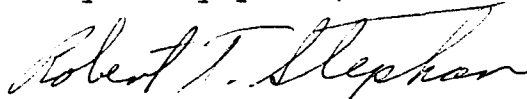
The above-quoted statutory excerpt leaves much to the discretion of the governing body in determining upon particular programs and activities to be supported by the proceeds of the transient guest tax. It leaves to the legislative determination of the local governing body the determination to make particular expenditures, so long as they fall within the broad guidelines of convention and tourism promotion. Obviously, there may well be differences of opinion among various groups as to the kinds of particular expenditures which are most productive and effective in encouraging either conventions or tourism. However, the resolution of those policy differences is left to the legislative determination of the city governing body, so long as the funds in question are expended within the broad parameters of convention and tourism promotion. This office cannot conclude, as a matter of law, that the use of transient guest tax revenues to upgrade handicapped accessibility on public property is not an expenditure for convention and tourism promotion.

In conclusion, it is our opinion that a city may expend revenues from the transient guest tax to upgrade handicapped

Representative Betty Jo Charlton  
Page 3

accessibility on public property in a downtown shopping area where the city governing body, in its legislative judgment, determines that such expenditures will encourage either conventions or tourism.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JLM:TRH:jm