



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 92-152

Steven W. Hirsch
Decatur County Attorney
P.O. Box 296
Oberlin, Kansas 67749

Re: Counties and County Officers -- County
Commissioners -- Authority to Purchase Equipment
for Another County Entity

Synopsis: The Decatur board of county commissioners cannot
buy a plow with money from the county general fund
to give to the soil conservation district so that
they can lease it to private individuals.
Cited herein: K.S.A. 2-1907b; 19-119; Kan.
Const., Art. 11, § 5.

* * *

Dear Mr. Hirsch:

As Decatur county attorney, you request our opinion as to
whether the Decatur board of county commissioners can
purchase a plow with general fund money on behalf of the soil
conservation district and then the soil conservation district
lease out the equipment to private individuals.

In Attorney General Opinion No. 87-75, we opined that:


"Article 11, § 5 of the Kansas
Constitution requires that a tax be used
for the purpose for which it was levied.
The Kansas Supreme Court has determined
that a general revenue tax is levied to
cover the usual, ordinary current expenses
of the county. Since Rawlins County
expenses related to the prevention of soil

erosion must be classified as special or extraordinary, rather than usual or ordinary, the prevention of soil erosion is not a matter which falls within the purposes for which the general tax levy is made. Accordingly, use of general fund revenue to finance the prevention of soil erosion would violate Article 11, § 5 of the Kansas Constitution. Such a use would also violate the provisions of K.S.A. 2-2001 et seq., the statutes which deal with wind-blown dust and soil erosion."

Since the plow is to be used for terrace repair, such use would not be deemed as a usual and ordinary expense of the county, but would be more like the prevention of soil erosion and thus use of general fund money for this purpose would violate article 5, § 11 of the Kansas constitution.

Furthermore, because the county is contemplating giving the equipment to the soil conservation district (SCD) there are other statutory constraints. K.S.A. 2-1907b allows the county to give the SCD \$10,000 out of the general fund so as to allow the supervisors to carry out their duties. In addition, the board of county commissioners "may levy an annual tax against the taxable tangible property within the district, not to exceed 2 mills or \$55,000, whichever is less, to provide additional moneys for the operation of the conservation district." K.S.A. 2-1907b. The monies raised by the levy shall be used for "activities and functions of the district including cost of travel and expenses of supervisors and employees of the district incurred within the state, educational materials, conservation awards, annual meeting expenses, excluding meals, and membership dues to conservation related organizations." K.S.A. 2-1907b. Based on this outline of appropriate expenses it does not appear that purchase of a plow would fit within this category.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Mary Jane Stattelma
Assistant Attorney General