FILE
Subject Cities - Funds
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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

January 14, 1974

Opinion No. 74- 8

Dan E. Turner
Topeka City Attorney
Municipal Building
215 East 7th Street
Topeka, Kansas 66603

Dear Mr. Turner:

You advise that a question has been raised as to whether a political subdivision and more specifically, the City of Topeka, may provide for public service such as public safety, environmental protection, public transportation, health, recreation, and social services for the poor, indigent, aged, needy and underprivileged.

Assuming the City of Topeka may provide such services, the further question arises whether it is proper to allocate federal revenue sharing funds to provide these services.

Kansas has no constitutional or statutory authority setting forth the specific purposes for which Topeka's general fund may be extended. It is therefore necessary to rely upon general municipal corporation law for a determination of public purpose, and in so doing we turn to 16 McQuillin, Municipal Corporations, § 39.19:

> "All appropriations or expenditures of public money by municipalities and indebtedness created by them, must be for a public and corporate purpose . . ."
>
> * * *
>
> "[I]f the primary object is to subserve a public municipal purpose, it is immaterial that, incidentally, private ends may be advanced. Moreover, the public purposes for which cities may incur liabilities are not restricted to those for which precedent can

> be found, but the test is whether the work is required for the general good of all the inhabitants of the city. But it is not essential that the entire community, or even a considerable portion of it, should directly enjoy or participate in an improvement in order to make it a public one. Otherwise stated, the test of a public purpose should be whether the expenditure confers a direct benefit of reasonably general character to a significant part of the public, as distinguished from a remote or theoretical benefit." [Emphasis supplied.]

The term "public purpose" does not readily lend itself to an objective definition. It goes without saying that no two persons think alike and what one may rationalize to constitute a valid public purpose may strain the thought processes of another.

> "What is a public municipal purpose is not susceptible of precise definition, since it changes to meet new developments and conditions of times. While the question of what is and what is not a public purpose is initially a legislative responsibility to determine, in its final analysis, it is for the courts to answer." [Emphasis supplied.]

As implied above, the courts have been faced with defining public purpose in general terms and in some cases the courts are required to decide whether a particular activity is in fact a public purpose. You cite a number of decisions dealing with this question. The Texas Supreme Court held that what constitutes a public purpose may not be circumscribed by any precise definition other than to state that, if an object is beneficial to the inhabitants and directly connected with the local government, it will be considered a "public purpose." See Davis v. City of Taylor, 123 Tex. 39, 67 S.W.2d 1033. The Nebraska Supreme Court in United Community Services v. Omaha National Bank, 162 Neb. 786, 77 N.W.2d 576, stated on page 585 that a public purpose has for its objective the promotion of the public health, safety, morals, security, prosperity, contentment, and the general welfare of all the inhabitants.

A precise definition of "public purpose" is not possible nor for that matter feasible, for to define said term would unquestionably limit the power and the discretion of government to provide services in a given area. The Tennessee Supreme Court seemed to realize the possible limitations and inherent danger of limiting or placing strict descriptive bounds on the term "public purpose" when deciding Knoxville Housing Authority v.

City of Knoxville. The court held the novelty of a purpose does not render it less a "public purpose" and the conception of a "public purpose" must necessarily broaden as the functions of government continue to expand. See Knoxville Housing Authority v. City of Knoxville, 174 Tenn. 76, 173 S.W.2d 1085.

The above cited cases leave no doubt that "public purpose" may not be specifically defined. It therefore follows that when municipalities consider programs involving public financial resources they must determine whether a given planned program or action seems a valid public purpose.

In Carmichael v. Southern Coal Co., 301 U.S. 495, the Supreme Court stated:

> "The requirements of due process leave free scope for the wide legislative discretion in determining what expenditure will serve the public interest."

While the governmental bodies have discretion to guide their actions, abuse of discretion in determining public purpose will not be permitted. The restriction against abuse of discretion was emphatically stated in Pipes v. Hilderbrand, 243 P.2d 123, where the court held that whether performance of an act or accomplishment of a specific purpose constitute a "public purpose" for which municipal funds may be lawfully disbursed, and method by which such action is to be performed or purpose accomplished, rest in the judgment of the city council, and the judicial branch will not assume to substitute its judgment for that of the governing body unless the latter's exercise of judgment or discretion is shown to have been unquestionably abused.

It seems quite clear that the City of Topeka may, in its discretion, provide public services such as safety, environmental protection, public transportation, health, recreation and social services, and that absent any abuse of discretion the providing of such services is a lawful public purpose.

Assuming that providing the stated services is a valid "public purpose," the second issue confronting the City of Topeka is whether the city may use revenue sharing funds to finance the furnishing of these services. For this authority we must enlist the provisions of federal law.

Title 31, § 1222(a) of the United States Code provides:

> "Funds received by units of local government under this subchapter may be used only for priority expenditures. For purposes of this chapter, the term "priority expenditures" means only --

(1) Ordinary and necessary maintenance and operating expenses for --
  (A) Public safety (including law enforcement, fire protection, and building code enforcement).
  (B) Environmental protection (including sewage disposal, sanitation, and pollution abatement).
  (C) Public transportation (including transit systems and streets and roads).
  (D) Health.
  (E) Recreation.
  (F) Libraries.
  (G) Social services for the poor or aged, and
  (H) Financial administration; and
(2) Ordinary and necessary capital expenditures authorized by law." [Emphasis supplied.]

The priority expenidtures as provided for in § 1222(a) above are essentially services which fall within the ambit of "public purpose" as defined by the Nebraska court in United Community Services v. Omaha National Bank, supra, and by other cited cases.

Pursuant to the authority granted in 31 U.S.C. 1262, the Secretary of the Treasury has promulgated certain rules and regulations with respect to the local governments' authority to allocate revenue sharing money. The Secretary has also written an opinion concerning this authority to allocate. The opinion states in part:

> "Section 123(a)(4) of the Act [31 U.S.C. 1243(a)(4)] requires that a recipient government expend its revenue sharing funds in accordance with the laws and procedures applicable to the expenditures of its own revenues. Thus, if the City is prohibited under local law from financing any particular project with its own revenues, it may not finance such project with revenue sharing funds." [Emphasis supplied.]

Once it is established that a service fits within the ambit of local government purpose and such service comes within the provisions of Title 311, § 1222(a), such service is properly funded by revenue sharing funds.

There has been some confusion whether some of the agencies or organizations designated by the City of Topeka to receive revenue sharing funds are really eligible to receive these funds. The organizations about which there has been some question are:

Big Brother - Big Sister Program
The Boys' Club
Weigh, Inc. (a halfway house for retarded adults)

Topeka Indian Center
Shawnee County Community Assistance and Action, Inc. (a Community Action Agency)
Seven Step Foundation (an organization for rehabilitation of ex-convicts)

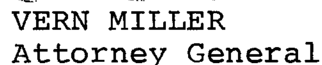
The social services provided by each of these organizations appears to fall within the category of social services which may properly be funded through federal revenue sharing funds. Copies of the contracts which each of these organizations has entered into with the City of Topeka have been furnished this office.

Clearly, the city governing body has made a determination that a public purpose will be served by each such contract. Nothing in any of these contracts affords this office any basis upon which to gainsay this determination.

You advise that the City of Topeka has, in order to insure that all of the priority expenditures are within the revenue sharing guidelines, entered into detailed contracts with each and every recipient of funds. In consideration for receipt of the funds, each of the agencies covenants and promises to provide certain services to the community. The services provided vary from agency to agency, however, they are all similar in one respect -- public service. Failure to so provide the public services would constitute a breach and subject the agency to immediate loss of funds. Further, no agency actually handles funds but rather, the agency must submit claim vouchers through the Finance Department of the City of Topeka for payment. This procedure allows the city to monitor the flow of revenue sharing funds. Such monitoring of the revenue sharing expenditures allows the city to maintain a watchful eye on the recipient agencies and further to satisfy itself that the public service bargained for is being provided.

In summary, after consideration of the contracts in question, and the views you have submitted, we cannot but concur in your judgment that the expenditures in question are for social services which clearly do not fall beyond the generally accepted scope of the public purpose doctrine, and are social services which may lawfully be funded through federal revenue sharing sources.

Yours very truly,



VERN MILLER
Attorney General

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