

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

July 2, 1974

Opinion No. 74- 217

Robert J. Woody
Westwood City Attorney
Court Square Building
110 South Cherry
Olathe, Kansas 66061

Dear Mr. Woody:

You advise that the governing body of the City of Westwood is presently considering an expenditure of municipal funds for the purpose of providing a cable television line to Westwood View Elementary School, the only public school within the city boundaries. You enclose a copy of a draft ordinance authorizing the use of city streets, alleys and other public right-of-way by Telecable of Overland Park, Inc., for this purpose, and authorizing reimbursement of Telecable of its costs thereof. You request our opinion whether this proposed expenditure would serve a proper municipal purpose.

You advise that 41 percent of the students of the Westwood View Elementary School are actual residents of the City of Westwood, the remainder being residents of adjacent cities, including Westwood Hills, Mission Woods, Fairway and Roeland Park, all in Kansas. This school is one of the few, you indicate, in the Shawnee Mission School System which does not have access to the benefits of educational television which would be provided by the kind of installation envisioned here. The contemplated expenditure would not exceed \$2,500.

At 15 McQuillin, Municipal Corporations, § 39.19, the writer states thus:

"All appropriations or expenditures of public money by municipalities and indebtedness created by them, must be for a public and corporate purpose . . ."

* * *

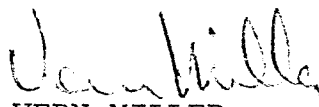
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"[I]f the primary object is to subserve a public municipal purpose, it is immaterial that, incidentally, private ends may be advanced. Moreover, the public purposes for which cities may incur liabilities are not restricted to those for which precedent 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."

In order for an expenditure to be valid, it must serve not only a public purpose, but a public corporate purpose of the municipality. The expenditure of sums for installation of equipment necessary to enhance educational resources and facilities, such as a television feeder cable solely for use of a public school system, serves, surely, a public purpose, when made by the board of education charged by law with the responsibility of providing educational facilities and resources. This responsibility is not, however, a public corporate responsibility of a Kansas municipal corporation.

We have recognized in the past that Kansas cities may expend municipal funds for a wide variety of public services in such areas as safety, environmental protection, public transportation, health, recreation and other social services. However, in this instance, the proposed expenditure would be for a purpose properly within the sphere of responsibility of another public corporate body, the board of education. It is for this reason that we believe the proposed expenditure of municipal funds to be improper. Certainly, the city may authorize the use of its public streets, alleys and rights-of-way upon such reasonable terms as it may determine. However, in our view, the expenditures authorized by sections 3 and 4 of the ordinance are not proper expenditures of public funds of the municipal corporation itself.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm