



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

September 3, 1975

ATTORNEY GENERAL OPINION NO. 75- 356

Mr. R. B. Barefield
CORMAN AND BAREFIELD
206 N. Concord
Minneapolis, Kansas 67467

Re: Townships and Township Officers--Buildings and Sites--
Election--Taxation--Funds Appropriated by Budget

Synopsis: Those funds received from the township's school building funds and presently held in the general account of Fountain Township may be expended for the purchase of a township hall only after being properly budgeted during the next fiscal year in accordance with the provisions of K.S.A. 79-2925 and only after the question of such expenditure has received a favorable vote of the township electors.

* * *

Dear Mr. Barefield:

You have requested an opinion from this office relative to the disposition of certain funds presently held by the treasurer of Fountain Township, Ottawa County, Kansas. Specifically, you have inquired whether the township may expend funds acquired from the sale of a township school building without submitting the question to a vote of the township electors when the purpose of expenditure is to purchase or otherwise acquire a township hall. Additionally, you have asked whether, assuming an election and a favorable vote, the expenditure may be taken in the present fiscal year although such an expense or acquisition was not specifically provided for in the township's budgetary allocations.

R. B. Barefield
Page Two
September 3, 1975

In response to your first inquiry, K.S.A. 80-604 provides in pertinent part:

The township trustee, clerk and treasurer of the several organized townships in the state of Kansas, in addition to the powers that are now conferred upon them by law, shall have power to procure not to exceed three acres of land for the township, and to build thereon permanent buildings, or to purchase school building or grounds or both the building and grounds the same to be used for public purposes, such as meetings relating to township business, political gatherings, township fairs, entertainments, whether for free use or for hire and profit, at which an admission price may be charged, and such other meetings as may be authorized by the township board:

Provided further, That in no event shall said township officers proceed to procure said land or erect said buildings thereon or purchase such schoolhouse or appropriate any of the moneys of said township or levy any tax therefor without first submitting the question to a vote of the electors of said township, and said election shall be governed by and the returns thereof made in accordance with the laws governing the election of township officers:

It is our view the language of this statute is susceptible to only one interpretation. We find nothing which suggests patent or latent ambiguity in its intent. The above quoted proviso specifically limits the township's power to purchase or otherwise acquire realty and improvements thereon to only those instances in which the question has first been approved by a vote of the township electors. We know of no other statute which grants the township a concomitant power to that expressed in K.S.A. 80-104. Accordingly, it is the opinion of this office that prior to the purchase, acquisition or construction of a township hall, the question must first be submitted to and approved by a favorable vote of the township electors at an election held for that purpose.

R. B. Barefield
Page Three
September 3, 1975

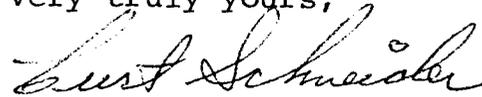
As to your second question, K.S.A. 79-2934 provides:

The budget as approved and filed with the county clerk for each year shall constitute and shall hereafter be declared to be an appropriation thus made shall not be used for any other purpose. No money in any fund shall be used to pay for any indebtedness created in excess of the total amount of the adopted budget of expenditures for such fund, and any balance remaining in such fund at the end of the current budget year shall be carried forward to the credit of said fund for the ensuing budget year.

The obvious impact of this statutory provision is to hold that all municipalities, including townships, are limited to making only those expenditures previously budgeted from any and all separate funds and accounts. It is our view this represents the correct interpretation. In the instant case, the funds received from the sale of the school building were deposited in the township's general account. Furthermore, no budgetary allocation or appropriation was made for these funds at the time the budget was adopted and approved. The application of K.S.A. 79-2934 to this situation clearly results in a holding that since these funds were not allocated in this year's budget, the expenditure cannot be taken during this fiscal year.

Accordingly, those funds received from the township's school building funds and presently held in the general account of Fountain Township may be expended for the purchase of a township hall only after being properly budgeted during the next fiscal year in accordance with the provisions of K.S.A. 79-2925 and only after the question of such expenditure has received a favorable vote of the township electors.

Very truly yours,



CURT T. SCHNEIDER
Attorney General