



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 9, 1976

ATTORNEY GENERAL OPINION NO. 76-245

Mr. D. H. Corson, Jr.
City Attorney
City of Bonner Springs
434 Brotherhood Building
Kansas City, Kansas 66101

RE: Cities - Bands - Levies

SYNOPSIS: Proceeds from the municipal band levy authorized by K.S.A. 12-14a01 *et seq.* may be used only to fund concerts and other musical services provided by the city band pursuant to contract with the city, and may not be used to fund musical presentations by other groups. The city band may contract with the city to furnish musical services to support other municipally-sponsored cultural activities at which charges are made to defray non-band related expenses thereof.

* * *

Dear Mr. Corson:

As counsel for the City of Bonner Springs, you inquire concerning the availability of a levy authorized pursuant to K.S.A. 12-14a01 *et seq.* to fund a concert proposed to be performed by the Kansas City Philharmonic.

You advise that in 1928, a one-half mill levy was approved by the voters of the city. The use of the fund is governed by K.S.A. 12-14a04, which provides in pertinent part thus:

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"All moneys received from such levy shall be paid into a special fund to be known as the 'band fund,' and no moneys shall be appropriated out of such fund until the mayor and council, commissioners or township board shall have first entered into a written contract with the authorized officials of a band for its employment in the giving of free band concerts or musical service by the band upon such occasions of public importance as shall be stipulated in said contract."

You advise that for many years, the city has had a "city band," which furnishes free concerts, and which is funded by this levy. However, the question has arisen whether proceeds of the levy may be used to support, in addition to the ongoing activities of the city band, a free concert to be furnished by the Kansas City Philharmonic on a one-time basis.

The act contemplates that the proceeds of the levy shall be used to fund free concerts provided by "a band," which shall provide musical services on a continuing basis pursuant to a contractual agreement with the city. In 1925, when the act was passed, municipal bands as an organized community institution were more common than presently. The levy is statutorily designated to fund a municipal band, such as the City of Bonner Springs now has, and its proceeds may not be diverted, in my judgment, to support arts and music functions generally, including concerts provided by other musical groups.

In addition, K.S.A. 12-14a05 defines the term "band" as "a band composed of musical instruments as are recognized in the standard instrumentation established for the use of U.S. army bands." The instrumentation of the Kansas City Philharmonic is unlikely to conform to the foregoing.

Secondly, you advise that the question has arisen whether the municipal band might provide the music at plays and other functions sponsored by the proposed municipal arts commission. It is proposed that admission will be charged at these functions, to cover the costs of theatrical or other performances, and if the municipal band were to play at such functions, the costs would be substantially reduced. The act requires that the band furnish free band concerts and other musical services. In my judgment, it is within the power of the city to contract with

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the municipal band to provide its services without charge to support municipally-sponsored cultural and theatrical projects to which admission is charged. While the band must, pursuant to its contract, provide free concerts and other musical services to the city, neither the letter nor the spirit of this requirement is violated by an agreement whereby the services of the band are provided without charge to assist in the presentation of other municipal cultural undertakings, for which an admission charge must necessarily be made to support the costs thereof to defray the nonmusic costs thereof.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:en