



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 8, 1976

ATTORNEY GENERAL OPINION NO. 76-277

Mr. Donald Curry
Johnson County Clerk
Johnson County Courthouse
Olathe, Kansas 66061

Mr. Frank Jenkins
City Attorney
100 West Santa Fe
Post Office Box 768
Olathe, Kansas 66061

Re: Cities--Funds--Bond and Interest

Synopsis: The City of Olathe may include in its 1977 general fund budget monies derived from the general fund levy to be applied to bond and interest obligations of the city.

* * *

Gentlemen:

You inquire whether a city may budget monies for bond and interest purposes and expenditures in its general fund. The question arises regarding the proposal of the City of Olathe to include in its general fund budget for fiscal 1977 a substantial portion of the money anticipated to be needed for bond and interest expenditures.

In some measure, the question is a natural outgrowth of the action of the 1975 legislature, reducing the multiplicity of separate levies and funds for cities. For example, K.S.A. 1974 Supp. 79-1951, applicable to cities such as Olathe, was amended to reduce the number of statutory levies and funds from 33 to 8. The general fund, obviously, may as a result be required to bear a greater number of special-purpose expenditures than formerly.

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The precise compass of permissible expenditures from the general fund has never been clearly defined. In *Smith v. Haney*, 73 Kan. 506, 85 Pac. 550 (1906), the plaintiff challenged a statutory provision which permitted a county to expend monies from its general fund to assist in the erection and furnishing of a new county courthouse. The court stated thus:

"So regarded, there is no difficulty in saying that the legislature clearly meant to authorize the commissioners in their discretion to use the unexpended balance of the general revenue fund for several years toward paying for the construction of the courthouse The phrase 'general fund,' as applied to the fiscal management of a Kansas county, has a definite and well-recognized meaning. It covers the proceeds of a tax levied to provide for the usual current expenses. The building of a court-house is a special or extraordinary matter, and not one included in the purposes for which the general tax levy is made. To permit the division to that use, therefore, of any part of the unexpended proceeds of a general revenue tax would be a violation of the spirit and letter of the constitution." 73 Kan. at 508, 509.

Two years later, this "definite and well-recognized meaning" became more elastic. In *State ex rel. Jackson v. Board of County Commissioners*, 77 Kan. 527, 94 Pac. 1004 (1908), there was again challenged an enactment authorizing the commissioners of certain counties to expend surplus funds in the county general fund for the erection of a courthouse building. The court upheld the measure. It did point out that funds involved in the latter case did not derive from ad valorem taxes. However, the statute itself applied to all surplus funds, from whatever source. The distinction between the two cases is in no wise apparent. In 1906, the court held that surplus monies in the general fund could not be used for courthouse construction. Two year later, the court held that surplus monies in the general fund could indeed be used for courthouse construction. Whatever else the cases may establish, it is clear that as long ago as 1908, the phrase "general fund" as applied to Kansas counties no longer had a very definite nor widely recognized meaning.

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We are concerned here with the use of the general fund of a Kansas city. There are no statutory restrictions or delineations of the permissible uses of a city general fund nor are there constitutional restrictions, aside from whatever inferences may be drawn from *Smith v. Haney, supra*, and *State ex rel. Jackson v. Commissioners, supra*, upon permissible expenditures therefrom. Defined in a most general sense, the general fund is the fund for which the municipality accounts for all revenues and expenditures for which it does not make provision by other funds. Certainly, there is no statutory or constitutional basis for a conclusion that the payment of municipal indebtedness or interest thereon is, as a matter of law, an unlawful general fund expenditure, or a purpose for which general fund monies may not be spent. There is, in my judgment, no constitutional or statutory reason why proceeds of a general fund levy may not be applied to and expended for payment of municipal indebtedness and interest thereon. This is so notwithstanding a separate bond and interest levy is made for the identical purpose, for the legality of a general fund expenditure is not affected by the fact that monies for the same purpose may also be available from other funds of the municipality.

It may be objected that use of the general fund levy to satisfy bond and interest obligations of the city may result in a deceptive or misleading reduction of the remaining bond and interest levy. While this may be a consideration in discussing the public feasibility of the practice, it is not a pertinent argument on the legal merits of the question. Nothing in the practice is fraudulent or inherently deceptive. Records of the municipality will continue to reflect correctly the amounts spent for bond and interest purposes.

In sum, it is my judgment that the use of general fund proceeds for bond and interest obligations of the City of Olathe is a permissible expenditure of general fund monies, and that monies for that purpose may lawfully be included in the general fund budget in 1977.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj