



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 15, 1977

ATTORNEY GENERAL OPINION NO. 77- 389

Mr. Dan E. Turner
City Attorney
215 East Seventh Street
Topeka, Kansas 66603

Re: Cities--Budgets--Board of Tax Appeals

Synopsis: The State Board of Tax Appeals has no authority under K.S.A. 1976 Supp. 79-2939 to authorize an increase in the budgeted expenditure authority of a city except when and as necessarily incident to approval of an application for the issuance of no-fund warrants. In Docket No. 1095-7, upon an application of the City of Topeka for no-fund warrants to defray the costs of street lighting for the remainder of the fiscal year, the Board exhausted its authority upon denial of the requested authority for no-fund warrants, and had no jurisdiction to enter any further order for the transfer or diversion of moneys from the general fund to the street lighting fund. However, the city may defray such costs through direct expenditures from the general fund of the city, notwithstanding exhaustion of the street lighting fund.

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Dear Mr. Turner:

You inquire concerning an order issued by the State Board of Tax Appeals issued December 14, 1977, in Docket No. 1095-7, upon an application by the City of Topeka, Kansas, for authority to issue no-fund warrants and for authority to exceed the existing budgeted expenditure authority in the street lighting fund by an amount of \$49,568.13, pursuant to K.S.A. 79-2939. The Board refused to authorize the issuance of no-fund warrants. However, upon

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a finding that the City had sufficient available moneys in its general fund, the Board ordered the City to transfer an amount not to exceed the amount specified above from its general fund to the street lighting fund, and granted budget expenditure authority for the expenditure of that amount from the street lighting fund. You inquire whether the Board exceeded its authority in that order.

The Board acted in this matter pursuant to K.S.A. 1976 Supp. 79-2939. Despite several somewhat exalted recitals of its powers, the State Board of Tax Appeals is a statutory body, and its powers are solely those which are expressly granted to it by statute. If it exercises any implied powers whatever, they are only those which are reasonably and necessarily implied from those expressly granted. The Board acted in this matter pursuant to K.S.A. 1976 Supp. 79-2939. The only power vested in the Board under that section is the power to approve or disapprove applications for authority to issue no-fund warrants. Necessarily implied in the approval of a no-fund warrant application is the authority to expend the proceeds of those warrants. Thus, an order of the Board approving a no-fund warrant application has a two-fold effect: first, it constitutes express authority for the issuance of those warrants and, secondly, it constitutes necessarily implied authority for the applicant to spend the proceeds thereof. Toward that end, the Board has been deemed, historically, to have the necessarily implied power, when approving a no-fund warrant application, to amend the budget of the applicant by increasing the budgeted expenditure authority of the appropriate fund to permit the expenditure of the warrant proceeds.

When the Board refuses to approve a no-fund warrant application, however, there is no occasion for increased budget authority. Certainly, the Board has no express power under any statutory provision cited in its order to amend the budgets of taxing subdivisions with matters pending before it. It has that necessarily implied authority when and only when it approves an application for authority to issue no-fund warrants. Having refused that application, the Board has exhausted its power under that section, and had no further jurisdiction to enter any other order respecting the administration of the financial affairs of the City of Topeka.

K.S.A. 1976 Supp. 79-2934 provides in pertinent part thus:

"The budget as approved and filed with the county clerk for each year shall constitute and shall hereafter be declared to be an appropriation for each fund, and the appropriation

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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 clerk or secretary of each taxing subdivision or municipality shall open and keep an account of each fund, showing the total amount appropriated for each fund, and shall charge such appropriation with the amount of any indebtedness created at the time such indebtedness is incurred

No part of any fund shall be diverted to any other fund, whether before or after the distribution of taxes by the county treasurer, except as provided by law."

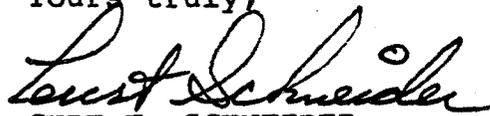
The Board in its order states that this section, including the prohibition against the diversion of monies in one fund to another, is not binding upon the Board as an "independent agency of the state." The order of the Board does not recite any provision which authorizes it to waive this prohibition, or to exempt any municipality or other taxing subdivision from this or any other constraint of the budget law, except when and as necessarily incident to the approval of an application for no-fund warrants. Indeed, there is no such authority, and quite clearly, as a matter of law, K.S.A. 1976 Supp. 79-2934 remains binding upon the city, despite the purported dispensation granted by the Board.

The City's application to the Board in this instance was premised implicitly on the belief that moneys in the general fund could not be expended for street lighting purposes, because a separate fund was created expressly for that purpose. In Opinion No. 76-277, we considered the question whether the city may expend monies from its general fund for a purpose for which a special purpose fund has been created and was maintained by the city. A copy of that opinion, no. 76-277, is attached, and it is unnecessary to recapitulate its conclusions here. Clearly, the operation of the city street lighting system is an ordinary, necessary and usual current operating expense, to which, absent some express constitutional or statutory prohibition, moneys in the general fund may be applied. It has been urged upon this office that

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this practice is contrary to generally accepted accounting principles of municipal accounting, and should, therefore, be deemed unlawful. The practice may very well be prohibited by regulations adopted by the Director of Municipal Accounting, with the approval of the Municipal Accounting Board pursuant to K.S.A. 1976 Supp. 75-1121, which have not yet become effective. However, it is our view that the practice is not prohibited by express provisions of the general budget law, or by any compelling inference to be drawn therefrom. Thus, it is my view that the City may meet its obligations incurred for street lighting during the remainder of the current fiscal year through expenditures directly from the general fund, and no transfer of monies from the general fund to the street lighting fund is necessary to authorize those direct expenditures.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj