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October 16, 1979

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ATTORNEY GENERAL OPINION NO. 79-233

Mr. Larry S. Vernon
Cloud County Attorney
Concordia, Kansas 66901

Re: Cities and Municipalities--Investment of Idle
Funds--Authority of Counties

Synopsis: While K.S.A. 1978 Supp. 12-1675 grants permissive authority to a county to invest its idle funds, any such investment must be in compliance with said statute's requirements, which are uniformly applicable to all counties, and a county may not exercise its home rule powers to deviate from these statutory provisions.

* * *

Dear Mr. Vernon:

You have posed several questions regarding the authority of the Cloud County Board of County Commissioners to invest idle funds. Several of your questions hinge upon our response to your inquiry as to the ability of the Board to exercise its home rule powers regarding this matter. Therefore, it is to this proposition that we first direct our attention.

The investment of idle county funds is statutorily governed by K.S.A. 12-1675 et seq. This statutory series originated in 1968 (L. 1968, ch. 217) and has been amended and supplemented by the legislature on numerous occasions. Two of these subsequent enactments have particular relevance to your inquiry. In 1975, the legislature enacted a provision, which was codified at K.S.A. 12-1678b (L. 1975, ch. 69, §2), that declared the idle

Mr. Larry S. Vernon
Page Two
October 16, 1979

funds investment statutes to be immune from the exercise of a county's home rule powers. However, in Attorney General Opinion No. 75-388, Attorney General Schneider declared this statute to be an invalid exercise of legislative authority. In that opinion, the Attorney General determined that K.S.A. 12-1678b attempted a direct amendment of K.S.A. 19-101a (prescribing inter alia limitations on county home rule powers) without complying with the requirements of Article 2, Section 16 of the Kansas Constitution pertaining to amendment of legislative enactments. As a result of this determination, the Attorney General concluded that K.S.A. 12-1675 et seq. were susceptible of modification by a county through the exercise of its home rule powers. Such conclusion was expressed as follows:

"Clearly, in my judgment, it is an appropriate exercise of county home rule authority for the board of county commissioners to augment and supplement the statutory investment authority provided by K.S.A. 1974 Supp. 12-1675 by additional authority fashioned by ordinary resolution adopted pursuant to K.S.A. 19-101a(b)"

In 1976, in apparent response to Attorney General Schneider's opinion, the legislature repealed K.S.A. 12-1678b (L. 1976, ch. 79, §5), and in section 2 of that same enactment the legislature also amended K.S.A. (now 1978 Supp.) 12-1675. In our judgment, these amendments to 12-1675, together with further amendments in 1977 (L. 1977, ch. 55, §1), validly effect the legislative objective stated in 12-1678b to preclude counties from exercising their home rule powers with respect thereto.

As a result of the 1976 and 1977 amendments, one of the portions of 12-1675 pertinent to your inquiry reads as follows:

"The governing body of any county . . . may invest any moneys which are not immediately required for the purposes for which the moneys were collected or received, and the investment of which is not subject to or regulated by any other act of the legislature."

Mr. Larry S. Vernon
Page Three
October 16, 1979

Following the above-quoted excerpt, the statute then provides that "[s]uch moneys shall be invested only in" certain enumerated securities. Thus, it is apparent that, while the statute grants permissive authority to a county to invest its idle funds, any such investment must be in compliance with the requirements of 12-1675; and our research has not disclosed any basis for determining that such requirements are not uniformly applicable to all counties.

Therefore, in our opinion, a county may not exercise its home rule powers to deviate from the provisions of K.S.A. 1978 Supp. 12-1675. The basic grant of counties' home rule authority is provided by K.S.A. 1978 Supp. 19-101a (as amended by L. 1979, ch. 52, §9), the relevant provisions of which state:

"(a) Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions: First, counties shall be subject to all acts of the legislature which apply uniformly to all counties;"

Based on our determination that K.S.A. 1978 Supp. 12-1675 applies uniformly to all counties, the foregoing provisions of 19-101a operate to preclude a county from legislating regarding the matters encompassed by 12-1675. In our judgment, if a county determines to invest its idle funds, the county must comply with the requirements of 12-1675.

With one exception, your remaining questions were premised on the assumption of a conclusion contrary to the foregoing opinion, and answers to those questions are no longer required. The one exception is your inquiry as to what implication can be derived from the previously quoted authorization in 12-1675 to invest "any moneys which are not immediately required for the purposes for which the moneys were collected or received." You ask whether this phrase means that the moneys invested pursuant to 12-1675 "must eventually be used for the purposes for which they were collected or received."

Mr. Larry S. Vernon
Page Four
October 16, 1979

In our judgment, this phrase in 12-1675 does nothing more than identify the moneys which may be invested, i.e., moneys which are not immediately required to be expended, in this instance, by the county. However, as to the ability of the county to expend the moneys for a purpose other than that for which said moneys were collected or received, we invite your attention to the so-called Budget Law (K.S.A. 79-2925 et seq.). The provisions thereof bearing upon your inquiry are found in K.S.A. 79-2934, which states in pertinent part:

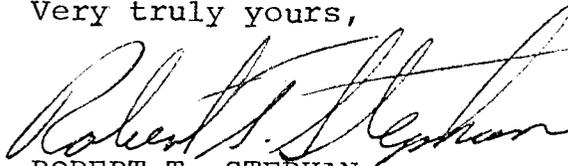
"The budget as approved and filed with the county clerk for each year shall constitute and shall hereafter be declared to be an appropriation for each fund, and the appropriation thus made shall not be used for any other purpose

"No part of any fund shall be diverted to any other fund, . . . except as provided by law."

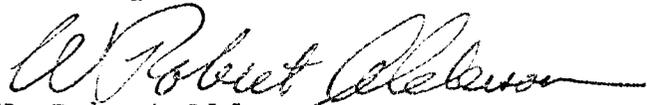
We believe these provisions to be self-explanatory.

As to the ability of a governmental body to divert tax moneys from the purpose for which said moneys were raised, we suggest that Article 11, Section 5 of the Kansas Constitution and the cases cited thereunder should provide further insight into this question.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk