



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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November 9, 1979

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ATTORNEY GENERAL OPINION NO. 79-257

Vernon D. Grassie
Assistant County Attorney, Crawford County
Office of the Crawford County Attorney
Judicial Center, 4th and Pine
Pittsburg, Kansas 66762

Re: 1) Federal revenue Sharing Funds--Expenditure
by Local Governments
2) Taxation--Miscellaneous Provisions--Itemized
Budget

Synopsis: 1) Federal revenue sharing moneys received by a local government may be expended for any programs or projects which are authorized by either state statute or local ordinance, as long as procedural requirements established by the State and Local Fiscal Assistance Act, 31 U.S.C. §1221 et seq., are also met.
2) Before an item may be paid from a county general fund, it must have been itemized in the budget which was adopted for that year, pursuant to K.S.A. 79-2927. Items paid from moneys which are not derived from tax levies may be added to the budget at any time during the year, provided that statutory notice and hearing requirements are met.

* * *

Dear Mr. Grassie:

In your letter of August 16, 1979, you request the opinion of this office concerning two related questions involving the use of county funds for the support of the Crawford County Humane Society. Specifically, you first inquire whether revenue sharing moneys may be used in this way. Secondly, you ask if the money may come from the Crawford County General Fund in the absence of a mill levy for this purpose.

The State and Local Fiscal Assistance Act was enacted by the United States Congress in 1972, and appears in the statutes at 31 U.S.C. §1221 et seq. More commonly known as revenue sharing, the measure authorized the making of grants to state and local governments, and initially contained definite restrictions on the use of such funds. These restrictions were repealed in 1976, leaving no federally imposed substantive limits on the types of programs which could be so funded. However, restrictions of a different sort remain.

In addition to Federal procedures (such as the nondiscrimination provisions of 31 U.S.C. §1242), the individual program must be permissible under state statutes or, when applicable, local ordinances. This is provided for by 31 U.S.C. §1243(a)(4), which requires each recipient unit of government to insure that "it will provide for the expenditure of amounts received . . . only in accordance with the law and procedures applicable to the expenditure of its own revenues." (Emphasis added.) This latter term has been interpreted by the Attorney General to mean that revenue sharing funds are to be treated in every respect as part of the funds available to a local government, including the requirement that provisions for the expenditure thereof be included in the budget (Attorney General Opinion No. 74-244). We concur in this determination.

Therefore, the question becomes one of whether the county may legally spend its funds for the support of the County Humane Society. As we understand it, the County Humane Society is a non-profit corporation which provides a public service to county residents of the kind that the county could provide in the Society's absence. As such, the county's power to fund the society would appear to be supplied by the home rule statutes, K.S.A. 19-101 et seq. Since this is the case, the county may use revenue sharing funds for that purpose, or, in the alternative, funds from the general budget.

Whatever the method used, however, the expenditure would have to be itemized, pursuant to K.S.A. 79-2927. While the county budget has by this time been approved and published, this does not necessarily mean that this item cannot now be added. An opinion issued by this office in 1978, Attorney General Opinion No. 78-65, dealt with a similar problem, and held that a budget may be amended at any time in order to provide for the expenditure of revenues derived from a source other than taxes. As this would be the case if revenue sharing funds were used, the adoption of an amendment which utilized such previously undesignated moneys or which shifted the use of funds already allocated would not be proscribed by the budget law. Of course, published notice of and opportunity for participation in a public hearing upon such proposed amendments would be required, both under state (K.S.A. 1978 Supp. 79-2929) and federal (31 U.S.C. §1241) enactments.

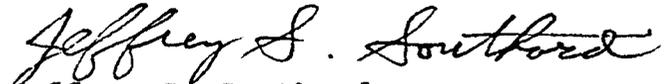
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In conclusion, before an item may be paid from a county general fund, it must have been itemized in the budget which was adopted for that year, pursuant to K.S.A. 79-2927. Items paid from moneys which are not derived from tax levies may be added to the budget at any time during the year, provided that statutory notice and hearing requirements are met.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJJ:JSS:gk

