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January 30, 1980

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ATTORNEY GENERAL OPINION NO. 80- 24

Richard E. Brown
Legislative Post Auditor
Legislative Division of Post Audit
Mills Building
Topeka, Kansas 66612

Re: Legislature--Legislative Post Audit--
Audit Requirements Under Federal Revenue
Sharing Act

Synopsis: Pursuant to federal revenue sharing regulations adopted under authority of the State and Local Fiscal Assistance Amendments of 1976 (P.L. 94-488; 31 U.S.C. §§1221 et seq.), governments receiving federal revenue sharing moneys are required to conduct audits of those public funds specified in 31 C.F.R. §51.106(a). As applied to Kansas state government, such audits (which are to be performed by the Legislative Division of Post Audit) must cover those funds established in and maintained as part of the state treasury. Such funds are identified in the financial reports prepared by the Director of Accounts and Reports pursuant to K.S.A. 75-3735.

* * *

Dear Mr. Brown:

In Attorney General Opinion No. 79-147, we considered federal statutory requirements that, in order to qualify for revenue sharing payments under the State and Local Fiscal Assistance Amendments of 1976 (P.L. 94-488; 31 U.S.C. §§1221 et seq.), a state government must "use fiscal, accounting, and audit procedures which conform to guidelines established therefor by the Secretary [of Treasury]." 31 U.S.C. §1243(a) (5) (A).

In measuring the performance audits of the type performed by the Legislative Division of Post Audit against the audit requirements established by the Secretary of Treasury, particularly those contained in 31 C.F.R. §§51.105, 51.106, we concluded that "it does not appear that the audit of federal revenue sharing funds provided by Legislative Post Audit satisfies federal requirements." As an apparent result of that opinion, you have indicated that "[a]t the direction of the Legislative Post Audit Committee, the Legislative Division of Post Audit is expanding its audit coverage to incorporate the audit requirements of the federal revenue sharing act." However, the question now arises as to the scope of such audit. You have advised us that the federal "requirements call for an audit of all state funds, regardless of whether . . . revenue sharing moneys are involved," and you have requested our opinion as to which state funds are contemplated by this requirement, noting that federal regulations provide that our opinion "will define the funds required to be audited for revenue sharing purposes."

The federal revenue sharing regulation pertinent to our consideration is 31 C.F.R. §51.106(a), which provides in part:

"The scope of each audit required under §51.10(a) of this part shall include each separate fund which is defined as a self-balancing group of accounts required under state or local law and procedures (as determined by the State Attorney General . . .) to be maintained by the recipient government."

Aside from this rather broad requirement, we have not found existing federal regulations to be very instructive. We also have reviewed pertinent provisions of the proposed revisions of these federal regulations, but have not gained any further insight. The only relevant comment offered by the Department of Treasury, Office of Revenue Sharing, as to the scope of the audits to be required by proposed Section 51.107 (replacing and reiterating essentially the same requirement of §51.106 quoted above) is as follows:

"The proposed rule would amend this section to clarify that the scope of audits include all of the financial statements for each separate fund."
44 F.R. 77366, December 31, 1979.

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Therefore, absent any definitive federal guidelines, it has been necessary for us to predicate our determination on the underlying intent and objective of the existing federal regulations. Proceeding on this basis, it is our opinion that the funds to be covered by Legislative Post Audit's audit for revenue sharing purposes are those funds established in and maintained as part of the state treasury. In our judgment, the essential purpose of the revenue sharing regulations with respect to the scope of an audit of state funds is to obtain an audit of funds containing state moneys which are under control of a state legislature pursuant to the appropriation process, in order that assurance can be provided as to a state's compliance with other federal statutes and regulations regarding receipt and expenditure of federal revenue sharing moneys. In Kansas, such moneys are within the various funds in the state treasury, since only moneys in the state treasury require an appropriation, in compliance with Article 2, Section 24 of the Kansas Constitution, as a condition precedent to their expenditure or disbursement. See State, ex rel., v. State Highway Comm., 139 Kan. 391, 395 (1934).

As to the identification of these funds, K.S.A. 75-3735 provides the answer, stating in pertinent part:

"The director of accounts and reports shall:

"(1) At least once each month and annually, prepare reports as of the close of the preceding month or fiscal year showing the financial condition of each fund as of the close of the respective periods and the transactions of each fund for such month or fiscal year."
(Emphasis added.)

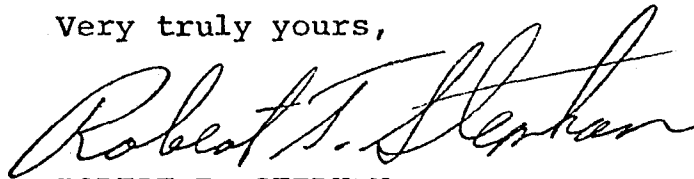
The funds referred to by the emphasized portion of the foregoing quoted language are funds in the state treasury. We are persuaded to this conclusion by an analysis of the legislative history of K.S.A. 75-3735 and the following provisions of K.S.A. 75-3731:

"The director of accounts and reports shall examine and audit every receipt, account, bill, claim, refund and demand on the funds in the state treasury arising from activities carried on by state agencies."
(Emphasis added.)

The remaining provisions of this statute impose additional duties on the Director of Accounts and Reports with respect to funds in the state treasury. It is to be noted that K.S.A. 75-3731 and 75-3735 were originally enacted as Sections 31 and 35 of Chapter 375 of the 1953 Session Laws of Kansas. Also of significance is the fact that intervening sections (§§32 to 34) of this 1953 enactment also are concerned with funds in the state treasury, with Section 34 (K.S.A. 75-3734) being of particular relevance in providing that, except as otherwise required by federal laws or regulations, "[f]ederal funds received by any state agency shall be deposited in the state treasury."

By construing these statutes in pari materia, it is clear that "each fund" in K.S.A. 75-3735 is a reference to a fund in the state treasury. Therefore, it is our opinion that the funds identified in the reports prepared by the Director of Accounts and Reports pursuant to K.S.A. 75-3735(1) are the funds to be covered by the audit of state funds by the Legislative Division of Post Audit in compliance with 31 C.F.R. §51.106(a).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk

cc: The Honorable Wint Winter
The Honorable Mike Hayden