



STATE OF KANSAS

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July 25, 1980

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ATTORNEY GENERAL OPINION NO. 80- 167

Mr. Leonard M. Robinson
Chief Legal Counsel, Flint View Improvement District
629 Quincy, Suite 201
Topeka, Kansas 66603

Re: Counties and County Officers--Public Improvements--
Use of Special Maintenance Funds

Synopsis: The board of county commissioners has no authority to expend moneys derived from a special maintenance tax levied pursuant to K.S.A. 1979 Supp. 19-2709 except for expenses incurred for maintenance of a sewage system. An expenditure of such moneys to reimburse another fund used to pay for expenses incurred for repairs to said sewage system is impermissible. Cited herein: K.S.A. 1979 Supp. 19-2704, 19-2709, K.S.A. 19-2753 et seq., K.S.A. 1979 Supp. 19-2765, K.S.A. 79-2925 (as amended by L. 1980, ch. 89, §4), 79-2927, 79-2934, 31 U.S.C.A. §§1221 et seq.

* * *

Dear Mr. Robinson:

You have asked for the opinion of this office in response to several questions relating to expenditure of certain funds by the Wabaunsee County Board of County Commissioners, based on the following factual situation. You advise that in January, 1973, the Wabaunsee County Board of County Commissioners (hereafter referred to as "the Board") created a main and lateral sewer district pursuant to K.S.A. 1979 Supp. 19-2704 et seq. and thereafter proceeded to construct sanitary sewer collection and treatment facilities.

You further advise that in February, 1977, it became necessary for repairs to be made to said sewer facilities. The Board received bids, authorized the repairs, and paid for the repairs with county revenue sharing funds. Later, the Board levied a special maintenance tax pursuant to K.S.A. 1979 Supp. 19-2709 for the express purpose of reimbursement of the revenue sharing funds used to pay for the above-mentioned

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repairs. On advice of the Board's counsel, the Wabaunsee County Attorney, the Board directed that funds derived from such levy and apparently placed in the sewer district "operating fund" be transferred to the revenue sharing fund "to reimburse said fund for part of the repair work which was done in 1977," leaving a balance of \$1,103.48 to be reimbursed. (See Minutes of the Wabaunsee County Board of County Commissioners, July 30, 1979.)

Based on the foregoing, you first inquire whether the Board has authority to use funds derived from a levy pursuant to K.S.A. 1979 Supp. 19-2709 for the purpose of reimbursing the county's revenue sharing fund for moneys used to pay for repairs to a sewage facility. The statute in question empowers the Board

"to levy a special maintenance tax of not to exceed seven (7) mills on the assessed valuation of all real estate and improvements within the sewer district or joint sewer district, for the purpose of creating a maintenance fund to be used solely for the purpose of maintaining and keeping in repair . . . sewers . . . and any sewage treatment plants, pumping stations, pumps or other apparatus or appurtenances used in connection therewith." (Emphasis added.)

You argue that the Board has no authority to use the tax levy funds to reimburse the revenue sharing fund since the above-quoted statute specifies that the maintenance fund derived from the levy shall be used "solely for the purpose of maintaining and keeping in repair" the sewage collection and treatment system. The county attorney in his letter opinion to the Board dated July 24, 1979, states, in pertinent part:

"There appears no question about your authority under K.S.A. 19-2709 to levy a tax not exceeding five (5) mills [sic] for an operating fund to pay the cost of 'constructing and reconstructing the sewage system and for the cost of operation and maintenance. . . .'

"Likewise, the Board has complete control over its use of revenue sharing funds and I find no law which prohibits the reimbursement of such funds from the operating fund of the sewer district. It should be in your inherent power to do so." (Emphasis added.)

We agree with you that the Board has no authority to expend moneys derived from the special maintenance tax levied pursuant to the statute in question except for expenses incurred for maintenance of the sewage system, and that an expenditure of such funds to reimburse the revenue sharing fund is impermissible. Certainly, there is no question that the revenue sharing money was used to pay for expenses incurred for repairs to the sewage system. As Mr. Baldock explains in the above-mentioned opinion, the repair work became necessary before money in the sewer district "operating fund" could be accumulated sufficient to pay the costs for the repairs, and for that reason, the Board used "available revenue sharing funds with the idea of reimbursing the expenditure of revenue sharing as funds became available" in the sewer district "operating fund." In our judgment, however, such an expenditure for reimbursement is improper for several reasons. First, the Board has no authority, express or implied under K.S.A. 1979 Supp. 19-2709, to make such reimbursements out of the maintenance fund.

Moreover, it should be noted that the fund derived from the levy of the special maintenance tax may only be used for the purpose of maintaining and keeping in repair the sewage system. The county attorney cites language of the statute referring to "operation and maintenance," but that portion of the statute pertains to user charges assessed against landowners in the sewer district, in addition to the special maintenance tax. The section provides, in pertinent part:

"In addition to the special maintenance tax and for the purpose of paying all or any portion of the costs of constructing and reconstructing the sewage system and for the costs of operation and maintenance thereof, the governing body may establish a schedule of charges to be assessed . . . for the use of the sewerage facilities of such district."

The Board should take care that any moneys derived from the special maintenance tax be kept separate and distinct from any moneys derived from any user charges assessed. Each fund is to be used for different purposes. If the fund derived from the special maintenance tax is called a sewer district "operating fund," it is mislabelled, and moneys therein should not be used for operating expenses. Only that fund derived from the assessment of user charges may be used for the costs of operation of the sewage system, pursuant to K.S.A. 1979 Supp. 19-2709.

Second, it is our opinion that such a transfer of moneys from one fund to another offends the provisions of K.S.A. 79-2925 et seq., the Budget Law. Under K.S.A. 79-2927, counties and other taxing subdivisions

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or municipalities are required each year to prepare a budget "properly itemized and classified by funds." As required by the same section, the budget must show "all amounts and items included and to be expended for the ensuing budget year" and must include an estimate of amounts of money "to be received from taxes and from other sources . . . with the amount estimated to be received from each source separately stated." It is our judgment that "other sources" of money referred to in K.S.A. 79-2927 must necessarily include revenue sharing funds and that such funds should be identified and budgeted in accordance with K.S.A. 79-2927. (The only "other sources" excluded from such computations that we are aware of are those funds, and any moneys received as gifts or bequests, specifically identified in K.S.A. 79-2925, as amended by L. 1980, ch. 89, §4.) Upon compliance with the statutory procedure for the adoption of the budget, K.S.A. 79-2934 provides, in pertinent part, that

"[t]he budget . . . 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, whether before or after the distribution of taxes by the county treasurer, except as provided by law." (Emphasis added.)

In Shouse v. Cherokee County Commissioners, 151 Kan. 458 (1940), affirmed on rehearing 152 Kan. 41 (1940), the Kansas Supreme Court considered the language of K.S.A. 79-2934 stating, in pertinent part:

"Under section 79-2934 the appropriation for each individual fund as set forth in the budget 'shall not be used for any other purpose.' The board [of county commissioners] therefore was without authority to borrow from one budgeted item to pay for items not budgeted, or which should have been budgeted in some other item. Under the budget law each of the budgeted items is separate and distinct--in effect a trust fund earmarked for a particular purpose. Clearly it is contrary to the letter and spirit of the law for the board to borrow from one item fund to pay the obligations chargeable to another item fund, or to pay an obligation not budgeted at all." (Emphasis added.) 151 Kan. at 465-466.

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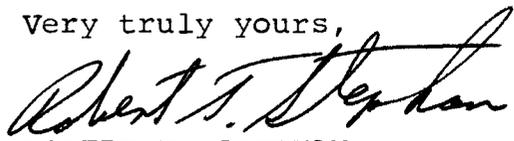
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With attention to your specific question in consideration of the foregoing authority, it appears that the board decided to use money from the county's revenue sharing fund to pay for the costs of repair of the sewage facility with the intention of "paying back" the revenue sharing fund with money derived from the levy of the special maintenance tax under K.S.A. 1979 Supp. 19-2709. Assuming that the revenue sharing moneys were properly budgeted for such purpose, and given the wide discretion of local units of government for expenditure of such funds (see 31 U.S.C.A. §§1221 et seq. and 31 C.F.R. Part 51), we have no quarrel that revenue sharing funds may be budgeted for and used to meet such repair or maintenance contingencies.

But, we cannot agree with the county attorney that the Board has any power, "inherent" or otherwise, to use funds derived from the levy under K.S.A. 1979 Supp. 19-2709 to "pay back" revenue sharing moneys expended for repairs which ordinarily would be paid for out of such maintenance tax funds. Under K.S.A. 1979 Supp. 19-2709, the Board is empowered only to levy a tax by which it shall establish a maintenance fund to be used "solely" for the purpose of maintaining and keeping the sewage system in repair. Under the Budget Law, the Board adopts a budget which establishes "an appropriation for each fund." K.S.A. 79-2934. The term "fund" refers to "those funds which are authorized by statute to be established." K.S.A. 79-2925(b), as amended by L. 1980, ch. 89, §4. Once so established, "the appropriation . . . shall not be used for any other purpose." K.S.A. 79-2934. Thus, the county's use of money in the fund established under K.S.A. 1979 Supp. 19-2709 for a purpose other than those purposes specified in that statute (already noted above), i.e., for the purpose of reimbursement of the revenue sharing fund in the amount taken from said fund for sewage system repairs, is improper.

You further inquire whether the Flint View Improvement District, established pursuant to K.S.A. 19-2753 et seq., is authorized under law to levy the seven mill tax authorized by K.S.A. 1979 Supp. 19-2709. The improvement district is not so empowered. However, we note that an improvement district is authorized to make its own levy of "a general tax . . . to create a general fund" and of "assessments and special taxes . . . if deemed expedient by the directors." See K.S.A. 1979 Supp. 19-2765, paragraphs Sixth and Seventh.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:pf