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FILE
Subject Taxation --
Distribution
Copy to of Tax Moneys

STATE OF KANSAS
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ATTORNEY GENERAL OPINION NO. 81-221

The Honorable Ardena Matlack
Representative 93rd District
Sedgwick County
615 Elaine Avenue
Clearwater, Kansas 67026

Re: Taxation -- Sale of Liquor by Clubs -- Disposition of Revenues

Synopsis: Moneys in the special alcohol programs fund created by K.S.A. 1980 Supp. 79-41a04 may not be expended for capital improvements. Cited herein: K.S.A. 1980 Supp. 79-41a04.

* * *

Dear Representative Matlack:

You inquire whether subsection (d) of K.S.A. 1980 Supp. 79-41a04 prohibits the use of moneys in the special alcohol programs fund for capital improvements. More specifically, you request our opinion as to whether such moneys may be used to retire the principal and interest on general obligation bonds for an alcoholism treatment facility.

Subsection (d) of K.S.A. 1980 Supp. 79-41a04 provides:

"Each city treasurer, upon receipt of any moneys distributed hereunder, shall deposit the full amount thereof in the city treasury and shall credit one-third (1/3) of the deposit to the general fund of

the city, one-third (1/3) to a special parks and recreation fund in the city treasury and one-third (1/3) to a special alcohol programs fund in the city treasury. Moneys in such special funds shall be under the direction and control of the governing body of the city. Moneys in the special parks and recreation fund shall be expended only for the purchase, establishment, maintenance or expansion of park and recreational services, programs and facilities. Moneys in the special alcohol programs fund shall be expended only for the purchase, establishment, maintenance or expansion of services or programs of alcoholism prevention and education, alcohol detoxification, intervention in alcohol misuse or treatment of persons who are alcoholics or are in danger of becoming alcoholics." (Emphasis supplied.)

It is clear from the language of the foregoing statute that the legislature included the term "facilities" when setting out the permitted use of moneys in the special parks and recreation fund, but omitted the term when describing the authorized use of moneys in the special alcohol programs fund. The effect of such omission is to be determined by the application of well-established rules of statutory construction.

First, as noted in Johnson v. McArthur, 226 Kan. 128 (1979):

"The fundamental rule of statutory construction, to which all other rules are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. When a statute is plain and unambiguous the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. Thomas County Taxpayers Ass'n v. Finney, 223 Kan. 434, 573 P.2d 1073 (1978)." 226 Kan. at 135.

In giving effect to the intent of the legislature, courts "must consider the language of the statute; its words are to be understood in their plain and ordinary sense." Lakeview Gardens, Inc. v. State, ex rel, Schneider, 221 Kan. 211, 214 (1976). Moreover, it is not the function of the courts to expand or broaden the plain letter of a statute. State v. One Bally Coney Island No. 21011 Gaming Table, 174 Kan. 757, Syl. para. 2 (1953). Finally, and of particular pertinence here, we note the following statement of the Court in Rogers v. Shanahan, 221 Kan. 221 (1977):

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"When . . . the resolution of a question requires construing a statute, the court is guided by certain presumptions. It is presumed the legislature understood the meaning of the words it used and intended to use them; that the legislature used the words in their ordinary and common meaning; and that the legislature intended a different meaning when it used different language in the same connection in different parts of a statute. See 82 C.J.S. Statutes, §316(b) (1953); See also, Rausch v. Hill, 164 Kan. 505, 190 P.2d 357." (Emphasis added.) Id. at 223, 224.

In our judgment, application of the foregoing rules of statutory construction leads to the inescapable conclusion that moneys in a city's special alcohol programs fund may not be expended for capital improvements. Even though K.S.A. 1980 Supp. 79-41a04 permits the expenditure of moneys in the special parks and recreation fund for "services, programs and facilities," the language of that statute is plain and unambiguous in limiting expenditures from the special alcohol programs fund to "services or programs." Thus, considering the different language used regarding these two funds, and considering the words used in each instance in their plain and ordinary sense, we find no basis for determining a legislative intent that moneys in the special alcohol programs fund be expended for capital improvement projects, *i.e.*, facilities. Accordingly, we do not believe that moneys in the special alcohol programs fund may be expended for the purpose of retiring the principal of and interest on general obligation bonds for an alcoholism treatment facility.

Very truly yours,

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