



STATE OF KANSAS

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October 28, 1981

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ATTORNEY GENERAL OPINION NO. 81- 248

Don Babcock  
Recreation Director  
Garden City Recreation Commission  
P. O. Box 637, 702 North Main  
Garden City, Kansas 67846

Re: Cities and Municipalities -- Public Recreation --  
Recreation Commission; City Treasurer as Ex Officio  
Treasurer Thereof

Synopsis: Pursuant to K.S.A. 12-1901 et seq., a city may,  
either independently or in cooperation with a  
school district, delegate the operation of a sys-  
tem of public recreation to a recreation commis-  
sion. The membership and powers of such a commis-  
sion is prescribed by K.S.A. 12-1907, which con-  
tains among its provisions the requirement that  
commission funds be held by the treasurer of the  
city with this official serving as ex officio  
treasurer of the commission. Cited herein: K.S.A.  
12-1906, 12-1907, Kansas Constitution, Article 12,  
Section 5(b).

\* \* \*

Dear Mr. Babcock:

As recreation director for the Garden City Recreation Commis-  
sion, you request the opinion of this office on two questions  
concerning the handling of commission funds. Specifically,  
you wish to know whether the treasurer of the commission must  
be the city treasurer, or if the commission may select one of  
its members for such a position. Additionally, if the city  
treasurer must hold such a dual role, you wish to know if  
the commission is required to compensate the treasurer for  
his or her duties. You inform us that the commission was  
established by the City of Garden City alone, although the  
statutes also authorize joint city-school district commissions.

In our opinion, the answer to your first inquiry is supplied by K.S.A. 12-1907. That statute, which is a portion of the act governing the creation and operation of recreation commissions (K.S.A. 12-1901 et seq.), provides for the number and method of appointment of commission members and further provides that:

"Said commission shall elect a presiding officer and secretary. Said commissioners are hereby empowered to administer in all respects the business and affairs of the recreation system. The amount received from the tax herein provided shall be set over to said commission and used by said commission for the purposes herein set out; and shall be held by the treasurer of the city or school district who shall be ex officio treasurer of said commission. All financial records of such commission shall be audited as provided in K.S.A. 75-1122, and a copy of such annual audit report shall be filed with the governing body of any city or school district which is involved in the operation of such recreation system." (Emphasis added.)

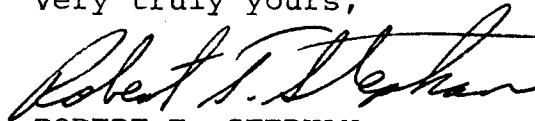
From the underscored language above, it is clear that the Garden City treasurer must also serve as the treasurer of the recreation commission, in that the wording of the statute is mandatory ("shall") rather than directive ("may"). Furthermore, as the city treasurer is ex officio treasurer of the commission, he or she serves automatically without being expressly appointed, merely by virtue of holding the position with the city. See, e.g., Barber Pure Milk Co. v. Alabama State Milk Control Board, 275 Ala. 489, 156 So.2d 351 (1963). Finally, as the act in which this statute appears is uniform in nature, the city is unable to exercise its home rule authority under the Kansas Constitution to charter out from this requirement. Kan. Const., Art. 12, §5(b).

As to your second inquiry concerning compensation, we would note that K.S.A. 12-1907 is silent concerning any power of the commission to pay compensation for services rendered by the city treasurer. As an entity which exists solely by virtue of statute, the commission possesses no powers which are not expressly given it by law. See, e.g., Murray v. Board of Regents, 194 Kan. 686 (1965). Accordingly, if the treasurer desires additional compensation for his or her increased duties, the matter is one which is left to the city to determine, with the commission having no authority to do so.

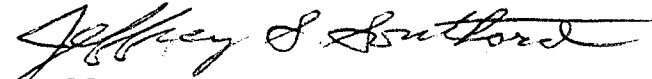
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In conclusion, pursuant to K.S.A. 12-1901 et seq., a city may, either independently or in cooperation with a school district, delegate the operation of a system of public recreation to a recreation commission. The membership and powers of such a commission is prescribed by K.S.A. 12-1907, which contains among its provisions the requirement that commission funds be held by the treasurer of the city with this official serving as ex officio treasurer of the commission.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Jeffrey S. Southard  
Assistant Attorney General

RTS:BJs:JSS:hle