



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 5, 1982

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 82- 24

J. D. Euler
Wathena City Attorney
137 South Main
Troy, Kansas 66087

Re: Taxation -- Sales of Liquor by Clubs -- Local
Alcoholic Liquor Fund; Use of Revenues for Special
Alcohol Programs

Synopsis: Pursuant to K.S.A. 1980 Supp. 79-41a04, a city is entitled to receive certain moneys from the local alcoholic liquor fund, which fund is disbursed by the state after having been collected by private clubs located in the city. One-third of the moneys so distributed shall be credited to a special alcohol programs fund, and may be expended only for specified purposes set out by subsection (d) of K.S.A. 1980 Supp. 79-41a04, one of which is the establishment of alcoholism prevention and education programs. Cited herein: K.S.A. 1980 Supp. 79-41a02, 79-41a03, 79-41a04.

* * *

Dear Mr. Euler:

As City Attorney for Wathena, Kansas, you request our opinion on a matter regarding the local alcoholic liquor fund established pursuant to K.S.A. 1980 Supp. 79-41a04. Specifically, you wish to know whether moneys from the fund may be used for the purpose of a program of alcoholism prevention and education which is to be conducted under the supervision of the Chief of Police. News releases, speakers, literature and other services are some of the contemplated ways by which the program would reach the public.

The local alcoholic liquor fund is created by K.S.A. 1980 Supp. 79-41a04, which statute is a portion of a law enacted

in 1979 (L. 1979, ch. 152). Section 12 of that act (now K.S.A. 1980 Supp. 79-41a02) imposes a ten percent tax upon the gross receipts derived from the sale of alcoholic liquor by private clubs in this state. Moneys thus collected are paid to the secretary of revenue (K.S.A. 1980 Supp. 79-41a03), placed in the local alcoholic liquor fund, and then dispensed to cities and counties according to K.S.A. 1980 Supp. 79-41a04(b). The share of a city such as Wathena in the local alcoholic liquor fund represents that amount which is collected and paid-in by clubs located in the city. It is the uses to which such moneys may be put that prompts your opinion request.

Requirements for the expenditure of moneys distributed from the local alcoholic liquor fund are imposed by subsection (d) of K.S.A. 1980 Supp. 79-41a04, which states:

"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 added.)

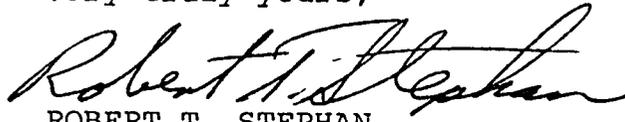
As may be seen from the above-underscored provisions, the legislature has placed explicit restrictions on the use of that one-third of the tax moneys earmarked for special alcohol programs. Each of the purposes which are set out therein are expressly linked with alcoholism or alcohol misuse. Accordingly, as the wording of the statute is plain and unambiguous, there is little, if any, justification to read more into the statute than what is there set forth. Johnson v. McArthur, 226 Kan. 128 (1979).

J. D. Euler
Page Three

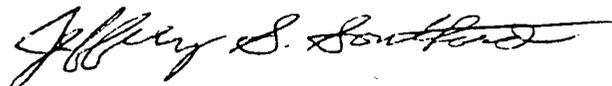
Given the scope of the program which you present, it is our opinion that it would be permissible under the wording of the statute. All of the activities which are proposed are clearly and completely directed to alcohol-related concerns, in contrast to other programs upon which this office has also recently expressed opinions. Therefore, we know of no basis for challenging the use of local alcoholic liquor funds in the manner the city proposes.

In conclusion, pursuant to K.S.A. 1980 Supp. 79-41a04, a city is entitled to receive certain moneys from the local alcoholic liquor fund, which fund is disbursed by the state after having been collected by private clubs located in the city. One-third of the moneys so distributed shall be credited to a special alcohol programs fund, and may be expended only for specified purposes set out by subsection (d) of K.S.A. 1980 Supp. 79-41a04, one of which is the establishment of alcoholism prevention and education programs. Cited herein: K.S.A. 1980 Supp. 79-41a04, 79-41a03, 79-41a04.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle