



STATE OF KANSAS

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June 5, 1985

ATTORNEY GENERAL OPINION NO. 85- 60

Lee Hornbaker  
City Attorney  
715 North Washington St.  
P.O. Box 168  
Junction City, Kansas 66441-0168

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

Synopsis: Pursuant to the provisions of K.S.A. 79-41a04 (as amended by 1985 Senate Bill No. 370), the governing body of a city that has a population of 10,000 or less may transfer any moneys credited to a special alcohol programs fund (established pursuant to L. 1979, ch. 152, §14) to the city general fund. Cited herein: K.S.A. 79-41a04 (as amended by 1985 Senate Bill No. 370); L. 1982, ch. 424, §5; L. 1979, ch. 152, §14.

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Dear Mr. Hornbaker:

As city attorney for the City of Grandview Plaza, you request our interpretation of K.S.A. 79-41a04. Specifically, you ask whether moneys credited to a special alcohol programs fund, established pursuant to L. 1979, ch. 152, §14, are subject to the restrictions on expenditure prescribed by subsection (d) of K.S.A. 79-41a04. You indicate that the city has a population of less than 10,000.

Subsection (d) of K.S.A. 79-41a04, which relates to distribution of revenues received from taxation of gross receipts derived from the sale of alcoholic liquor by clubs, presently provides as follows:

"Each city treasurer of a city that has a population of more than 10,000, upon receipt of any moneys distributed under this section, shall deposit the full amount in the city treasury and shall credit 1/3 of the deposit to the general fund of the city, 1/3 to a special parks and recreation fund in the city treasury and 1/3 to a special alcohol and drug programs fund in the city treasury. Each city treasurer of a city that has a population of 10,000 or less, upon receipt of any moneys distributed under this section, shall deposit the full amount in the city treasury and shall credit 1/3 of the deposit to the general fund of the city and 1/3 to a special parks and recreation 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 and drug programs fund shall be expended only for the purchase, establishment, maintenance or expansion of services or programs of alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers." (Emphasis added.)

Prior to the amendment of the above-quoted statute by L. 1982, ch. 424, §5, all cities receiving moneys from the local alcoholic liquor fund were directed to credit 1/3 of such revenues to a special alcohol programs fund, with moneys in such fund to be expended only for specified purposes relating to prevention and treatment of alcohol abuse. See L. 1979, ch. 152, §14. However, after the 1982 amendment, which expanded the permissible uses of the fund so as to include drug programs, cities having a population of 10,000 or less were no longer directed to credit moneys distributed under K.S.A. 79-41a04 to a

special alcohol programs fund. Further, language restricting the use of moneys in a "special alcohol and drug programs fund" was included in the statute without any indication whether it applied only to cities having a population of more than 10,000, or whether it also applied to cities of less than 10,000 having moneys remaining in a special alcohol programs fund.

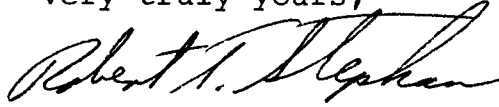
In considering whether moneys remaining in the special alcohol programs fund of the City of Grandview Plaza are subject to the restrictions on expenditure prescribed by subsection (d) of K.S.A. 79-41a04, we are guided by rules of statutory construction enunciated by the Kansas Supreme Court. Specifically, the court has held that, in determining legislative intent, courts are not limited to a mere consideration of the language employed but may properly look to the historical background of the enactment, the circumstances attending its passage, the purposes to be accomplished and the effect the statute may have under the various constructions suggested. State ex rel. v. City of Overland Park, 215 Kan. 700 (1974), Syl. ¶10. In this regard, the 1982 amendment of K.S.A. 79-41a04 originated from an amendment on the floor of the Kansas House in the final days of the 1982 legislative session, and there is no legislative history which provides guidance as to legislative intent. However, we are compelled to observe that there are two possible reasons why the legislature eliminated the requirement that cities having a population of less than 10,000 credit a portion of the subject revenues to a special alcohol programs fund:

1. The extent of alcohol abuse in such cities is not sufficient to mandate such expenditures; and/or
2. There is a dearth of alcohol and drug programs in such cities, and available revenues are insufficient to enable city governing bodies to establish a viable program.

Given these possible reasons for the 1982 amendment of subsection (d) of K.S.A. 79-41a04, it is our opinion that the legislature did not intend that any moneys remaining in the special alcohol programs fund of a city having a population of 10,000 or less be subject to the restrictions on expenditure prescribed by K.S.A. 79-41a04. Accordingly, in our judgment the governing body of a

city that has a population of 10,000 or less may transfer any moneys credited to a special alcohol programs fund established pursuant to L. 1979, ch. 152, §14 to the city general fund.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

TRH: jm