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July 1, 1985

ATTORNEY GENERAL OPINION NO. 85- 72

Ronald S. Reuter
Perry & Hamill
College Boulevard National Bank Bldg.
Third Floor
4650 College Blvd., P.O. Box 7933
Overland Park, Kansas 66207

Re: State Departments; Public Officers, Employees--
Kansas Tort Claims Act--Costs for Defense of
Municipalities or Its Employees; Special Liability
Expense Fund, Establishment and Maintenance

Synopsis: A city may use moneys credited to a special liability
expense fund to purchase tort liability insurance, but
may not use such moneys to construct a "holding pond" on
city property. While a city may reduce or eliminate
the tax levy authorized by subsection (c) of K.S.A.
75-6110, it may not transfer tax moneys in the special
liability expense fund to the general fund of the
city. Cited herein: K.S.A. 75-6110, 75-6111,
79-5001, 79-5016; Kan. Const., Art. 11, §5.

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Dear Mr. Reuter:

As City Attorney for the City of Roeland Park, you request our
opinion concerning several questions related to the use of moneys
credited to a special liability expense fund established pursuant
to K.S.A. 75-6110. Specifically, you ask whether the city may
use moneys in that fund to construct a holding pond on city
property to protect against flooding of an adjacent landowner's

property. Additionally, you ask whether the city may use moneys in the fund to pay all or a portion of its liability insurance premiums, and whether the city can terminate the fund or reduce the amount of the fund and transfer the balance thereof to the general fund of the city.

K.S.A. 75-6110 prescribes conditions under which a municipality may establish a special liability expense fund and levy a tax therefor, with subsection (a) restricting the expenditure of expense fund moneys as follows:

"Payments by municipalities for the cost of providing for its defense and the defense of employees pursuant to this act and for the payment of claims and other direct and indirect costs resulting from the implementation of this act may be paid from the general or other existing fund of such municipality or from a special liability expense fund established for such purpose pursuant to subsection (b)."

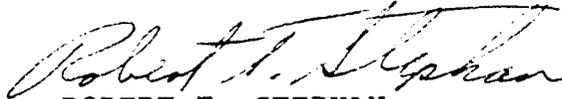
In regard to whether moneys from such a fund may be used to construct a holding pond on city property, it is necessary to consider whether such an expenditure would constitute a "direct or indirect cost resulting from the implementation" of the Kansas Tort Claims Act, K.S.A. 75-6101 et seq. You advise that a judgment was entered against the city for damages suffered in previous flooding, and that the holding pond is necessary to protect against the possibility of future damage to the property of the adjacent landowner. While the judgment against the city is clearly a cost resulting from implementation of the Kansas Tort Claims Act, we are not persuaded that an improvement to city property constitutes such a cost. If such were the case, almost any improvement, from street repairs to renovation of city hall, could be charged to the special liability expense fund on grounds that such an improvement was necessary to protect against possible injury to persons or property. In light of the fact that the special liability expense fund is not subject to the ordinary budget process, and tax levies therefor are not subject to the tax lid law (K.S.A. 79-5001 to 79-5016), it is our opinion that the legislature did not intend that said fund be used to finance improvements to city property. Accordingly, it is our opinion that a city may not use moneys credited to a special liability expense fund to construct a holding pond on city property to protect against flooding of an adjacent landowner's property.

In regard to whether a city may use moneys in the fund to purchase liability insurance, K.S.A. 75-6111 provides that a

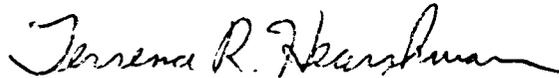
governmental entity may obtain insurance to provide for its liability for claims brought pursuant to the Tort Claims Act. Accordingly, in our judgment a city may use moneys in a special liability expense fund to purchase liability insurance.

Your final question concerns whether the city may terminate the special liability expense fund, or reduce the amount of the fund and transfer the balance thereof to the general fund of the city. In response, it is our opinion that a city may reduce or eliminate the tax levy for a special liability expense fund authorized by subsection (c) of K.S.A. 75-6110. However, as Article 11, Section 5 of the Kansas Constitution prohibits a diversion of tax moneys to any object other than those enumerated in the law authorizing the levy, it is our opinion that a city may not transfer tax moneys in the special liability expense fund to the general fund of the city in the absence of statutory authority for such a transfer.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm