



STATE OF KANSAS

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July 26, 1985

ATTORNEY GENERAL OPINION NO. 85- 88

Alan F. Alderson
Attorney for Kansas County
Treasurer's Association
1610 SW Topeka Avenue
P.O. Box 237
Topeka, Kansas 66612

Re: Cities and Municipalities -- General Provisions --
Apportionment of Revenue from Countywide Retailers'
Sales Tax

Synopsis: While K.S.A. 1984 Supp. 12-192 prescribes no time limit within which a county treasurer must make a distribution of countywide retailers' sales tax revenue apportioned to cities located within the county, such distribution must be made within a reasonable time following receipt by the county treasurer. The reasonableness of the time within which a county treasurer distributes such revenue is a question of fact to be ascertained in light of all facts and circumstances. Cited herein: K.S.A. 1984 Supp. 12-189, 12-192.

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Dear Mr. Alderson:

On behalf of Doris Larsen, Lincoln County Treasurer and President of the Kansas County Treasurer's Association, you request our interpretation of K.S.A. 1984 Supp. 12-192. Specifically, you request our opinion as to whether there is any time limit within which a county treasurer must distribute to each city in the county its share of countywide retailers' sales tax revenue.

K.S.A. 1984 Supp. 12-189 prescribes that countywide retailers' sales tax revenue shall be distributed by the state treasurer to county treasurers at least quarterly, and we are advised that such distributions actually occur on a monthly basis. Subsection (a) of K.S.A. 1984 Supp. 12-192 sets forth the formula which county treasurers must use in apportioning countywide retailers' sales tax revenue among the county and each city located in the county, and subsection (c) thereof prescribes that "[a]ll revenue apportioned to the several cities of the county shall be paid to the respective treasurers thereof." Thus, while it is clear that it is the duty of the county treasurer to pay each city its share of sales tax revenue, neither K.S.A. 1984 Supp. 12-192 nor any other statute prescribes the period of time within which the distribution is to be made.

Under these circumstances, it is our opinion that the "reasonable time rule" is applicable. That rule is as follows:

"Where no time has been fixed for the performance of an act to be done, the law implies that performance is to be accomplished within a reasonable time."
Singer Company v. Makad, Inc., 213
Kan. 725, Syl. ¶7 (1974).

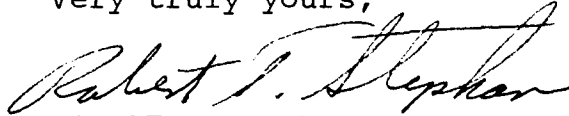
Moreover, "[w]hat constitutes a reasonable time depends on the facts and circumstances of the particular case." Id. at Syl. ¶8.

You indicate that a manual published by the League of Kansas Municipalities states that monthly distributions of countywide retailers' sales tax revenue should normally be made within two or three working days after receiving payment from the state. It may be that in most cases the distribution of sales tax revenue should occur within such a time period, and that any significant delay beyond three days would be unreasonable under the circumstances. However, we cannot state as a matter of law that the distribution must occur within three days, since the determination of what constitutes a "reasonable time" depends upon the facts of the particular case. A computer malfunction, for example, could render an otherwise unreasonable delay (7 to 10 days) acceptable on a one-time basis.

In conclusion, it is our opinion that while K.S.A. 1984 Supp. 12-192 prescribes no time limit within which a county treasurer must make a distribution of countywide retailers'

sales tax revenue apportioned to cities located within the county, such distribution must be made within a reasonable time following receipt by the county treasurer. The reasonableness of the time within which a county treasurer distributes such revenue is a question of fact to be ascertained in light of all facts and circumstances.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Terrence R. Hearshman
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RTS:JSS:TRH:crw