



STATE OF KANSAS

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November 12, 1985

ATTORNEY GENERAL OPINION NO. 85- 155

James B. McKay, Jr.
El Dorado City Attorney
P.O. Box 49
El Dorado, Kansas 67042

Re: Taxation--Sales of Liquor by Clubs--Tax on Sales
of Liquor by Clubs; Disposition of Revenues

Synopsis: Moneys in a special alcohol and drug programs fund established pursuant to K.S.A. 79-41a04 may be used for medical treatment of alcohol and drug related conditions of city prisoners. However, in the absence of a charter ordinance providing otherwise, such moneys may not be used to incarcerate persons arrested for driving under the influence of alcohol. Cited herein: K.S.A. 79-41a02, 79-41a03, 79-41a04; L. 1985, ch. 171, §§13, 14.

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Dear Mr. McKay:

You request our opinion on a question regarding the local alcoholic liquor fund established pursuant to K.S.A. 79-41a04, as amended by L. 1985, ch. 171, §14. Specifically, you wish to know whether moneys from the special alcohol and drug programs fund may be used for incarceration and medical treatment of city prisoners who have been arrested for driving under the influence of alcohol or drugs.

The local alcoholic liquor fund is created by K.S.A. 79-41a04 (as amended) and is funded by a ten percent tax upon the gross receipts derived from the sale of alcoholic liquor by private clubs in this state. (See K.S.A. 79-41a02.) Moneys thus collected are paid to the Secretary of Revenue (K.S.A. 79-41a03, as amended by L. 1985, ch. 171, §13) with seventy percent

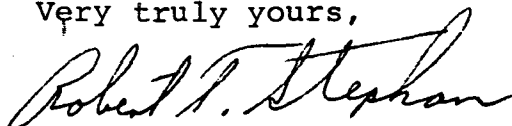
thereof credited to the local alcoholic liquor fund. Moneys in that fund are then disbursed to cities and counties according to K.S.A. 79-41a04(b).

As amended, K.S.A. 79-41a04(d) provides, in part, that each city treasurer of a city having a population of more than 10,000 shall credit 1/3 of any moneys received from the local alcoholic liquor fund in a special alcohol and drug programs fund. The statute also restricts expenditures from the special alcohol and drug programs fund as follows:

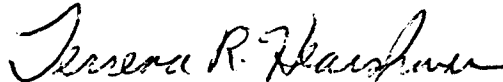
"Moneys in the special alcohol and drug programs fund shall be expended only for the purchase, establishment, maintenance or expansion of services or programs of alcoholism and drug abuse prevention and education, alcohol and drug detoxification, intervention in alcohol and drug abuse or treatment of persons who are alcoholics or drug abusers or are in danger of becoming alcoholics or drug abusers." (Emphasis added.)

In our judgment, the underscored words in the above-quoted statutory excerpt indicate a legislative intent to restrict expenditures from the fund to rehabilitation and treatment of alcohol and drug problems. Thus, responding to your question, it is our opinion that moneys in the special alcohol and drug programs fund may be used for medical treatment of alcohol and drug related conditions of city prisoners, but may not be expended to treat other medical conditions. Additionally, it is our opinion that said moneys may not be used to pay the costs of incarceration of prisoners who have been arrested for driving under the influence of alcohol, since incarceration, in and of itself, does not have a sufficient nexus to treatment and rehabilitation of alcohol and drug problems.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General