



STATE OF KANSAS

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April 14, 1986

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ATTORNEY GENERAL OPINION NO. 86-54

David E. Frey
Assistant Administrator
Kansas Wheat Commission
2630 Claflin Road
Manhattan, Kansas 66502-2743

Re: State Departments; Public Officers and Employees--
Salaries and Assistants; Miscellaneous Provisions--
Fees and Moneys Paid Into State Treasury by State
Agencies

Agriculture--Kansas Wheat Act--Disposition of
Tax Moneys

Synopsis: Whether the wheat commission is designated a "fee
agency" is not determinative of whether it should
be required to pay 20% of the taxes it collects
pursuant to K.S.A. 1985 Supp. 2-2608 into the
state general fund. The statutes require the wheat
commission to make that contribution, and the
legislature has authority under Article 11, Section
4 of the Kansas Constitution to enact such a
requirement. Cited herein: Kan. Const., Art.
11, §4; K.S.A. 1985 Supp. 2-2608; K.S.A. 2-2609;
75-3170, 75-3170a, 77-133.

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Dear Mr. Frey:

As Assistant Administrator of the Kansas Wheat Commission, you
have requested our opinion regarding whether the commission is
a "fee agency." Specifically you question whether K.S.A. 75-

3170a would apply to the Wheat Commission if it was found not to be a fee agency.

K.S.A. 75-3170a provides as follows:

"(a) The 20% credit to the state general fund required by K.S.A. 1-204, 2-2609, 2-3008, 9-1703, 16-609, 16a-2-302, 17-1271, 17-2236, 17-5609, 17-5610, 17-5612, 17-5701, 20-1a02, 20-1a03, 34-102b, 44-926, 47-820, 49-420, 55-131, 55-155, 55-609, 55-711, 55-901, 58-3074, 65-6b10, 65-1718, 65-1817a, 65-2011, 65-2418, 65-2855, 65-2911, 65-4610, 66-1,155, 66-1503, 74-715, 74-1108, 74-1405, 74-1503, 74-1609, 74-2704, 74-2902a, 74-3903, 74-5805, 74-7009, 74-7506, 75-1119b, 75-1308 and 75-1509 and acts amendatory of any of the foregoing including amendments by other sections of this act is to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services.

. . . .

(d) Notwithstanding any provision of K.S.A. 2-2609 and 2-3008 and amendments thereto or any provision of any section referred to in subsection (a) of this section, the 20% credit to the state general fund no longer shall apply to moneys received from sources applicable to the wheat commission fund, the Kansas corn commission fund, the Kansas grain sorghum commission fund and the Kansas soybean commission fund, as specified for each such fund by this subsection, and for the remainder of a fiscal year the full 100% of the moneys so received shall be credited to the appropriate fund of such funds, whenever in any fiscal year:

"(1) With respect to the wheat commission fund, such 20% credit to the state general fund in relation to such fund in that fiscal year is equal to that portion of \$200,000 that bears the same proportion to \$200,000 as the amount credited to the wheat commission fund during the preceding fiscal year bears to the total of the amounts credited to the wheat commission fund, the Kansas corn commission fund, the Kansas grain sorghum commission fund and the Kansas soybean commission fund during the preceding fiscal year; . . ."
(Emphasis added.)

In addition, K.S.A. 75-3170 provides:

"Upon receipt of the fees and moneys paid into the state treasury in accordance with the provisions of sections 1 to 31 [*], both sections inclusive, of this act, the state treasurer shall credit the same as follows:

"(a) Twenty percent (20%) of the gross receipts received from each particular agency shall be credited to the general fund to reimburse the said fund for accounting, auditing, budgeting, legal, payroll, personnel, and purchasing services, and any and all other state governmental services, which are performed on behalf of each of said agencies by other state agencies receiving general revenue fund appropriations to provide such services.

"(b) The remaining balances of fees and moneys paid into the state treasury by each of the said state agencies, after credits to the general fund in accordance with subsection (a) hereof, shall be credited to the specific fee funds as provided for in sections 1 to 31 [*] and K.S.A. 17-5609, 17-5610 and 17-5701."

K.S.A. 75-3170 was originally enacted as L. 1963, ch. 398.
The Table of Sections, found in the Constitutions volume of

the Kansas Statutes Annotated, indicates that section 2 of the laws of 1963, chapter 398, is presently located at K.S.A. 2-2609.

K.S.A. 1985 Supp. 2-2608, a section of the Kansas wheat act, provides for the levy of a four-mill excise tax on every bushel of wheat marketed through commercial channels in this state. K.S.A. 2-2609 provides that 20% of the money received by this levy is to be credited to the state general fund. The balance is to be credited to the wheat fund for use in the administration of the wheat act.

It has been suggested that since the money collected by the wheat commission is a tax rather than a fee, the wheat commission would not be a fee agency and therefore would not be required to pay 20% of these tax receipts into the state general fund. In our opinion, this theory fails for several reasons. To begin with, the Kansas statutes do not define the term "fee agency." The only place this term appears in the statutes in question is in the heading of K.S.A. 75-3170a. Since statute headings are written by the Revisor of Statutes and are not part of the body of the statute, they do not carry the weight of law. K.S.A. 77-133. K.S.A. 75-4207(m) defines "fee agency account" as including "fees, tuitions and charges authorized by law," indicating that fees are not the only moneys taken in by agencies which are required to be remitted to the state treasurer.

Furthermore, K.S.A. 75-3170 provides for the disposition of "fees and moneys" paid into the state treasury by various state agencies. Again, this indicates that moneys other than fees must also be distributed in accordance with K.S.A. 75-3170 and 75-3170a. The requirements of these statutes do not depend upon an initial finding that the agency covered is a "fee agency."

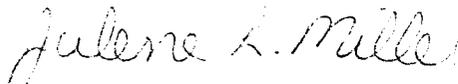
Finally, K.S.A. 2-2609 specifies that 20% of the four-mill excise tax imposed by K.S.A. 1985 Supp. 2-2608 "shall be credited to the state general fund. . . ." Article 11, Section 4 of the Kansas Constitution authorizes the legislature to provide "for raising sufficient revenue to defray the current expenses of the state. . . ." Therefore, regardless of whether the revenue is designated a fee or a tax, the legislature has exercised its authority to require part of it be used as provided in K.S.A. 75-3170 and 75-3170a. The legislature has clearly provided that 20% of this excise tax be paid into the state general fund to defray state expenses.

In conclusion, whether the wheat commission is designated a "fee agency" is not determinative of whether it should be required to pay 20% of the taxes it collects pursuant to K.S.A. 1985 Supp. 2-2608 into the state general fund. The statutes require the wheat commission to make that contribution, and the legislature has authority under Article 11, Section 4 of the Kansas Constitution to enact such a requirement.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

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