



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88- 1

Mr. Charles A. Peckham  
Rawlins County Attorney  
308 Main  
Atwood, Kansas 67730

Re: Bonds and Warrants -- Cash-Basis Law -- Creating  
Indebtedness In Excess Of Funds Unlawful; Exceptions

Aircraft and Airfields -- Municipal Airports and  
Fields -- County Airports

Counties and County Officers -- Miscellaneous  
Provisions -- Disposal of Refuse; Costs; Bonds

Taxation -- Miscellaneous Provisions -- Creation of  
Indebtedness In Excess Of Budget Unlawful; Exceptions

Synopsis: Budgetary laws, K.S.A. 79-2925 et seq., and cash-basis laws, K.S.A. 10-1101 et seq., prevent diverting any budgeted fund to the use of another fund and the creation of any unbudgeted indebtedness against the county except as specifically allowed. In furtherance of the proposed improvements to the airport runway, Rawlins County may use moneys budgeted in the airport fund, moneys contained in any existing revolving account established to operate the airport and moneys from the general fund not previously allocated for other uses. In order to relocate the county landfill the county may expend moneys from the budgeted landfill and general funds. Use of general fund moneys is limited to those uses which serve a valid public purpose and actions by the board are subject to continuing fiduciary duties. If expenditures exceed amounts budgeted for in the

specific and general funds, the county may attempt to amend the budget and issue no-fund warrants or issue bonds. Cited herein: 3-121; 3-301 et. seq.; 10-1101; 10-1102; 10-1116; 19-2659; 19-2661; 19-2662; 65-3410; 79-2925; 79-2929a; 79-2934; 79-2935; 79-2938.

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Dear Mr. Peckham:

As Rawlins County Attorney you request our opinion on the legalities involved in the proposed improvements to the Atwood Airport and the thereby necessitated relocation of the county land-fill. You inform us that the Federal Aviation Administration may approve a grant enabling improvement of existing runways at reduced costs. You further inform us that the contemplated improvements, and the approval of the grant, necessitate the relocation of the county land-fill. You state that there is approximately \$186,000 in the county general fund; that the budget for airport maintenance is \$4,037 with a current cash balance of \$5,800; that the budget for the landfill is currently in excess of available funds by \$19,000; and that the preliminary estimate for moving the land-fill is \$30,700. While it appears from information provided that the airport and landfill are individually provided for in the yearly county budget, we do not know the particulars of that budget or if a revolving airport fund has been established. Specifically you ask (1) whether the expenditure of funds for the airport violates the cash-basis law; (2) whether the proposed expenditure of funds violates K.S.A. 79-2934 and 79-2935; and (3) whether funds from the general fund may be used to relocate the landfill.

K.S.A. 79-2925 through 79-2937 contain the budget laws applicable to counties. The budget of a county must be itemized and classified by funds, which when filed operates as an appropriation for each individual fund. Appropriations are segregated by funds, and unless one of the enumerated exceptions applies, one fund cannot be used for purposes other than that for which it was originally budgeted. K.S.A. 79-2934; Gridley v. Woodson County Commissioners, 155 Kan. 407, 411 (1942); Shouse v. Cherokee County Commissioners, 151 Kan. 458, 466 (1940). Exceptions to the budget law include "any revolving fund set up for the operation of a municipal airport." See K.S.A. 79-2925(a)(3). Designating a "general fund" allows a county to appropriate a lump sum for general purposes and leave its use and expenditure to the discretion of the county board. 20 C.J.S. Counties §235 (1940).

K.S.A. 10-1101 et seq. sets forth the cash-basis law. K.S.A. 10-1101 definitions include counties and their boards of commissioners, subjecting them to the limitations and requirements contained in the act. K.S.A. 10-1102 states in part that "[a]ll municipalities are required to pay or refinance their valid indebtedness as in this act provided. . . and to contract no indebtedness. . . except as herein provided." (Emphasis added).

The cash-basis and budget laws prevent deficits in municipality funds at the end of a fiscal year and insure that the budget is carefully made and faithfully observed. Shouse at 465. The practice of making reappropriations for accumulated deficits of previous years is not encouraged by the courts. 20 C.J.S. Counties §236 (1940). In the event proper procedures are followed, it is possible for a county to expend money in excess of amounts budgeted.

K.S.A. 10-1116 allows limits placed on indebtedness to be exceeded when (1) Payment has been authorized by a vote of the electors of the municipality; or . . . (4) provision has been made for a revolving fund for the operation of any municipal airport. . . ." Section (1) does not allow a governing body to violate the prohibition against "contracting any indebtedness" in anticipation of electorate approval of payment. It permits approval of payment after a debt exceeds the budget. We do not know if Rawlins County has established a revolving fund for operation of the airport, which would allow exceptions under K.S.A. 10-1116(4) and K.S.A. 79-2925(a)(3).

In addition to the aforementioned exceptions, K.S.A. 79-2938 allows expenditures through the use of no-fund warrants. These may be issued when "because of unforeseen circumstances the revenues of the current budget year from any fund are insufficient to finance the adopted budget of expenditures for such a fund for the current budget year. . . ." (Emphasis added). What constitutes an "unforeseen circumstance" is a question of fact. The budget must already include the expenditures before issuance of no-fund warrants may be approved. If the county wants to spend more than what the original budget provided for through the use of no fund warrants, the county must amend its budget pursuant to K.S.A. 79-2929a. The issuance of no-fund warrants also requires approval by the board of tax appeals as set forth in K.S.A. 79-2938.

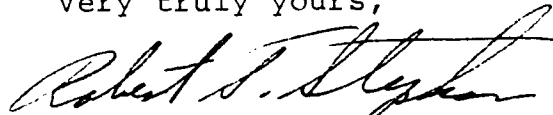
Assuming the proposed expenditures exceed amounts contained in the proper funds and that Rawlins County does not wish to or cannot make use of the previously cited exceptions to the

cash-basis and budgetary laws, the county may also be able to fund expenses in excess of the budget through the issuance of bonds. K.S.A. 65-3410 authorizes establishment of county waste disposal facilities and states that all fees collected for use of the facility may be used only for costs connected with the facility. (See also K.S.A. 19-2661). In addition to such user fees, K.S.A. 19-2659 states that in order to finance such a facility the board of county commissioners "may use moneys from the general fund, from any refuse disposal fund created under provisions of this act, from the sale of property as hereinafter provided [see K.S.A. 19-2662], or may issue general obligation bonds or bonds payable from revenue derived from service charges made for the use of the facility. . . ." (Emphasis added). Thus, in order to finance the relocation of the county land-fill when the cost exceeds amounts contained in budgeted funds, Rawlins county may be able to issue bonds pursuant to procedures set forth in K.S.A. 19-2659.

Additionally, K.S.A. 3-301 et seq. contain authorization for the establishment of a county airport and the issuance of bonds in order to finance improvements. K.S.A. 3-121 and K.S.A. 3-301 et. seq. place electoral and amount limitations on such bonds when issued by a county or city.

In summary, it is our opinion that in furtherance of the proposed improvements to the airport runway the county may use moneys budgeted in the airport fund, moneys contained in any existing revolving account established to operate the airport and moneys from the general fund not previously allocated for other uses. In order to relocate the county landfill the county may expend moneys from the budgeted landfill and general funds. Use of general fund moneys is limited to those uses which serve a valid public purpose and actions by the board are subject to continuing fiduciary duties. If expenditures exceed amounts budgeted for in the specific and general funds, the county may attempt to amend the budget and issue no-fund warrants or issue bonds.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls  
Assistant Attorney General