



STATE OF KANSAS

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February 8, 1988

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ATTORNEY GENERAL OPINION NO. 88- 17

Jim Pringle
Cowley County Attorney
Courthouse
Winfield, Kansas 67156

Re: Taxation--Liquor Drink Tax--Local Alcoholic Liquor
Fund; Distribution of Moneys

Synopsis: Moneys in a special alcohol and drug programs fund
established pursuant to K.S.A. 1987 Supp. 79-41a04
may not be used to finance drug law enforcement
operations. Cited herein: K.S.A. 1987 Supp.
79-41a02; 79-41a03; 79-41a04.

* * *

Dear Mr. Pringle:

As Cowley County Attorney, you request our opinion regarding
the appropriate use of moneys in a special alcohol and drug
programs fund created pursuant to K.S.A. 1987 Supp.
79-41a04(e). Specifically, you question whether the county
may use these moneys for drug law enforcement, particularly in
the area of undercover operations.

The local alcoholic liquor fund is created by K.S.A. 1987
Supp. 79-41a04 and is funded by a ten percent tax upon the
gross receipts derived from the sale of alcoholic liquor by
clubs, drinking establishments and caterers in this state.
See K.S.A. 1987 Supp. 79-41a02. Moneys thus collected are
paid to the Secretary of Revenue, K.S.A. 1987 Supp. 79-41a03,
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. 1987 Supp. 79-41a04(b).

K.S.A. 1987 Supp. 79-41a04(e) provides, in part, that each county treasurer, upon receipt of any moneys distributed under subsection (b), shall deposit the full amount in the county treasury, crediting to a special drug and alcohol programs fund 23 1/3% of the amount collected from clubs, drinking establishments or caterers located in the county and within a city that has a population of 6,000 or less. Subsection (e) restricts expenditures from this 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 whose principal purpose is 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." K.S.A. 1987 Supp. 79-41a04(e).

In Attorney General Opinion No. 85-155 we opined that the language used in the above-quoted statutory excerpt indicates a legislative intent to restrict expenditures from the fund to "rehabilitation and treatment of alcohol and drug problems." It was therefore concluded that moneys in a special alcohol and drug programs fund could not be expended to treat other than alcohol and drug related conditions or 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." Attorney General Opinion No. 85-155, page 2.

Subsequent research has revealed no reason to deter from our opinion that the legislature intended to restrict expenditures to rehabilitation and treatment of alcohol and drug problems. Indeed, the following language in the minutes of the 1982 legislative committee studying this statutory provision bolster our conclusion:

"Moneys in the local alcoholic liquor fund are to be distributed quarterly to cities

on the basis of the amount collected from the establishments in those cities, as follows:

. . . .

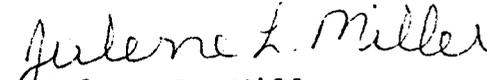
- "3. 40% to special drug and alcohol fund for education and treatment programs, (in counties w/ less than 50,000 population this portion would be distributed to the county treasury for such programs)." House Committee on Ways and Means, April April 4, 1982. (Emphasis added.) See also Attachment VI, House Committee on Ways and Means, April 4, 1982.

We therefore conclude that moneys from the special alcohol and drug programs fund may not be used to finance drug law enforcement as its primary purpose is not the treatment and rehabilitation of alcohol and drug abuse problems, but rather crime detection and criminal law enforcement.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm