



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91- 70

J. Michael Grear
Kiowa County Attorney
211 East Florida
Greensburg, Kansas 67054

Re: Taxation -- Miscellaneous Provisions; Budgets of
Taxing Subdivisions -- Purpose of Levy Satisfied
Before Expiration of Levy; Funds in Excess of Debt

Synopsis: Money raised pursuant to a specific tax levy may
not be diverted to another fund or use. Any
amounts raised by the levy in excess of the
indebtedness shall be deposited into the general
fund. Money in the general fund can be used to pay
for current general expenses. Cited herein:
K.S.A. 79-1946; K.S.A. 79-2934; K.S.A. 79-2958.

* * *

Dear Mr. Grear:

As Kiowa county attorney you request our opinion whether the
Kiowa board of county commissioners must immediately repeal
a tax levy when the purpose of the levy has been satisfied and
if so, what is the appropriate fund for the excess funds
raised by the levy. If it is determined that the excess money
goes to the general fund, you ask whether the county can
allocate that same amount from the general account to the
original recipient of the money.

In August of 1988, the voters of Kiowa county approved of a
resolution which authorized the board of county commissioners
to levy a tax not to exceed .5 mill for four years for the
payment of a senior citizen building. However, through

private donations and fund raising the amount necessary to pay for such an expense has been raised before the authorization for the mill levy has expired, thus raising the above mentioned questions.

Money raised pursuant to a specific tax levy can only be used for the purpose set forth in the resolution. K.S.A. 79-2934. Furthermore, K.S.A. 79-2934 prohibits diverting money from one fund to another fund except as provided by law. See Attorney General Opinion No. 88-65; Gridley v. Woodson County Commissioners, 155 Kan. 407, 411 (1942); State ex rel. Schneider v. City of Topeka, 227 Kan. 115, 120 (1980).

Since the money raised by the levy is for the purpose of paying for the senior citizen center building and such purpose has been achieved, the purpose for the tax levy no longer exists and therefore the levy must be repealed.

Your next inquiry involves the appropriate fund for moneys that have been raised before the levy is repealed.

"Whenever there shall remain in any fund of any taxing subdivision of the state moneys received from the levy of a tax and belonging to such fund, after all indebtedness and obligations of such fund have been fully paid and cancelled, it shall be the duty of the treasurer of such taxing subdivision to report such fact to the governing body thereof. If such governing body shall find and determine that the unexpended balance stating the amount in such fund is not presently and will not in the future be required for the purpose for which it was levied due to the fact that all indebtedness and obligations of such fund have been fully paid and cancelled and such purpose has been discontinued or for any reason no longer exists, such money shall belong to such taxing subdivision the same as if it had been levied and collected for general purposes. . . ." K.S.A. 79-2958.

This statute dictates that the tax levy for payment of the senior citizen building should be repealed and any funds generated from the levy in excess of the indebtedness shall be deposited into the general fund.

Your final question is whether the excess dollars generated by this mill levy, which go to the general fund can be allocated to the original recipient.

K.S.A. 79-2934 states that "no part of any fund shall be diverted to any other fund." Also, K.S.A. 79-2929a prohibits changing the budget (i.e. switching money from one fund to another) without going through the budget amendment procedures. Therefore, the county commissioners would not be able to transfer the excess dollars from the general fund to another fund without amending the budget.

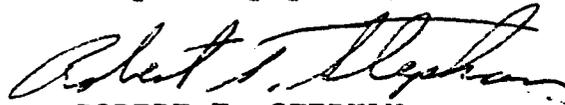
However, K.S.A. 79-1946 authorizes the "board of county commissioners . . . to fix a rate of levy annually to meet and defray the current general expenses of the county."

"[D]efined in a most general sense, the general fund is the fund for which the municipality accounts for all revenues and expenditures for which it does not make provision by other funds." See Attorney General Opinion No. 76-277 and 85-181.

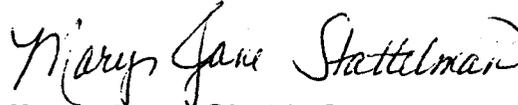
Since the general fund is raised for the purpose of paying current general expenses the commissioners may pay for expenditures related to the senior citizen building if the expenses are current general expenses.

In conclusion, it is our opinion that tax levy for the senior citizens building should be repealed and any funds generated from the levy in excess of the indebtedness shall be deposited into the general fund. The general fund can be used to pay for expenses related to the senior citizen building as long as they are current general expenses.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmann
Assistant Attorney General