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Subject Cities & Municipalities --
Libraries
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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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CH. 12
art. 12

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ATTORNEY GENERAL OPINION NO. 92- 47

Fred J. Logan, Jr., Counsel
Johnson County Library Board of Directors
Windsor Building
3500 W. 75th, Suite 302
Prairie Village, Kansas 66208

Re: Cities and Municipalities -- Libraries -- Use of
Tax Levy Proceeds

Synopsis: Under the circumstances stated herein, the Johnson county board of commissioners is prohibited from diverting funds raised pursuant to a library tax levy to the general fund for the purpose of having the library pay for administrative service charges. Cited herein: K.S.A. 12-1220; 12-1225a; 12-1225b; 12-1226; 12-1774; 19-506; 28-175; 79-2934; 79-5036(c).

* * *

Dear Mr. Logan, Jr.:

As the attorney for the Johnson county library board of directors, you request our opinion on several issues regarding Johnson county commission resolution 010-92.

The Johnson county commissioners met on January 30, 1992 and adopted resolution number 010-92:

"authorizing the encumbrance and transfer of funds for administrative costs."
(Johnson county resolution no. 010-92,

p. 1). These charges are to cover the cost of administrative services "provided by the County to departments, agencies and other funds which are not, for budget and tax purposes, included with the County General Fund, and to authorize the encumbrance and transfer of monies for that purpose. . . (Johnson county resolution no. 010-02, p. 2); that administrative charges for the budget year 1992 shall be and hereby are established in the amounts specified in the attached Schedule 2 for the identified Funds, Agencies or Departments; that the appropriate County Officials and Directors, responsible for administering the budgeted and appropriated funds, shall be and hereby are authorized and directed to encumber monies in the amounts specified for the purposes of administrative services charges of the County and are not otherwise authorized to expend those funds; and that the Board of County Commissioners shall review all budget appropriations and the encumbrances and limitations on expenditure authority established pursuant to this Resolution at least quarterly and shall, following each review, authorize the retention or the transfer, as necessary, of the monies encumbered for administrative services charges. (Johnson county resolution no. 010-92, p. 3)."

Schedule 2 entitled "amounts transferred to general fund" shows that the library is charged with administrative costs in the amount of \$202,513.00. Based on the provisions set forth in Johnson county resolution no. 010-92 you ask the following questions:

"1. Is Johnson County Commission Resolution 010-92 in violation of K.S.A. 79-2934 which provides, in pertinent part, as follows:

The budget which is approved and filed with the county clerk for each year shall constitute and shall hereafter be declared to be an appropriation for each

fund, and the appropriation thus made shall not be used for any other purpose.

* * *

No part of any fund shall be diverted to any other fund, whether before or after the distribution of taxes by the county treasurer, except as provided by law.

"2. Is the Board of County Commissioners of Johnson County prohibited from ordering the transfer of funds from the Johnson County Library Fund, which is created by an annual levy pursuant to K.S.A. 12-1220, to the County General Fund, for general county expenditures, even if the transfers are for what the County Commissioners term 'administrative service charges'?"

"3. Is the Johnson County Treasurer the lawful custodian of the Johnson County Library Fund? If he is the lawful custodian of the Johnson County Library Fund, does he have the authority to transfer funds from the Library Fund to the County General Fund for any purpose other than 'to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774'?"

In Attorney General Opinion No. 90-11, we established that the Johnson county library was a taxing subdivision for the purposes of exempting out from under the tax lid law pursuant to K.S.A. 79-5036(c). The opinion acknowledged that although the budget of the Johnson county library board is to be approved by the county commission pursuant to K.S.A. 12-1225b, "the final adoption of the budget and the authorizing of any tax levy are powers which remain with the library board as the governing body of the library."

Even though the board of county commissioners have some control over the library board expenditures there are statutes which govern how these funds can be handled. In general, money raised pursuant to a specific tax levy can only be used for the purposes 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 Opinions No. 88-65, 91-70; Gridley v. Woodson County Commissioners, 155 Kan. 407, 411 (1942); State ex rel. Schnedier v. City of Topeka, 227 Kan. 115, 120 (1980).

The county treasurer has the duty to "receive, accept and administer any money appropriated or granted to it by the state or the federal government or any agency thereof for the purpose of aiding or providing library service." K.S.A. 12-1225a. Both K.S.A. 12-1220, which authorizes a tax levy for the maintenance of a library, and K.S.A. 12-1226, which explains the duties of the Johnson county library board treasurer, establish that funds generated for the library shall be kept in a separate library fund. Therefore, the board of county commissioners cannot authorize the transfer of funds through the process of passing a resolution, if such resolution violates state statutes. Since the money has been raised for the purpose of providing library services such money cannot be diverted to the general fund be used for other purposes.

Next, you ask whether the board of county commissioners can transfer funds for the purpose of paying for "administrative service charges." As stated above, K.S.A. 12-1225a specifically states that it is the county treasurer's duty to "receive, accept and administer any money appropriated or granted to it by the state or the federal government or any agency thereof for the purpose of aiding or providing library service." Also, K.S.A. 19-506 states, "[i]t shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source they may be derived, and all other moneys which are by law directed to be paid to him or her." "County officers and employees shall receive no compensation, tips, fees, mileage or salaries, which compensation, tips, fees, mileage or salaries are or shall be paid to such officer or employee directly or indirectly by reason of his or her performance of the duties or obligations of such county office or employment, unless such compensation, tips, fees, mileage or salaries are specifically allowed to them by law." K.S.A. 28-175.

Because it is the county treasurer's duty to receive and administer the moneys received pursuant to the library tax levy, neither the treasurer or the board of county commissioners can charge extra for the performance of a statutory duty of the treasurer.

Your final question is whether the Johnson county treasurer is the lawful custodian of the Johnson county library fund and if so does he have the authority to transfer funds from the library fund to the general fund for any purpose other than to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774?

"In Johnson county, the treasurer of the library board shall give bond, in an amount fixed by the library board and approved by the board of county commissioners for the safekeeping and due disbursement of all funds that many come into the treasurer's hands. The bond shall be filed with the county clerk. Except where otherwise provided by law, the treasurer of the library board shall pay over to the county treasurer all funds collected for the maintenance of the library, with the exception of gifts and nongovernmental grants. The treasurer of the library board shall keep an accurate record of all moneys received along with its source and those moneys disbursed to the county treasurer. The funds of such library board in the hands of the county treasurer shall be maintained in a separate library fund and any interest payable thereon shall be added to that fund. The administration of such fund shall be with the county treasurer who shall pay out moneys from the fund upon orders signed by the chairperson of the board of county commissioners and the county clerk or their designees." (Emphasis added). K.S.A. 12-1226(b).

Pursuant to this statute, the county treasurer is charged with the duty of maintaining and administering a separate library fund and thus would be considered the lawful custodian of such fund.

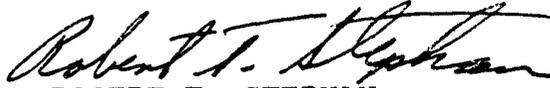
Generally, the county treasurer can pay out money only on the order of the board of county commissioners. K.S.A. 19-506. However, K.S.A. 12-1226(b) puts the requirement that the order for payment be signed by the "chairperson of the board of county commissioners and the county clerk or their designees." (Emphasis added).

Regardless of the authorization by the chairman of the board of county commissioners and the county clerk, the general rule stated above regarding the inability to divert money from one fund to another (K.S.A. 79-2934) or to spend tax levy monies for a purpose that is not in accordance with the levy would

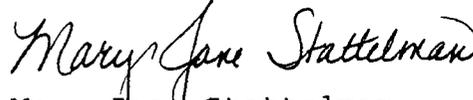
negate the authority of Johnson county to transfer this money to the general fund in contravention of K.S.A. 79-2934.

In conclusion, the Johnson county board of commissioners is prohibited from diverting funds raised pursuant to a library tax levy to the general fund for the purpose of charging the library for administrative service charges.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmann
Assistant Attorney General

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