



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

December 28, 2012

ATTORNEY GENERAL OPINION NO. 2012-33

Pamela Campbell Burton, Counsel
Leavenworth County Fire District No. 1
119 Delaware St., P.O. Box 10
Leavenworth, KS 66048

Re: Counties and County Officers—Fire Protection—Districts in Any County—
Fire Districts; Fire Protection Reserve Fund; Source of Revenue;
Limitations

Synopsis: A fire district organized under K.S.A. 19-3601 *et seq.* may only divert money from its general fund levy to a special fire protection reserve fund “by resolution,” as provided in K.S.A. 19-3612c. This resolution may, however, be adopted as part of the district’s budget process. Cited herein: K.S.A. 12-1,117; 19-119; 19-3601; 19-3612c; 79-2934.

* * *

Dear Ms. Burton:

As legal counsel for Leavenworth County Fire District No. 1, you ask whether a fire district may annually budget money into a fire protection reserve fund created pursuant to K.S.A. 19-3612c.

K.S.A. 79-2934, a provision of the Kansas budget law, states that “[n]o part of any fund shall be diverted to any other fund . . . except as provided by law.” Accordingly, money raised by a fire district’s general fund levy (and thus credited to the district’s general fund) may only be transferred to the district’s fire protection reserve fund as provided by statute. For a fire district organized under K.S.A. 19-3601 *et seq.*, K.S.A. 19-3612c is the only statute we can identify that would authorize such a transfer.

K.S.A. 19-3612c provides, in relevant part:

The governing body of any fire district organized under K.S.A. 19-3601 *et seq.*, and amendments thereto, is hereby authorized and empowered to transfer, annually, by resolution, from the general fund of the district any money credited to such fund, and subject to legal expenditure, which in the opinion of the governing body will not be needed for general operating expenses in such year, to a special fund to be established for the acquisition of fire-fighting equipment, apparatus or machinery or land and buildings to be used for fire-fighting purposes.

As you note, statutes that authorize other local governmental entities to create reserve funds provide that money may be “budgeted and transferred” into the reserve fund by means of an “annually budgeted transfer.”¹ K.S.A. 19-3612c differs from these statutes in that it requires any transfer to the fire protection reserve fund to occur “by resolution.” Given the plain text of K.S.A. 19-3612c, we opine that money may not be placed into the fire protection reserve fund by means of the budget alone.

That being said, we see no reason why a resolution transferring money from a fire district’s general fund to its fire protection reserve fund cannot be adopted as part of the district’s budget process. Your request letter seems to contemplate that K.S.A. 19-3612c only authorizes the transfer of “previously budgeted money.” We do not read the statute in this manner. To be sure, K.S.A. 19-3612c only allows a district to transfer money “which in the opinion of the governing body will not be needed for general operating expenses in such year.” But the district can make this determination at the time it adopts a budget; nothing in the text of K.S.A. 19-3612c requires the district to first budget the money for some other purpose and then transfer it to the special reserve fund.

Sincerely,

Derek Schmidt
Attorney General

Dwight Carswell
Assistant Attorney General

DS:AA:DC:sb

¹ See, e.g., K.S.A. 12-1,117 (municipal equipment reserve fund); K.S.A. 19-119 (county equipment reserve fund).