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December 18, 2014

ATTORNEY GENERAL OPINION NO. 2014- 21

Dr. Rob Edleston, President and CEO
Manhattan Area Technical College
3136 Dickens Ave.
Manhattan, KS 66503

Re: Cities and Municipalities—General Provisions—City Retailers' Sales Taxes; Use of Revenue; Technical Colleges

Synopsis: A city may levy a retailers' sales tax for the purpose of providing funds to a technical college if doing so serves a valid public purpose. If the electors of a city, by voting to approve a proposed sales tax, determine that providing funds to a technical college serves a valid public purpose, a court would likely defer to that judgment. Cited herein: K.S.A. 2014 Supp. 12-187; K.S.A. 72-4469; 72-4475.

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Dear Dr. Edleston:

On behalf of the Manhattan Area Technical College, you request our opinion on whether a city may levy a retailers' sales tax for the purpose of providing funds to a technical college when the technical college itself has no taxing authority under state law.¹

We believe your question is substantially answered by Attorney General Opinion No. 2001-14, which concluded that a city could use proceeds from a retailers' sales tax to provide financial assistance to a public school district. Like technical colleges, public school districts have no authority to levy a sales tax.² But that is beside the point — the sales tax would be levied by the city, which does have authority to levy a sales tax

¹ The technical college statutes are found at K.S.A. 72-4469 *et seq.* K.S.A. 72-4475 establishes the Manhattan Area Technical College.

² School districts do, of course, have authority to levy other taxes, but we fail to see how that is a relevant distinction when the tax at issue is a sales tax.

under K.S.A. 12-187 *et seq.* The only question is whether money raised by a city sales tax may be provided to a technical college.

As Attorney General Opinion No. 2001-14 noted, public funds may only be used for a valid public purpose. Given the deference paid to legislative bodies, Attorney General Opinion No. 2001-14 concluded that a court would likely find that providing funds to a public school serves a valid public purpose, namely economic development. Similarly, if the electors³ of a city, by voting to approve a proposed sales tax, determine that providing funds to an area technical college serves a valid public purpose, we believe a court would likely defer to that judgment.

Sincerely,

Derek Schmidt
Attorney General

Dwight Carswell
Assistant Attorney General

DS:AA:DC:sb

³ While Attorney General Opinion No. 2001-14 referred to a decision of a local governing body, you indicate that the proposal for providing funds to the Manhattan Area Technical College involves placing the sales tax question on the ballot by a petition in accordance with K.S.A. 2014 Supp. 12-187(a). We do not believe the distinction between a question placed on the ballot by the governing body and one placed on the ballot by petition is material in determining whether the use of funds serves a legitimate public purpose, particularly since in either case the sales tax must receive the approval of a majority of the voters at an election in order to take effect. See K.S.A. 2014 Supp. 12-187(a).