

Fund Balances, Fund Creation, Fund Miscellaneous

Question: Do we have to use the General Fund detail page if we have more than the page allows?

Answer: No, you do not have to use the detail page if you have more information than the page allows and, in fact, it is not necessary that you utilize the page at all. The detail page is for the benefit of those who wish to break down further than that provided for on the general fund page, but is not a “fund page” per se as contemplated by the state budget law.

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Question: I have a question pertaining to the recording of the revenue for Local Alcohol Liquor tax. The Kansas Statute provides that one-half of the revenue should be posted to the General Fund and the other half to be posted to the Special Parks and Recreation Fund. I am working with a small city that only received \$1,912 in alcohol tax revenue for the 2011 year. This City does not have a Special Parks Fund but does have a Recreation Fund. Are they required to set up a new fund for Special Parks and Recreation to record \$956 of Local Alcohol tax revenue or can they record this in the Recreation Fund since the money can be spent on recreation programs?

Answer: The statute reads that the monies should be deposited into a special parks and recreation fund of the city. The statute then goes on to read that monies in such fund may be expended only for the purchase, establishment, maintenance or expansion of park and recreational services, programs, and facilities. (See KSA 79-41a04.)

While the statute reads that the monies are to be deposited into a special fund, we believe the legislative intent is that the monies be used for recreational and park purposes. So we would not have an issue with the monies being deposited directly into the Recreation Fund, as long as one of the receipt line items clearly identifies the monies being from the local alcohol liquor taxes.

We hope this information helps.

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Question: Our City would like to create a reserve fund in which to transfer surplus unencumbered cash. The reserve fund might have multiple uses, including payment for system

replacement, equipment replacement, debt service on future bonds, etc.; in other words, the City would like for the use of this fund to be somewhat flexible.

Do you know of any statutory authority for a fund of this nature? I've looked and did not see anything that jumped out at me. What do you think about creating such a fund via home rule? Thanks!!

Answer: You are correct, there is no fund authorized by state statute that is broad enough to allow the flexibility you describe. It appears that the city is trying to incorporate into one fund the provisions of KSA 12-1,117 (Equipment Reserve), KSA 12-1,118 (Capital Improvement), KSA 12-825d(c) (Depreciation Reserve), and KSA 10-113 (Debt Service).

One thought is to transfer excess monies into an Equipment Reserve fund, and if in the future the city needs monies for other purposes, transfer the monies back out to the originating fund(s). It could be cumbersome but, in the absence of other authority, that would be the only way we can think of to accomplish this.

As to creating a hybrid fund utilizing your home rule authority, we think it is possible that authority exists for you to do so. Of course, you should consider consulting with your city attorney for his or her opinion on this question.

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Question: Is there anything in Municipal Services, or the budget or cash basis law statutes, or anywhere else, that would require or limit the dollar amount of unencumbered cash fund balances?

Answer: Good morning. Based on our interpretation of the cash basis and budget laws, with one notable exception there is no State statute or policy requiring that local units of government maintain unencumbered cash fund balances, or limiting the size of unencumbered cash fund balances. The exception of which we are aware is in the general bond law where, by statute, a municipality is allowed under certain circumstances to maintain as a cash reserve one year's worth of principal and interest, thereby placing an annual limit on the dollar amount of the debt service fund unencumbered cash balance (see KSA 10-113).

If the local governing body desires some type of cash reserve in a fund, for budget purposes they may – and typically do – budget such in an expenditure line item (e.g. capital outlay, equipment reserve, or miscellaneous). Please note that if they budget a reserve utilizing a “miscellaneous” line item, the amount in this line item is limited to 10% of their total expenditures. Where authorized to do so, they also may transfer monies not immediately needed into capital outlay or equipment reserve funds. Again, these practices are solely at the discretion of the local

government. As indicated, and with the one exception noted above, there is no State statute or policy requiring or limiting unencumbered cash fund balances.

Municipal Services does encourage local units of government to consider maintaining an unencumbered cash fund balances. We believe this is a prudent business practice due to the fact if there is a major, unanticipated event, or perhaps a downturn in the economy (and assessed valuations go down), the local units of government will have a cash reserve upon which to draw, and hopefully can avoid consideration of a property tax increase or reduction of services. However, this is only advisory, not mandatory.

Hope this information helps.

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Question: If we do add a capital improvement fund, may yearly transfers be made into it from the Water Utility Fund? I don't see where it specifies in the statute. We don't want to create another fund if we can only finance it through the general fund since our water fund has much more in it than our general. Things we would be saving for in our capital improvement fund would probably all be water/sewer related.

Answer: Good Morning. Transfers from the Water Utility into the Capital Improvement fund, a non-budgeted fund, can be made yearly and you have a couple options for doing so.

First, K.S.A. 12-1,118 allows transfers to and from capital improvement funds. The language concerning the transfer reads as follows: "The ordinance establishing such fund . . . may provide for the budgeted transfer of moneys from other city funds lawfully available for improvement purposes to the capital improvement fund . . ."

And, K.S.A. 12-825d allows transfers of surplus revenue from a water utility when not needed for operations or debt service. The statute allows the transfer from the utility fund into any other fund of the city.

We hope this information helps.

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Question: In 2010 we started receiving Alcohol Tax checks. A bar and grill in town had switched from CMB to liquor. We did not even know we would get alcohol tax money so that was a nice surprise. Of course, we didn't realize that this money had to be divided between parks and general fund until after a few payments, but when we did our Treasurer simply put a new line item under General Fund as Parks and Recreation. She has been putting half the money in

this and it has only been used for park repairs and improvements and the other half in other areas of the general fund. Is this a big violation? And how do we actually set up a new fund?

Answer: The statute that governs this area is K.S.A. 79-41a04. Since the statute requires the monies distributed from this tax to be split between the General Fund and the Special Parks and Recreation Fund, then the statute serves as the authority to create the fund. We would agree and create the fund as part of your next budget for the city. Although the statute states you should have a special fund, we probably would not be overly concerned as long as the expenditures for parks and recreation in the general fund exceed the amount of alcohol monies received for such purpose. Do not worry about transferring any monies to the new fund. Beginning with your next budget just deposit one-half of the total alcohol monies into the new fund. If there are any monies earmarked for special parks and recreation remaining in the General Fund, just spend those monies from the General Fund.

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Question: We are looking at doing some concrete walkways in 2013. I know it's a Capital Improvement, but where does it go on the 2013 Budget?

Answer: According to your most recent hospital district budget, you only have two funds – the General Fund and an Employee Benefit Fund. Since the walkways could not be classified as an employee benefit, the estimated cost of the project should be included in a line item in the General Fund of your proposed budget.

It does not appear that you have a capital projects fund, but if the hospital district was formed under the provisions of K.S.A. 80-2501 *et seq.*, it appears that the formation of a capital improvement fund for the hospital is at least implied by statute.

K.S.A. 80-2518(d) reads as follows:

Hospital moneys which are deposited to the credit of funds and accounts which are not restricted to expenditure for specified purposes may be transferred to the general fund of the hospital and used for the operation of the hospital or to a special fund for additional equipment and capital improvements for the hospital.

K.S.A. 80-2501(c) defines hospital monies as “moneys acquired through the issuance of bonds, the levy of taxes, the receipts of grants, donations, gifts, bequests, interest earned on investments authorized by this act and state or federal aid and from fees and charges for use of and services provided by the hospital.”

So, if the district wished to create a capital projects fund and transfer monies into the fund from the general fund, an argument could be made that it would be allowed by statute. However, the

current accounting guidance recommends limiting the number of funds created. So, while the creation of a capital projects fund may be permissible, you may want to debate its establishment due to the relative small nature of improvements being made, and continue to list and make the expenditure from the general fund. If the district embarks on a large project, such as an addition, a capital project fund at that time should certainly be considered.

We hope this response addresses your question. If you have additional questions or comments, please do not hesitate to contact us.

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Question: We are small and have only had the following funds for years: General, Economic Development, Special Highway, Water Utility, Water Utility Reserve and Equipment/Maintenance Reserve.

Recently I attended a water rate class and they stressed how we should have a capital improvement fund. Is there a statute out there that governs this?

Answer: The basic statutes governing the creation of public utilities are found in K.S.A. 12-801 *et seq.* K.S.A. 12-825d(c) allows surpluses from a utility to be set aside in a depreciation reserve fund. We would classify this as a capital improvement fund, since the proceeds from the depreciation reserve fund should be used to finance repairs, replacements, and improvements to the utility.

You may also have the authority to establish a capital improvement fund under K.S.A. 12-1,118. To proceed under this statute would technically require the governing body to approve a multi-year capital improvement plan. Since you are discussing a utility, which is an enterprise fund, and should be self-supporting, we would recommend using the procedure found in K.S.A. 12-825d. However, you would need to incorporate into your 2013 budget a transfer from the water fund into this new fund.

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Question: I question whether we should continue to have all our sewer business under water utility. I think separating these would be a plus.

Answer: We have seen these utilities combined into one fund, which is your current practice, or divided into two funds – one for each utility. This really is an issue of preference by you and the governing body.

K.S.A. 12-631o appears to give cities the following options to finance a sewer system – out of the general fund, a combined utility fund, or a separate fund. So, you would have the authority to create the separate fund. If this is the path you and your governing body decide to follow, we would suggest that you create the fund in your next proposed budget. Show all revenue and expenditures related to the sewer going to and coming from that fund. You would also want to budget in the water fund a transfer to the sewer fund for the sewer monies still remaining in the water fund at the end of the current fiscal year. You would also want to show the transfer in the sewer fund as a receipt. The statutory authority for the transfer between the water and sewer fund is K.S.A. 12-825d.

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Question: Hello. One of our cities came in to discuss additional unanticipated revenue for the city. They are selling water from their city wells and roughly estimate the additional income this year in the neighborhood of \$30,000+.

Can they create a Reserve Fund to deposit the revenue into? If so, do they need to adopt a resolution/ordinance to do so? Does the revenue need to first be deposited into the General Fund and transferred to the Reserve Fund or can the revenue be directly deposited into the Reserve Fund? They have already received revenue earlier this year for the sale of water and deposited it into the General Fund. Can those funds be moved? What would they name the new reserve fund?

Thanks in advance for your help.

Answer: In regard to the city in question they certainly can create an equipment reserve fund. Pursuant to KSA 12-1,117 the fund will need to be created by ordinance. Since they just have the general and special highway budgeted funds the proceeds will need to be receipted into their general fund and then transferred to the reserve fund.

The equipment reserve fund is subject to certain limitations on how the dollars in that fund may be spent, but the idea, I'm assuming, is in part at least to find a place to park the unanticipated revenue. The statute provides that the fund is not subject to the budget law (a non-budgeted fund) and, importantly, dollars in the fund not needed for acquisition of equipment may be transferred back (via resolution) to the general fund where it can, as you know, be spent for any lawful purpose.

In addition, since the statute sets no percentage limitation on the amount that may be transferred annually to the equipment reserve fund the folks in this city may transfer dollars received prior to creation of the reserve fund. The one short-term limitation on transfers might be budget authority in the general fund, inasmuch as the transfers will code as expenditures to the general fund; if need be they can amend the general fund to create additional budget authority.

In regard to a name for the fund they might want to consider a name that includes the words “equipment” and “reserve,” inasmuch as that makes clear from where they found the statutory authority for the fund (I note, too, that the city in question already has a “City Municipal Equipment” fund which appears to have been created pursuant to KSA 68-141g; transfers there, however, are limited to 25% annually of resources available).

We hope that this helps. Pertinent parts of the statute are quoted below.

12-1,117. Municipal equipment reserve fund; purpose; investment and transfer of moneys in fund. (a) The governing body of any city may provide, by adoption of an ordinance, for a municipal equipment reserve fund to finance the acquisition of equipment. Moneys may be budgeted and transferred to such fund from any source which may be lawfully utilized for such purposes For the purposes of this act, equipment shall include machinery, vehicles and any other equipment or personal property including, but not limited to, computer hardware and software, which the city is authorized to purchase for municipal purposes.

(b) Moneys credited to such fund from annually budgeted transfers shall not thereafter be subject to the provisions of K.S.A. 79-2925 to 79-2937 In making the budgets of such city, the amounts credited to, and the amount on hand in, such equipment reserve fund and the amount expended therefrom shall be shown thereon for the information of the taxpayers of such city. . . .

(c) If the governing body of any city determines that money which has been credited to such fund or any part thereof is not needed for the purposes for which so budgeted or transferred, the governing body may transfer, by adoption of a resolution, such amount not needed to the fund from which it came

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Question: Howdy! We have a situation whereby a few residents in close proximity to a benefit district may join the benefit districts sewer system. They will possibly pay a higher rate based on expansion of the current system for them to join. Can we set up a sewer reserve fund to receive these specific residents’ fees and special assessments? The current benefit district wants to make sure these residents requesting the expansion pay for all costs associated with the sewer expansion. Thanks!

Answer: Good morning. Based on a review of the statute provided K.S.A. 12-631(o), we believe that a sewer reserve fund can be established and used in the manner described. Research is always easier when the reference is provided. Great job!!

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Question: I'm sure we've discussed this in the past, but I moved a couple of months ago, so I'll ask again. Is it possible to close our Community Building (CB) account and combine those funds into the General Fund? Most expenses for the CB are included in invoices for other departments, so I pay them all from the General Fund, which has a column for CB.

Like I said, I know we've discussed this at some point in the past, but I need a little refresher on what the answer was. Thanks so much,

Answer: Yes, the governing body may take action to close out your CB fund and transfer its unencumbered cash to your general fund (up to the amount of your current year budget authority, in the absence of a budget amendment). Expenditures normally paid from your CB fund can be paid from your general fund.

For budget creation purposes when you do your proposed budget later this year you will need to show a "transfer to" expenditure line-item in the current year column of the CB fund, and a corresponding "transfer from" receipt line-item in the general fund. You will want to show a "rent" line-item in the general fund receipts, with a dollar amount for the proposed budget year; same for general fund expenditures that would normally be paid from the CB fund.

Your CB fund has budget authority this year of \$4128.00, so as long as total expenditures from that fund in the current year (including the transfer out to general) do not exceed \$4128.00 you can accomplish the fund closure without necessity of a current year budget amendment or without, as an alternative, budgeting for the closure in your proposed year budget.

To be safe, and in anticipation of the potential for unencumbered cash carryover into the budget year, you can budget for an additional transfer/closure in the budget year; in doing so you will want to be somewhat optimistic in your receipt estimates in order to provide yourself sufficient budget authority on the expenditure side to be able to adequately cover whatever you might be left with in unencumbered cash going into the budget year.

On your transfer form page simply list "fund closure" as the authority for the transfer.

We hope that this helps.

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Question: Question: I was under the understanding that there are no/very few tax levy caps still in place. Do you have a listing of those still in place to make sure we are not doing anything we should not? Also, the commissioners are working on our 2013 budget now and are wanting to do

the max on our Nursing Home fund and then also the Hospital Maint. fund. Can you tell me if there are caps on those funds? Thanks so much.

Answer: In 1999 the legislature passed a law that included a section now codified at K.S.A. 79-5040, which reads in full as follows:

In 1999, and in each year thereafter, all existing statutory fund mill levy rate and aggregate levy rate limitations on taxing subdivisions are hereby suspended.

The impact of K.S.A. 79-5040 was to suspend all mill rate and total levy rate limits theretofore imposed on taxing subdivisions. There are, however, a series of Attorney General Opinions interpreting K.S.A. 79-5040, and which hold that despite the suspension of all mill rate limitations, should there be found in such statutes certain procedural requirements or potential limitations to exceeding statutory mill rate limits, the procedural requirements are still valid and must be followed. (See AGO 2002-36, 2002-44, 2004-20, 2007-34.) The result of the suspension of statutory levy limitations is, in effect, one which requires consideration of the authorizing statutes on a case-by-case basis (we do have a listing of statutes reflecting levy limitations, but it is in hard-copy form and somewhat dated).

Looking at your funds, then, your FY 2012 budget certificate page cites K.S.A. 19-2106a as authority for the Home for the Aged fund levy. That statute reads in pertinent part as follows:

The board of county commissioners . . . which has established a home for the aged . . . is hereby authorized to make an annual tax levy . . . for the operation, maintenance and repair of said home All county home revenues and moneys received . . . except for an amount to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774 . . . shall be deposited in the home for the aged operation, maintenance and repair fund which fund is hereby created in the office of the county treasurer All expenditures from such fund shall be for the operation, maintenance and repair of such home.

As you can see, K.S.A. 19-2106a contains no limitation to the levy so long as the levy purpose is for funding “operation, maintenance and repair” of the home. However, should the commissioners wish to build additional facilities for the aged, or enlarge the existing home, then levy authority for such falls under K.S.A. 19-2106b, a statute which does provide a mill levy limitation and, in addition, provides for an election upon submission of a successful protest petition. In that case, the levy limitation is of no further effect, but we believe that the authority to levy would be subject to a successful protest and election (see AGO 2002-44).

So, as to your Home for the Aged fund, if the purpose of your levy is to generate funds in order to operate, maintain, and repair the home as necessary, you do not have a limit on your ability to levy.

In regard to your Hospital Maintenance Fund, your FY 2012 budget certificate page cites K.S.A. 19-4606 as authority for the fund. In pertinent part this statute provides as follows:

(a) The commission . . . may annually levy a tax for the purpose of operating, maintaining, equipping and improving any hospital managed and controlled under the provisions of this act The commission . . . may levy such tax in any amount not exceeding six mills in any year without an election as provided in subsection (c) In the event the commission . . . proposes to levy such tax in an amount which exceeds two mills but is less than six mills in any year, such proposition shall be published once each week for two consecutive weeks in the official county newspaper. If, within 30 days after the last publication of the proposition, a petition signed by not less than 5% of the electors of the county who voted for the office of secretary of state at the last preceding general election requesting an election thereon, no such levy shall be made unless the proposition is submitted to and approved by a majority of the voters of the county voting at an election held thereon. Such election shall be called and held in the manner provided under the general bond law. Any tax levied for the purpose of paying the principal and interest upon any general obligation bonds issued pursuant to this act is not subject to the six-mill limitation imposed under the provisions of this subsection.

(b) After a hospital has been established, the commission may issue additional general obligation bonds

(c) The commission . . . shall not levy any tax exceeding six mills under authority of subsection (a) . . . until the levy of such tax . . . has been authorized by resolution of the commission and approved by a majority of the qualified electors of the county

As to your Hospital Maintenance Fund K.S.A. 19-4606 provides that you can levy “in any year” up to and including two mills without limitation. A proposed levy “in any year” which exceeds two mills, “but is less than six mills,” necessitates publication of the proposition in the official county newspaper followed by a protest petition period, possibly resulting in an election to determine whether the levy may be made. Finally, a proposed levy “exceeding six mills” must be authorized by resolution of the county commission and approved by the electors.

Please note that the statute *appears* to allow, without limitation, a levy of *exactly* six mills (i.e. protest petition for levy exceeding two mills but “less than” six mills; resolution and election required for levy “exceeding” six mills). We do not believe the legislature intended to provide a loophole of this nature, and that this anomaly in the statute is merely an oversight in the drafting of such.

At any rate, following the rationale set forth by the Attorney General in AGO 2002-44 we believe that the procedural limitations and requirements for proposed levies in any given year which exceed two mills, but are less than six mills, remain in effect. For a proposed levy exceeding six mills, a vote in favor by the qualified electors would provide authority for a levy of this amount in the proposed budget year and in all budget years subsequent, except to the extent otherwise limited in the election question (see AGO 2002-36, 2004-20).

We hope that this helps.

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Question: I have a question I hope you can help me. The Commissioners want to increase the levy for our fire district. This year we are something over 2 mills. What is the highest we can go? Thank you

Answer: It appears that your RFD was created pursuant to K.S.A. 19-3601 *et seq.* In that event, and as it relates to levy limitations, K.S.A. 19-3610 provides as follows:

(a) The board of county commissioners each year shall levy an ad valorem tax on the taxable tangible property within each fire district in the county Except as otherwise authorized by this section, the board of county commissioners shall not make a levy, in any year, in any fire district in excess of five mills

(b) The board of county commissioners of any county, when authorized by a majority of the electors of any fire district . . . may levy a tax of more than five mills but not more than seven mills in any year Such election shall be a question submitted election and shall be called and held in the manner provided for the calling and holding of elections upon the question of issuance of bonds under the provisions of K.S.A. 10-120

So, it appears that you are OK to levy up to five mills in your fire district without necessity of a vote in favor thereof. To levy in excess of five mills, and up to seven mills, would require authorization of the fire district electors.

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Question: Hi. Got another question. Our hospital in the past has done two budgets, the General Budget and Employee Benefit Budget. Our county clerk says that we no longer need to do the Employee Benefit Budget. So we have opted not to do one for 2013. My question is do we still need to fill in the Fund Page of the budget for the Current Year Estimate for 2012? Also, will any of this be a problem for our auditors? Thanks

Answer: Good morning. As a general rule, the county clerk advice is pretty sound and is in line with current accounting guidance concerning limiting the number of funds used by an entity to those that are just needed. However, in this particular case, we would recommend keeping the funds separate based on the provisions of K.S.A. 80-2516.

That statute reads in part that no levy in excess of two mills (or amount specified in a previous resolution) shall be made for your general fund unless the board adopts a resolution authorizing a levy in excess thereof. If all the board had to do was a resolution to increase the general fund levy, we would agree that moving the employee benefits into the general fund and increasing the levy for the general fund (by resolution) would be fine. However, the statute goes on to state that

such resolution is subject to a protest petition. If 5% of the voters sign the petition, then the increase asked for in the resolution is subject to an election. There are several Attorney General opinions that state that although the mill levy limitations found in statutes are suspended (see K.S.A. 79-5040), if there is a procedure requirement in the statute to increase the levy, the requirement is still valid and has to be followed. It is interesting in this case that there is no time period given for the protest period, so we would guess that there is a general statute that covers this requirement.

Our opinion would be that in this case moving the employee benefits expenses to the general fund would likely cause a mill levy increase in the general fund and might subject the hospital district to the resolution/procedural requirement that must be followed to increase the mill levy for the general fund.

However, K.S.A. 80-2516 reads that the tax discussed above (for our purposes, the general fund), is in addition to all other taxes allowed by law. A separate tax levy for employee benefits is allowed under the provision of K.S.A. 12-16,102. Subsection (d) of that statute reads, “[t]he governing body of any taxing subdivision having established employee benefits funds . . . is hereby authorized to levy an annual tax . . . in an amount determined by the governing body to be necessary for the purposes for which the funds were created. . . .” In short, unlike what we find with your particular general fund, there is no levy limitation for the levy which results from a separate, employee benefits fund.

So, although the employee benefit expenses could be moved to the general fund, in your particular circumstance we would recommend that the fund remain separate due to the additional procedures that might need to take place to move the employee benefit expenses to the general fund, and the possibility of having to apply these procedures each time an increase in expenditures to the general fund is needed. As you are probably aware, employee benefit costs can sometimes rise dramatically and, if these costs continue to be in a separate employee benefits fund, your governing body can increase the tax levy in this fund more easily without the procedural requirement of K.S.A. 80-2516.

This is also an issue that the hospital legal counsel should also review.

We hope this information helps. If you have additional questions or comments, please do not hesitate to contact us.

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Question: Hi. Earlier this year, we issued refunding bonds to obtain lower interest rates. All proceeds are being held in escrow until the eligible refunding date.

Our 2012 financial report will reflect other financing sources and uses of approximately \$5.5 million from this issue. However, for budget purposes, this may present a 2012 budget violation unless it is appropriate to show the refunding receipts less the payment to the escrow agent to

pay off the old bonds. We had a similar question in 2009/2010 with some smaller refundings, but recorded and absorbed those in the CIP Fund.

My preference is to avoid a formal 2012 budget amendment, but will do what is appropriate. Thanks in advance for your help!

Answer: We think that you are OK treating the refunding issue receipts and bond refunding payment to the escrow agent in the manner that you describe. In K.S.A. 79-2935 it is provided:

It shall be unlawful for the governing body of any . . . municipality in any budget year to create an indebtedness . . . in any fund after the total indebtedness created against such fund shall equal the total amount of the adopted budget . . . for such fund for that budget year. . . . Provided, That indebtedness may be created in excess of the total amount of the adopted budget . . . when provision has been made for payment by the issuance of bonds

We hope that this helps.

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Question: District Court asked if she could get more cash on hand in District Court. Right now they have \$50.00. She believes the \$50.00 she has right now is County money. It was there when she took office in 1982. We do not show this on our books. I have no problem getting cash on hand for them, but did not know if we could since they are State office and if so do we need to record the \$50.00 that they already have in their office.

Answer: As it relates to the fiscal responsibilities of each county, KSA 20-348 provides as follows:

Except for expenses required by law to be paid by the state, the board of county commissioners of each county have an obligation to adequately fund the operation of the district court in the county and shall be responsible for all expenses incurred for the operation of the district court in the county.

The best that we can tell from what could be a much more extensive review is that the State's obligation for funding the district courts is pretty much limited to payroll and benefits for its judicial and non-judicial personnel and does not extend to operating expenses such as what is described in your note. Inasmuch as the county commissioners are responsible for everything beyond what the State covers, it would seem to us that the original \$50 is, in all likelihood, "County money"; that providing the additional cash drawer funds would be an appropriate act of the County; and, anything additional provided for the cash drawer would likewise be "County money."

In summary, we believe that your county treasurer is acting lawfully if he or she should provide the additional cash drawer funds, and that it would be logical to assume that the existing \$50 represents funds of the County.

We hope that this helps

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Question: Quick email. We are needing to purchase new computers for our office. They are used for several things in the day-to-day of the clerk's office, payroll, accounts payable and also elections. We have spent our clerk's fund for the year but still have funds available in the election fund. Is there any statute or laws saying we cannot purchase these computers from our election fund? Thanks for the help.

Answer: We've done a little checking and it does not appear to us that you may expend cash from your elections fund for the acquisitions that you describe.

The statute which authorizes the property tax levy which provides the bulk of funding for your election fund is found at K.S.A. 25-2201a. In this statute it is provided that the ". . . county may make a tax levy . . . in an amount not greater than the amount necessary to pay the direct expense of elections . . . for which the county is not reimbursed" In short, the tax levy is intended to cover only those *direct* election expenses that are not otherwise covered through reimbursement by your cities, USDs, etc.

The term "direct expense" is not defined in the statutes as it relates to this levy, but a representative listing of what is anticipated by the term can be found in the Kansas Administrative Regulations. In K.A. R. 6-1-1(a) a list of the direct expenses that might be apportioned is set forth, including publication and printing costs, postage, rents, etc. The expense of computer equipment as described in your note, albeit necessary to the operation of your office vis-à-vis elections, would not be considered a "direct expense" of elections and, in our opinion, would constitute an expenditure beyond those anticipated to be made with the proceeds of this particular levy.

We hope that this is helpful. Thank you for the question.

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Question: Good morning. We are looking at the requirements of Senate Bill 50; we are using the information you supplied to us at the budget seminar and the web-site www.kansas911.org. The web-site shows a sample resolution to establish the fund. Is it necessary to pass a resolution to create a new fund?

Thanks for your assistance.

Answer: We would think that the customary process for establishing a new fund would occur via governing body action and specifically, in the case of a county, through a resolution. We're guessing, too, that a part of the application process will be the identification of an existing special revenue fund into which the dollars may be placed; thus, you should be good to go by following the sample available on the website that you provided to us.

Thank you for writing.

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Question: Wondered if you knew off-hand of a statute that authorizes a township to create a "Special Equipment" fund for fire purposes. We have a township that needs to save funds for the eventual replacement of a fire truck. Wondered if they could create a "Special Equipment" (or some type fund) to transfer fire funds to on an annual basis?

Answer: Hi. If the township has a fire fund, then under K.S.A. 80-1558 a "special fire protection reserve" non-budgeted fund may be established for the purpose you describe. The statute, in pertinent part, provides as follows:

- (a) The governing body of any township, by resolution, is hereby authorized . . . to transfer, annually, from the fire fund . . . not to exceed 25% of the amount of money credited to the fire fund . . . to a special fire protection reserve fund.
- (b) . . . All moneys credited to such special fund shall be used by such township for the acquisition of fire-fighting equipment, apparatus or machinery or land and buildings to be used for fire-fighting purposes. Such fund shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937 When making the budgets of such township the amounts credited to, and the amount on hand in, such special fund and the amount expended therefrom shall be shown for the information of the taxpayers of such township.
- (c) If the governing body of the township determines that money which has been transferred to such special fund or any part thereof is not needed . . . the governing body . . . may retransfer such amount not needed to the fund from which it came. . . .

Assuming that there is enough unencumbered cash and budget authority, the annual transfer to the non-budgeted reserve fund may be up to 25% of resources available in the fire fund (i.e. beginning unencumbered cash plus total receipts for the year).

We hope that this helps.

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Question: A city in our county wants to levy in support of its local Chamber of Commerce. They already support the Chamber each year out of their general fund. Can they do this?
Thanks

Answer: The support made at this time from the general fund would be permitted - if under no other authority - by the public purpose doctrine, a doctrine by which local governing bodies are granted fairly broad latitude in the expenditure of public dollars. Going a step further and creating a separate *home rule* levy in support of the local chamber of commerce is permissible pursuant to K.S.A. 12-137 *et seq.*

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Question: Good morning. A couple of our townships are asking if they can combine their special road fund with their road fund. Do you think it's okay to do this?

Answer: A very good question. However, your townships that have the special road fund will need to maintain that fund, and its levy, separate from that of the road fund. The special road fund levy is authorized by K.S.A. 80-1413, a statute which requires an affirmative vote of qualified electors in order to levy for certain township road purposes, and which also provides:

. . . Such levy shall be in addition to all other taxes authorized or limited by law.

In counties not operating under the county road unit system, the proceeds of such levy shall be used by the township board for the sole purpose of grading, sanding, graveling or otherwise improving township roads and shall first be used on township roads which are mail routes and on roads leading from mail routes to schools and cemeteries in the township.

As you can see from the statute the special road fund levy is “in addition to” all other levies, including that of the road fund, and the statute authorizing the special road fund levy places limitations on expenditures from that levy, which limitations are more restrictive than that which might be found in K.S.A. 68-518c, the statute authorizing the road fund levy (authorizes construction and reconstruction, in addition to maintenance and improvement of township roads).

For the above reasons the two funds, and the levies in support of those two funds, should remain separate.

* * * * *

Question: Hi. During our most recent budget process, several questions arose about the use and purpose of our risk management fund. City council has a fund balance policy prescribing the desired balance of this fund, but they have acknowledged conflict with their policy during recent budgets. I understand that uninsured losses may be charged against this fund per statute and per the 1991 resolution establishing this fund, but we are considering other options as well.

- In the event of a significant revenue shortfall in the general fund, could risk management funds be transferred to general fund?
 - If no, could expenditures other than casualty losses be charged directly to risk management fund?
- Can we charge insurance premiums to risk management fund?
- The City does not self-insure for any type of loss and we have reasonable deductibles. How would the governing body close the fund and return the balance to the general fund (the source of the funds), if desired?
- Are risk management funds common among Kansas cities?

Thanks for your help!

Answer: Good morning. A risk management reserve fund is authorized by K.S.A. 12-2615, and is created by a resolution of the governing body. The resolution “shall prescribe the purposes for which moneys in the fund may be used.” As to transfers the statute provides:

Moneys may be paid into such risk management reserve fund or special reserve fund from any source which may be utilized for such purposes, including transfers from the general fund, from any special liability expense fund established in accordance with the provisions of K.S.A. 75-6110 . . . or from any other fund or grant program account of the governmental unit in reasonable proportion to the estimated cost of self insuring the risk losses covered by such funds.

The statute also provides that money in this fund is not subject to the budget law and as such the fund can be shown on a non-budgeted form showing only the actual year activity, and with spending authority up to the amount of cash in the fund.

In subsection (b) the statute provides that when money credited to the fund is no longer needed such can be transferred back to the fund or funds from which it originated.

Questions:

Can money be transferred back to the general fund? If the governing body determines that money in the reserve fund is no longer needed for the purpose intended, then money can be transferred back to the fund from which it came.

Can insurance premiums be charged to the risk management fund? We are constrained to answer in the negative. The statute provides that the city “may pay [costs relating to any uninsured loss] from the risk management reserve fund” It would seem to us that insurance premiums are not “costs relating to any uninsured loss” and, thus, would not be permitted.

How can the risk management fund be closed? If the governing body determines that the fund is no longer needed, the governing body, by resolution, can transfer the remaining fund balance back to the funds from which such dollars originated, and provide for closure of the fund.

Are risk management funds common among Kansas’ cities? We do not track this information, but our guess would be that more often than not you would not find this fund in a city or county budget. You may check similar cities at our website home page under the heading “E-Budgets.” <http://www.da.ks.gov/ar/muniserv/>

We hope that this helps.

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Question: We published our general fund and employee benefit fund proposed expenditures for fiscal year 2011-2012. Insurance premiums are yet to be in, so I estimated. Can I exceed my published employee benefits fund expenses this fiscal year (if premiums are higher than estimated) if TOTAL expenses do not exceed the amount published for both employee benefits plus general fund expenses? If no, what is the process if later we find we may exceed our expenses in that fund? Republish? Thanks.

Answer: Good morning. Unfortunately, when you adopt the budget you are telling the taxpayers this is the maximum amount of expenditures for the recreation commission, by fund. This dollar amount may be the same as what you published, or it may be less than what you published, but it cannot be more than what you published. So, the general answer is that anytime you increase the amount of expenditures in a fund to more than what was adopted, the budget for that fund needs to be amended. If either of your two funds exceeds its budgeted amount, regardless of whether the two added together are less than the total budget amounts of the two funds, you are looking at a budget law violation.

One option to consider is to amend your employee benefits fund in order to increase the fund budget authority.

Another option to consider, since it appears that total expenditures for both the general and employee benefits fund will be less than the total amount adopted for the two funds (we are assuming the general fund has some flexibility) is to first pay all employee benefit expenses out

of the employee benefits fund (to the amount of budgeted expenditures) and to pay any remaining expenditures directly from the general fund (as long as you don't exceed the adopted budget for the general fund). Although you cannot transfer monies from the general fund to the employee benefit fund, you can pay any legal obligation of the recreation commission directly from the general fund.

We hope that this information helps.

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Question: Does the TIF fund need to be a budgeted fund?

Answer: Good question. As background, the budget law requires that all funds be authorized, and that all authorized funds be budgeted. The legislature has, however, created specific exceptions to the foregoing. Generally, a statute creating a "non-budgeted" fund will say something like "such fund shall not be subject to K.S.A. 79-2925 through K.S.A. 79-2936," or words to such effect; what that quotes means is that the fund is not subject to the budget law and, therefore, does not have to be budgeted.

So, if a statute creating a fund does not have the words quoted above, it is by general rule a budgeted fund.

As to the special fund authorized in the TIF law this fund is not authorized to exist outside of the budget law and should be a budgeted fund.

* * * * *

Question: The City sold their gas system a year ago. We closed out the gas fund by transferring the money to the General Fund. They have Sewer Bonds they wish to pay off next year and I have budgeted in the 2012 budget to transfer that money from the General Fund to the Sewer Fund to pay off the bonds. I cannot find a statute that qualifies the transfer. Is it possible I don't need to make the transfer and that we can pay the bonds directly out of the General Fund? Thanks for your help!

Answer: Good morning. To our knowledge there is no statutory authority to transfer monies from the general fund to the sewer fund. However, you are on the correct path by just paying the debt service for the bonds directly from the general fund. Hope this information helps.

* * * * *

Question: We work with a hospital district. Would they have authority to create a capital improvements fund?

Answer: Good morning. After reading through all of the statutes related to hospital districts we came across two references to a “special fund” for equipment and capital improvements. The statutory references are KSA 80-2505 (a statute dealing with transfer of assets upon creation of a hospital district in place of a municipal hospital) and KSA 2009 Supp. 80-2518(d).

The legislature has authorized creation and utilization of a fund separate from the general fund, and into which may be transferred district funds not otherwise restricted. However, unlike other reserve-type funds, there is no statutory authority for the hospital district special fund to be a non-budgeted fund; probably not a big deal for your folks to adopt a budget for this fund, but just an FYI.

* * * * *

Question: A city we work has a non-budgeted “Sewer and Wastewater Fund.” Is it OK to have a fund like this and, if so, is it OK that the fund be used to repay a loan made to the city for certain sewer project work.

Answer: Thank you for our telephone call and the additional information. You state that the fund was established a number of years ago for the purpose of funding updates to the city sewer system and the installation of a lagoon-type system. The fund has been a non-budgeted fund from the beginning. The construction work paid from this fund was completed in 2009, and since that time the fund has been utilized to make loan repayments to KDHE for construction funding provided pursuant to the Clean Water State Revolving Fund program, as well as to pay for ongoing repairs and/or upkeep of the system.

To summarize, the current purposes of the non-budgeted fund in question are (1) loan repayment to KDHE, and (2) repair and upkeep of the city sewer system.

The Kansas budget law, K.S.A. 79-2925, *et seq.*, provides as a general rule that all funds are to be budgeted in three columns, reflecting actual year, current year, and proposed budget year receipts and expenditures. The legislature has, however, granted exceptions to the budget law mandate that all funds be budgeted as just described.

Exceptions to the requirement that all funds be budgeted are scattered throughout the statute books, allowing non-budgeted funds for grants, equipment, etc. One exception often utilized by cities is found in K.S.A. 12-631n, *et seq.*, an act which specifically addresses municipal sewerage systems. In K.S.A. 12-631n it is provided:

As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein: (a) "Municipality" means any county, city, sewer district or other public agency or any combination thereof;

(b) "Sewerage system" means sewers, mains, pumping stations, treatment works, storage facilities and all other appurtenances to the collection, storage, treatment and disposal of sewage or waste water; and

(c) "P.L. 92-500" means public law 92-500 of the 92nd session of the United States congress, cited as the "federal water pollution control act amendments of 1972."

In K.S.A. 12-631o it is provided in part that:

Any municipality, by resolution of the governing body thereof, may establish one or more reserve funds

And, K.S.A. 12-631p further provides:

Moneys credited to such reserve funds may be used by the municipality for the construction, reconstruction, expansion, operation and maintenance of such sewerage system, or for the making of payments to the federal government under the provisions of P.L. 92-500, and such fund shall not be subject to the [budget law] (Emphasis added.)

From the above statutes it seems pretty clear that the city is well within the letter of the law to create and maintain its sewer and wastewater fund as a non-budgeted fund. The question, then, comes down to what types of expenditures from such fund are appropriate.

Legislative intent as to expenditures from this particular non-budgeted fund is unmistakably limited to expenditures for maintenance, operation, construction, reconstruction, and expansion of its municipal sewer system. In addition, moneys in the non-budgeted fund may be used for "the making of payments to the federal government under the provisions of P.L. 92-500."

The city utilizes money in this fund to pay for repair and upkeep of its sewer system, expenditures that are lawful under K.S.A. 12-631p. What, then, of the KDHE loan repayment expenditures?

Public Law 92-500 is the Federal Water Pollution Control Amendments of 1972. In this law Congress created a major public works financing program for municipal sewage treatment efforts, setting up a system of federal-state grant funding for construction of municipal sewage treatments plants. In 1987 the funding mechanism for municipal projects was replaced by the Clean Water State Revolving Fund program, a self-perpetuating loan assistance authority for water quality improvement projects. Program funding comes from the federal government and from the state in matching amounts. Here in Kansas the fund is administered by KDHE. Loan repayments are made not to the federal government, but to KDHE.

It would appear that passage by Congress of the Federal Water Pollution Control Act amendments of 1972 served as the impetus for passage of K.S.A. 12-631n, *et seq.*, as the Kansas act was passed by the legislature in 1973 and makes reference to P.L. 92-500 in each of the three statutes contained therein. In addition, K.S.A. 12-631p clearly anticipates and allows for payment from the authorized non-budgeted fund in accordance with the federal act.

The city received a loan made under the Clean Water State Revolving Fund program, a successor funding program to that created under P.L. 92-500. In light of the fact that the city loan is made pursuant to the funding mechanism which succeeded that found in P.L. 92-500, and in light of the legislative intent that payments made from this non-budgeted fund in accordance with the predecessor program would clearly be appropriate, we believe that the city's loan repayments from its sewer and wastewater fund would be allowable.

* * * * *

Question: How do we show a "budget credit" on the current year column of the budget? Do we just "reduce" the expenditure by the amount of the budget credit? Thanks

Answer: Treatment of budget credits depends upon whether or not the budget credit was anticipated and accounted for in the adopted budget, and may depend upon the nature of the budget credit (e.g. federal aid). Generally, a reimbursed expense is a cash receipt in the current year reimbursing a municipality for a payment previously charged to the current year budget.

K.S.A. 79-2934 provides in pertinent part as follows:

If any indebtedness is reimbursed during the current budget year and the reimbursement is in excess of the amount which was shown as reimbursed expense in the budget of revenues for the current budget year, the charge made shall be reduced by the amount of the reimbursement.

So, in accordance with K.S.A. 79-2934 a *budgeted* credit (e.g. regular county road maintenance on behalf of township) would be shown in the receipts section and any amount over the amount budgeted should be shown as a negative expenditure. A credit *not budgeted* (e.g. insurance reimbursement in the current year for expenditure incurred during the current budget year) should be shown as a negative expenditure.

The treatment of budget credits represented by federal aid (e.g. FEMA) can be slightly different from the treatment of budget credits provided for in K.S.A. 79-2934, inasmuch as the expenditure and reimbursement may occur in different budget years. K.S.A. 12-1663(a) provides in relevant part as follows:

Where a public agency spends from budgeted funds and later is reimbursed by federal aid, such expenditure from budgeted funds shall be a reimbursed expense and if received after the

budget year, shall increase the current budget to the same amount unless the budget had anticipated and included the reimbursement as income.

Using a FEMA reimbursement as an example, suppose that storm damage occurs in October, the municipality incurs storm-related expense from a budgeted fund prior to close of the budget year, and reimbursement for such expense occurs in the following budget year. The reimbursement was not anticipated and included in the adopted budget.

In this example, and in the absence of K.S.A. 12-1663, the municipality would treat the FEMA reimbursement as a budget credit only to the extent there might be storm-related expenditures in the current budget year. However, since the reimbursement is in the form of federal aid, pursuant to K.S.A. 12-1663 the full amount of reimbursement in the current budget year should be shown as a negative expenditure, despite the fact that the storm-related expense occurred in the preceding budget year.

It should be noted that while the statutes cited above provide that reimbursed expense over and above budgeted receipts shall be shown as negative expenditures, it is the practice of this office to leave to the municipality the decision of whether to show these reimbursements as receipts or as negative expenditures. Of course, the result (and benefit) of recording a credit as a negative expenditure is to reduce total expenditures so that the fund's budget authority is effectively increased by the same amount.

We hope that this helps.

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Question: I have a client that has forwarded me the following attachment and the information below explaining why they feel per KSA it is ok to net reimbursed expenses in the expense line item on their books and thus their financial statements. Our firm has always interpreted this and the KMAG guide to NOT net the reimbursed expense in the expense line item....we should be showing the expense in the expense line item and then show the reimbursement as a revenue line item called "reimbursed expense" and then show the budget credit if needed to avoid a budget violation. What are your thoughts on this?

REIMBURSED EXPENSES – Against Expenditure Line Item

Attached is the Kansas Statute substantiation to allow reimbursed expenses to be recorded as a reduction to the original expenditure if reimbursed expenses exceed the amount budgeted for reimbursements as line item revenue. (Statute – 79-2934)

Thank you as always for all of your assistance.

Answer: Good afternoon. What we have here is the difference between budgets and financial statements for reporting of reimbursed expenditures. You are correct as it relates to the financial statements, and your client is likely correct as it relates to the netting of expenditures for budget purposes.

K.S.A. 79-2934 and K.S.A. 12-1663 deal with reporting expense reimbursements for budget purposes; our budget manual provides additional guidance. And, KMAG is the standard to be used for preparing financial statements (budget credits are addressed on page B-7 of the KMAG).

For budget purposes K.S.A. 79-2934 provides in pertinent part as follows:

If any indebtedness is reimbursed during the current budget year and the reimbursement is in excess of the amount which was shown as reimbursed expense in the budget of revenues for the current budget year, the charge made shall be reduced by the amount of the reimbursement.

In addition, K.S.A. 12-1663(a) provides in relevant part as follows:

Where a public agency spends from budgeted funds and later is reimbursed by federal aid, such expenditure from budgeted funds shall be a reimbursed expense and if received after the budget year, shall increase the current budget to the same amount unless the budget had anticipated and included the reimbursement as income.

We hope this information is helpful.

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Question: What do you do with “Prior Year Cancelled Encumbrances?” Do you want us to adjust the beginning unencumbered cash amount or show a revenue item called “Prior Year Cancelled Encumbrances” in the budget? Thanks

Answer: A cancelled encumbrance releases the reserved cash back to the unencumbered cash balance. For those municipalities that utilize encumbrances, the encumbrances must be tracked to account for total cash on hand as either cash encumbered or cash unencumbered. A prior year encumbrance cancelled in the current year may be treated as either a revenue line item or as an adjustment to the beginning unencumbered cash balance.

While both methods are allowed, reconciling the cancelled encumbrance as a receipt provides for greater transparency and avoids the possibility of explaining the change of cash balance to the governing body and taxpayers.

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Question: The Library has been budgeting its carryover cash balances in the General and Employee Benefits Funds as a “miscellaneous” expenditure. After reviewing KSA 79-2927, I’m confused. I know the 10% rule applies to the “miscellaneous” category of revenues or expenditures. However the additional rule for the non-appropriated carryover balance restricts it to 5% of total expenditures and non-appropriated balance. It appeared to me that KSA 79-2927 applies to all municipalities, but are there different rules for special districts? Is what we’ve been doing by including the true miscellaneous expenses of \$5,000, plus the desired cash carryover of \$1.2 million (General Fund), correct to be shown as “miscellaneous” expenditures? Or, should we be separating these items to comply with the different percentage restrictions.

Thanks for your expertise and guidance.

Answer: Good morning. We have interpreted the budget law classifications you describe as being two separate items: one being the miscellaneous revenue or expenditure line item which is limited to no more than 10% of receipts or expenditures; the other being the non-appropriated balance, which can be an additional 5% of total expenditures (including “miscellaneous” expenditures). Thus, between the two budget items a municipality could hold a cash carryover of approximately 15%, if desired.

Hope this information helps.

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Question: I’m confused about the expectation for the “prior year actual” column for the General (and other) tax levy funds. We have reported this column to match the total cash per the audited financials. Thus, revenues are adjusted for some receivables due and expenditures have been adjusted to remove current year encumbrances, add prior year expenses paid, and adjust for prepaid expenditures and salary accruals. So, total expenditures and cash balance per the budget form differ from my cash basis financials that we prepare and give to the Board each month to use to track the budget-to-actual. When you receive these budget forms, are you expecting the Actual columns to tie to the audited “Statement of Revenues, Expenditures and Changes in Fund Balances – Budget and Actual (Budget Basis)?”

I’m trying to wrap my mind around this after so many years in state budgeting. We always showed the actual column as expenditures plus outstanding current year encumbrances and revenues as those actually received. Then we reported unencumbered cash as the net cash balance available if all outstanding encumbrances (contingent included) had been paid. That way we knew our worst case starting point for cash solvency purposes. We didn’t try to tie this back to the CAFR in any way for budget purposes.

I hope this makes sense, but if not, please give me a call. Thanks for any advice you can provide.

Answer: Good afternoon. From our perspective, we see the prior year actual (for budget purposes) as actual receipts, expenditures, and encumbrances. This reflects reporting on the cash basis, whereas, your audit is on a GAAP basis. So your State background and perspective of showing actual encumbrances, outstanding encumbrances, and revenues actually received should work out very well on the budget forms.

Due to the different reporting methods, we don't expect that the budget forms to agree with the audit numbers.

Hope this information helps.

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Question: Hi. A district manager asked me if their district can pay, in part, for one of their board members to participate in a leadership training. (The tuition fee is \$3,000.)

I wasn't absolutely sure about board members being approved to use public funds to sponsor "one of their own" for such a training. I would appreciate your guidance on this. Thanks,

Answer: Good morning. We are not aware of any statute that would authorize, or prohibit, payment from district funds for the described training. In the absence of express statutory authority the board members would be guided by Dillon's Rule and the public purpose doctrine.

Dillon's Rule limits the power of special districts to power granted by the legislature in express words, or power that is fairly implied or incident to the express power granted, or to those matters essential to the objects and purposes of the special district.

The "public purpose doctrine" provides, in general, that funds must be spent for a "public purpose."

In your case payment for training designed to improve the leadership ability of the organization's governing body might be fairly implied by your express statutory authority, and with a demonstrable public benefit to the organization payment for the board member's training would be allowed.

We hope this helps.

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Question: Can you clarify something for me? In the Kansas Budget Law - not all funds require a budget for the proposed budget year and some funds do not require a budget in order to be spent. I have always been a little confused about what the criteria is for a special revenue fund not to have a budget for the report or to be spent. In other words, in general, what distinguishes a fund from needing a budget to be spent vs. not needing a budget to be spent. Is it the funds that have a tax levy?

I know, I should know this but can't seem to figure it out based on reading the statute. Thought you would know off the top of your head!

Answer: Good afternoon. The answer to whether or not a fund needs to be budgeted will be found in the statute authorizing the fund. As a general rule, a fund must be budgeted unless a statute specifically exempts the fund from the Kansas budget law. For example, K.S.A. 12-110d allows monies to be expended by a county from a special ambulance or emergency medical service equipment fund without the fund being budgeted. When a fund is not subject to the budget law, you will normally see the following language, "and such fund shall not be subject to K.S.A. 79-2925 to 79-2936," the common statutory citation to the Kansas budget law.

You can also visit the Municipal Services website where you find listings of non-budgeted funds to particular classes of municipalities. The website address is <http://www.da.ks.gov/ar/muniserv/default.htm>. Once on the website home page look for the heading entitled BUDGET, underneath which you will find listings of non-budgeted funds for counties, cities, townships, and special districts.

Hopefully, we have addressed your questions.

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Question: When I look at the first page of a certified budget, some of the funds reference a KSA and some don't. Does that mean there is no statute authorizing the fund? Do all funds have to be authorized by statute?

Answer: Good morning. Our budget forms were developed to show statutory authority for only the tax levy funds. As a general rule, most municipalities must have statutory authority for the creation of a tax levy fund. Funds other than tax levy funds should have statutory authority, but we don't require the authority to be listed on the budget certificate page.

To further complicate this issue, counties have home rule authority by statute and cities have home rule authority by constitutional amendment. Because of their home rule authority counties and cities could have the ability to create funds without statutory authority. If a county or city

were to exercise home rule authority for the creation of a new fund, there should be reference on the budget certificate page to the resolution or ordinance creating such fund, especially if a tax levy is involved.

Now the question becomes if a county or city creates a fund, does it need to be budgeted? Our opinion is that it should be budgeted (particularly if there is a tax levy involved) for transparency purposes and to comply with the intent of the budget law.

Please note that home rule is a complex area of the law, and it would appear that even the courts have a difficult time interpreting and explaining it.

For all other municipalities, except for counties and cities, our guidance would be that they need specific statutory authority for a fund (but only the tax levy funds will have the statutory cite on the budget certificate page). In the absence of home rule authority these municipalities are subject to Dillon's rule (the antithesis to home rule), a restrictive late 1800s common law rule which basically limits the authority of local units of government to that power which is expressly granted by the legislature, or that which is necessarily implied by the powers expressly granted, or that which is essential or indispensable to the declared purpose of the municipality.

Hopefully this addresses your question. If you have additional questions, please let us know.

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Question: So overall when I do carry over dollars that keep the fund in line to avoid the up and down of spending I am saving the tax payers dollars overall by keeping it steady, correct. The more I carry over is saving money for the taxpayers right you could say?

Answer: You are certainly avoiding a future spike upward in the fund mill rate by maintaining a steady levy. What generally happens when the mill rate for a tax levy fund is slashed is that spending in the next year, two years, three years, stays about the same, but the reduced annual funding causes the unencumbered cash (the savings account, if you will) to get eaten up as it is used to offset the reduced ad valorem support.

What happens, eventually, is that there is a need to bump the levy back up because your savings is all gone, and so in that particular year what people see on the proposed budget or in their tax statement is what appears to be a "tax increase," but when in actuality it is simply a reversal of an earlier, not-so-wise tax decrease.

So, if you maintain a budget that brings in something at or slightly more than what it spends each year, and you avoid the wild swings in fund levy support, you are saving your taxpayers from an inevitable tax increase necessary to fix an earlier, ill-advised tax decrease.

Once you have a reasonable carryover in place and you have fine-tuned your levy to that point where annual receipts match up pretty close with annual expenditures, then it costs nothing on an annual basis to maintain that carryover. We look at that carryover as something akin to a family savings account; it's there, at least in part, to help you get through the tough economic times, or in the case of some extraordinary or unanticipated event. Across the state over the last four or five years a number of communities were able to provide pretty much the same level of service despite funding decreases caused by falling valuations because those communities were able to fall back on their fund reserves.

We hope that this helps.

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Question: Help me to understand on the county budget if you carry over say from the election budget from the prior year to the next more than what was anticipated does that reduce the amount of taxes needed to fund the election budget for the proposed year? Thanks

Answer: Good morning. A great question. Let's use an example to explain our response.

Suppose you put your budget together last summer and made a projection that at the end of 2011 you expected to carry over into 2012 in your direct election fund the unencumbered cash amount of \$50,000. This \$50,000 was expected to help fund the 2012 expenditures, but you were going to need more so your budget called for ad valorem tax support in the amount of \$110,000.

Now, you get to 2012 and find out that you actually carried over \$70,000, more than expected when you built and passed your budget. Does this extra \$20,000 reduce the amount of taxes needed to support the 2012 budget? The answer, in a perfect world, is "yes."

For example, if in 2012 you receive exactly what you expect in delinquent tax, motor vehicle tax, etc., and if you spend in 2012 exactly what was anticipated when you passed the 2012 budget, then in our example you should have \$20,000 of current tax support that was not needed and which can, in essence, be carried over and used to reduce the tax support needed in 2013.

Another point to make in regard to the above example: despite the extra \$20,000 that was carried over into 2012, the amount of property tax dollars levied for the 2012 budget will not change; that's locked in and you are going to receive the \$110,000 regardless of whether you carried over \$50,000, or you carried over \$70,000. Of course, there will be some delinquency associated with current AV tax collections; your levy for this fund, however, will not change due to a higher than expected carryover.

Finally, and as you know, from a general standpoint the best practice in budgeting the tax levy funds is to try to avoid ups and downs in your levies. Of course, if unencumbered cash is growing each year and is beyond what might be needed in an extraordinary situation it is

certainly a good practice to tweak your levy to try to achieve balance on an annual basis between receipts and expenditures; conversely, if you are spending more each year than what is brought in to support a particular tax levy fund you may want to slow down or halt the diminishment of your unencumbered cash by tweaking upward your annual levy amount.

We hope that all of this helps.

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Question: I am inquiring about a private group that is within the City. They are responsible for lobbying to Washington for needs for the city. The city budgets to send this group to DC. They also raise money through fundraisers and donations to spruce up city parks, buildings etc.

My question is can the city put their donations into our Convention and Tourism Fund (or another fund within the city) so that the money can be earmarked for these items and carried over balances each year.

I hope all of this makes sense.

Answer: Good morning. Great question.

While you can, if you wish, deposit any of the donations described into a non-budgeted fund or funds (K.S.A. 79-2925(a)(2)), we find nothing in the law related to your convention and tourism fund that would prohibit the crediting of such donations to this fund.

We hope that this helps.

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Question: Hello. One of our townships failed to include the FEMA fund in their 2013 budget and also didn't publish the FEMA expenditures of \$4,850.80. Do they need to hold a new hearing and/or republish?

Thanks so much.

Answer: Good afternoon. To our knowledge we have consistently taken the position with regard to FEMA reimbursements that the reimbursement dollars may be accounted for in the fund or funds in which storm-damage expenditures were made on the front-end, *or* that the reimbursement dollars may be deposited to the credit of a non-budgeted fund, the only limitation to which would be the unencumbered cash balance of such fund.

Looking at the current year budget of your township it appears that the township chose to account for its reimbursement dollars in a separate, non-budgeted fund (although they did utilize a three-column fund). That being the case, and inasmuch as K.S.A. 12-1663 (the statute addressing the accounting for federal aid) does not directly require that actual year activity in a fund not subject to the budget law (beginning balance, receipts, expenditures, and ending balance) be shown on the budget forms for the benefit of the taxpayers (note: this statute does not directly authorize creation of a non-budgeted fund, either, and arguably requires in reimbursement situations that the reimbursement dollars be accounted for in one or more funds subject to the budget law), we think that your township is OK with the budget adopted and that there is no need to republish, etc. to show a zeroing out of their FEMA fund. Our opinion is also influenced by the late date and the nature of the municipality.

We hope that this helps.

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