

Non-Budgeted Funds

Question: A couple of years back our PD, in cooperation with some other agencies, seized a planeload of cocaine, I believe.

We are now receiving our share of the property forfeiture proceeds. Our share is \$620,000 and spare change. These funds must be used for law enforcement, but cannot supplant our normal expenditures. I am presuming that these funds may be treated as grant proceeds, and are exempt from the budget law, however I would like to get confirmation of that fact from the Department.

Thanks for your assistance.

Answer: Good Morning. We hope all is going well for you and the city!!! Great questions!!! Our initial response to your question was to cite the general rule that all funds are required to be budgeted unless the statute itself excludes the fund from the budget law. Because of this, the statute was reviewed (KSA 60-4117), with the following language from KSA 60-4117 (d) being very intriguing:

(2) If the law enforcement agency is a city or county agency, the entire amount shall be deposited in such city or county treasury and credited to a special law enforcement trust fund. Each agency shall compile and submit annually a special law enforcement trust fund report to the entity which has budgetary authority over such agency and such report shall specify, for such period, the type and approximate value of the forfeited property received, the amount of any forfeiture proceeds received, and how any of those proceeds were expended.

(3) Moneys in . . . , the special law enforcement trust funds . . . shall not be considered a source of revenue to meet normal operating expenses. Such funds shall be expended by the agencies or departments through the normal city, county or state appropriation system and shall be used for such special, additional law enforcement purposes as the law enforcement agency head deems appropriate. Neither future forfeitures nor the proceeds from such forfeitures shall be used in planning or adopting a law enforcement agency's budget.

What is interesting with this language is that the city's governing body appears to have no control over expenditures from this fund. How the monies are to be used seems to be totally at the discretion of the Police Chief, who then just reports to the governing body the approximate value of the property received, the amount of forfeiture proceeds received, and the amount of proceeds expended.

The spending and reporting requirements seems to place the city's governing body ability to control this fund outside their authority. And the guidelines of this statute parallel very closely with the provisions of KSA 8-1008, which creates the Alcohol and Drug Safety Action fund which is controlled by the administrative judge of the district or municipal court. Attorney

General Stephan opined on this issue in AGO 85-68. In that opinion, the Attorney General held that the Alcohol and Drug Safety Action Fund of a Municipal Court was not subject to the provisions of the Cash-Basis Law or the Budget Law even though the municipal court was a department within the city. The rationale for this opinion was that administration of the fund was given to the district or municipal court administrative judge for specific program purposes, and the city has no authority to impose additional limits or requirements regarding such fund. In addition, the reporting requirements under KSA 8-1008 again closely parallel the reporting requirements found in KSA 60-4117.

So based on this research, I have no issues with the fund being treated as non-budgeted, and the city only showing the prior year's actual receipts and expenditures.

If you have additional questions or comments, please let me know.

* * * * *

Question: Good afternoon. I have a City wanting to know about setting up a reserve fund to purchase additional land. Is the above statute something that would allow them to do so? Or is it just for existing facilities?

If not, I suppose they could simply build up funds in the General Fund for the purchase. Thank you

Answer: A great question. Pursuant to K.S.A. 12-1,118 the fund is tied to creation of a multi-year capital improvements plan which sets "forth the public improvement and infrastructure needs of the city" Moneys in the fund may be used to finance "any public improvement need set forth in the capital improvement plan"

We will assume that the city is not a second-class city operating under the commission-manager form of government which wishes to acquire park land (in which case it might be able to use K.S.A. 14-2004).

If we are only talking about purchasing a parcel of land it seems a stretch to find authority within the statute. One thing that the statute is clear about is that expenditures from the fund are to be used on "improvements," a term that is defined in dictionary.com to include "change or addition by which a thing is improved," "betterment," and "something done or added to real property that increases its value." West Law dictionary contains similar verbiage. It would seem that common use of the term "improvement" would, in this case, anticipate making beneficial changes to land already under the control of the city, as opposed to the simple acquisition of land.

Conversely, we suppose that one could argue that to improve a park you must first own the land to be improved, and that without the land you cannot make the improvements. In this case one

might logically, if not legally, argue that by tying the two together (acquisition and improvement) in the capital improvements plan the acquisition is necessary to the improvement and a legitimate expense from the capital improvements fund. However, on balance we are of a mind that K.S.A. 12-1,118 is not the appropriate vehicle in which to park dollars until enough is accumulated to make the purchase, and from which the purchase would be made.

Another thought is that since this is a city with which you are working (as opposed to a township or special district) it might be possible for this city, *under its home rule authority*, to create a reserve fund to act as a repository for these transfers and from which a purchase might be made; you will want to check this over with your city attorney to see if home rule is an option.

Finally, as an alternative to home rule, or if home rule turns out not to be an option, the governing body might consider creating a capital improvements fund pursuant to K.S.A. 12-1,118 and making its transfers until the fund balance is built up to a balance sufficient to make an acquisition, at which time it would close the fund and return the fund balance to the general fund from which it would have authority to spend the extra cash in whichever way it finds to be in the best interest of the city. Of course, to create such a fund the city must first have in place a multi-year capital improvement plan.

We hope that this is helpful.

* * * * *

Question: Hello. I have a question on the State Budget Forms. Should I show our CID Funds as budgeted (3 years of data) or non-budgeted (2011 actual only) on the State Budget form? There is an additional 1% sales tax applied to purchases in each CID which was effective 01/01/2011.

Another question. These funds were created in 2011 and a budget was not done for 2011 and 2012. Will I have an issue because I don't have any budget authority for 2011 and 2012?

Thank you

Answer: Good Morning. In reviewing the Community Improvement District statutes we see that a specific fund is to be created for each district (see KSA 12-6a34) with the proceeds to each going to finance the respective projects as either 'pay as you go' or for payment of bond principal and interest. Since the CIDs were established in accordance with state statute, and we find no exclusion in the statute for the CID funds from the budget law, we recommend that the funds be budgeted showing all three years.

Regarding the lack of budget authority for these funds, for FY11 you may have an issue on the audit, which may result in a violation in the footnotes to the financials, but there is nothing that

can be done at this point. For FY12 the city still has time to amend the budget, with the amendment processing needing to be completed prior to December 31, 2012.

We hope this information helps.

* * * * *

Question: Our City was awarded a CDBG grant and a loan from Rural Development. Will I have to report that as capital improvements in the water tab? And if I do should I include the total amount of the grant and the loan? Thank You

Answer: Good Morning. I believe you could handle this a couple ways. The first would be as you suggested, creating line items in your Water Fund under receipts for both the CDBG Grant and the loan from Rural Development. I would record the grant and loan proceeds upon actual amount when received. You would also pay project expenses from the water fund (but I would be sure to identify them as expenses related to the grant and loan, because I am sure at some point Commerce or KDHE and Rural Water will want to know how the dollars were spent).

Or you could establish a separate non-budgeted funds to record the grant and loan and related expenses (see K.S.A. 12-1663, federal aid; and K.S.A. 12-16,111, state loans and grants).

In this case it would be your preference, whatever is easier and makes the most sense to you.

Hope this information helps.

* * * * *

Question: A County I work with is required to budget their Juvenile Justice and Community Correction funds. Neither of these funds levy tax dollars but they both receive a steady income from State and Federal sources. I am not finding a statute stating that they are required to be budgeted but want to clarify this before completing this year's budget.

Answer: After a quick review of the listing of authorized county funds and a review of statutes, we don't see the fund(s) listed. While not knowing how the fund(s) was created puts us at a disadvantage when trying to provide advice, if the monies received are grants from the federal and state governments, you may treat the fund(s) as non-budgeted (see K.S.A. 12-1663, federal aid; and K.S.A. 12-16,111, state loans and grants). However, if the fund(s) are financed, even in part, with monies from other sources or revenue streams, the fund(s) should be budgeted. Remember, in the absence of authority to do otherwise, the general rule of the budget law is that all funds are to be budgeted.

* * * * *

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.

* * * * *

Question: Our road and bridge department wants to buy 2-way radios and wants to take the funds out of the Special Machinery Fund. Is that ok?

Answer: A good question. It appears from a review of your 2012 budget that your special machinery fund is one created pursuant to KSA 68-141g, which provides as to expenditures:

All moneys credited to such special fund shall be used by such municipalities for the purpose of purchasing road, bridge or street building machinery or equipment or the building of bridges

We would like to say that your department head is OK with what he or she wants to do, but it might be stretching a little too far in this instance to say that radios fall within the limitations of the statute.

However, you may have a couple of other options: First, we notice that you also have a non-budgeted equipment reserve fund, presumably authorized by KSA 19-119, a statute which does allow expenditures of the type proposed here; and, second, KSA 68-141g authorizes a transfer back of dollars not needed to the fund from which those dollars originated. So, with the second option if the non-budgeted fund dollars originated in the road and bridge fund you might simply transfer back to road and bridge the cost of the two-way radios and make the purchase from that fund, assuming no statutory limitation.

We hope that all of this helps.

* * * * *

Question: On the donations fund that I need to create for ----- Township, do I need to just add it on the 2013 Budget under the Nonbud tab with the actual numbers from 2011?

Answer: Yes, that's exactly what you will do.

* * * * *

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

* * * * *

Question: I work with one of the library systems and they are wanting to set up a capital improvement fund. Would the same statute for public libraries (KSA 12-1258) allow the system library to set up a capital improvement fund? I could not find a separate statute.

Answer: K.S.A. 12-1258 provides authority for a “public library” to create and utilize a non-budgeted capital improvements fund, but such authority does not appear to extend under this statute to regional library systems, the general authority for which can be found at K.S.A. 75-2547 *et seq.*

We’ve reviewed the statutes that relate directly to the regional library systems and fail to find any that explicitly or by inference provide authority for a capital improvements fund and, under Dillon’s Rule, failing to appreciate how such a fund might be essential or indispensable to the system, do not believe that authority exists for such a fund.

We hope that this helps. Thank you for your question.

* * * * *

Question: Can ----- Township use funds from their Special Machinery Fund to purchase land and build a township building following a successful election? They are just questioning which funds are available for the purchase. Thanks again in advance for you help,

Answer: The township will not be able to use their special machinery fund to help pay the cost of land acquisition or building construction. KSA 68-141g, the authority for the special machinery fund, limits expenditures from the fund to the “[purchase of] road, bridge or street building machinery or equipment or the building of bridges.”

We hope that this helps

* * * * *

Question: Is it best to set up a special fund account for CDBG Grants, in regard to our city budget?

Answer: All things being equal, creating a non-budgeted fund for your CDBG grant is the best way to go. Good question.

* * * * *

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.

* * * * *

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.

* * * * *

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: I need to know if we are limited to 5 non-budgeted funds? Do we need to combine some of these so that there are only 5 non-budgeted funds, or can we have more??

Answer: There is no specific limit as to how many non-budgeted funds you may maintain. In fact, our City1 budget form has two non-budgeted fund pages (for up to 10 non-budgeted funds), and City2 and City4 have even more.

As to consolidation of non-budgeted funds, that's your call. Certainly, if combining is possible and, at the same time, makes your record-keeping easier, then it would be something to consider.

* * * * *

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: 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.

* * * * *

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.

* * * * *

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.

* * * * *