

Townships

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.

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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

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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: 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.

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Question: I have a quick question on levy limitations. I know that on most funds there are not limitations, but I was reading KSA 68-518c for the township road fund. It says that they can't exceed five mills without a resolution being published. Is that so?

Answer: Yes, it is correct that the township should, if it desires to increase "the authorized limit existing on the effective date of this act [May 27, 1999]," adopt and publish a resolution authorizing the increased levy limit.

The quoted language was added to the statute when last amended in 1999. The old levy limit was eight mills, which means that there is the possibility your township may already have an existing limit above five mills. So, the first question to answer with this particular township is whether the governing body members know, or can ascertain, the current mill rate limit for their road fund; it may already be above five mills. Otherwise, though, to go above five mills would require adoption of a resolution, coupled with publication and the opportunity for a protest petition.

We hope that this helps.

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We hope that this helps.

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Question: Can you please tell me if the levy for a township hall should be spread over the entire township (including the 3rd class city) or just limited to the township excluding the 3rd class city?

Answer: Good morning. Our opinion is that based on the language found for the mill levy authorization in K.S.A. 80-115, the levy is to be spread over the entire township, including the third-class city. That language reads as follows:

The township board . . . is hereby authorized and empowered to levy an annual tax on the taxable tangible property in such township. (Emphasis added.)

We contrast this language with the language found in K.S.A. 80-1503(a) (township fire levy), which specifically excludes the city and which reads as follows:

Townships are hereby authorized and empowered to levy a special tax not to exceed one mill on all tangible property in the township not including a corporate city (Emphasis added.)

The language of K.S.A. 80-1503(a) is somewhat duplicated in K.S.A. 68-518c(c), which concerns the township levy for roads and contains the following language:

Taxes imposed under this section shall be levied on all the taxable tangible property in the township outside of incorporated cities (Emphasis added.)

These statutes are the basis of our opinion which, again, is that in the case of the levy for township hall purposes the levy should be spread over the entire township, including the third-class city.

In addition, we did an internet search of the Kansas Statutes using the terms “Township Hall” and “(3rd) Third Class City” and looked for specific statutes stating that the levy for the township hall was to be spread over the entire township including the third-class city. However, we could not find any statutory reference with this specific language. We then went to a resource we have entitled *Kansas Local Government Law* (3rd Edition, authored by Mike Heim and published by the League of Kansas Municipalities) and found the following narrative in Chapter 1 - Local Government Organization; Structure; Functions:

Cities of the third class remain a part of the territorial jurisdiction limits of the township under K.S.A. 15-104. . . . Cities of the first and second class are specifically excluded from the corporate limits of any township under K.S.A. 80-1404. The impact of these statutes is that a township may levy most township taxes on property located within a city of the third class

See *Jackson Township v Wood*, 55 Kan 628 (1895) and K.S.A. 68-518c." (*Kansas Local Government Law* (2005 Edition, Page 1-21)

The text goes on to state the following:

Another example of a statute that specifically excludes township taxes on property located inside an incorporated city is K.S.A. 80-1503(a) which authorizes townships to contract with other local entities for fire protection services and to levy a tax for this purpose.

So, having an outside source that is providing the same guidance provides us with a great deal of confidence in the general principle that a township levy is applied against all property in the township, including the incorporated third-class city, *unless specifically exempted by statute*.

Hope this information 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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