

Legally (Relevant



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Legal (and Illegal) Use of Public Funds and Property

Cities and water and wastewater districts in Kansas are public entities subject to rules governing the use of their funds and property. Some of these rules are fairly intuitive, understood by all employees and governing body members. Others are not so obvious, and may be difficult to apply to all given situations.

Restrictions on Use of Public Property

Many of the restrictions on the use of public property are perfectly obvious, and violations of these restrictions may even be a crime. These include theft (intentionally, permanently depriving the owner

of the owner's property, K.S.A. § 21-5801); criminal deprivation of property (intentionally, temporarily depriving the owner of the owner's property, K.S.A. § 21-5803); criminal trespass (entering land knowing that entry is not authorized, K.S.A. § 58-5808); and official misconduct (using a vehicle in the officer or employee's custody or under his or her control exclusively for such officer's or employee's private benefit or gain, K.S.A. § 21-6002). Violations of these rules constitute crimes, and depending on the value of the property involved, penalties can be severe, including prison and fines.

While most officers and employees understand these restrictions, violations still occur. Scrap metal belongs to the utility and is not free for employees to take for their personal use or gain. In one city the utility superintendent routinely took the city's front-end loader home on weekends for use in his son's construction business and returned it on Sunday evenings so it was ready for the city's use Monday

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morning. This practice could easily be viewed as criminal deprivation (K.S.A. § 21-5803) or criminal trespass (K.S.A. § 21-5808). In addition to almost certain loss of his job, the superintendent may face conviction of a Class A or B misdemeanor, with applicable penalties.

But what if the superintendent had been told by the governing body that it was okay to take the city loader home on weekends to use in his son's business? Such use may not then be criminal because it was not "unauthorized" and it did not involve use of a "vehicle" as defined by law (authorized or not) for personal gain. But is there a different problem with the governing body having granted this permission in the first place? The answer to that question lies in another, more complex rule called the "public purpose doctrine".

The Public Purpose Doctrine

Unlike most states, Kansas does not have a public purpose doctrine stated in the State Constitution. Instead, it is a court made rule, first applied in 1871. Simply stated, the public purpose doctrine in Kansas requires that all expenditures of public funds or use of property be for a public, and not a private purpose. This is invariably a factual question, which begins by asking – what is the purpose to be achieved by the expenditure or the use of property? Does it tend to benefit the public entity or its residents generally, or is the result chiefly that of private benefit?

Kansas courts and the Attorney General have applied the public purpose doctrine many times over the years. The decisions all say that there is no specific formula that may be made to determine what satisfies the doctrine, and that what is or is not a public purpose necessarily changes over time.

Consider two such examples:

Could a rural water district share in the cost of plugging abandoned wells on privately owned land near the district's water wells? Based on

Attorney General Opinion 1993-73, the answer is likely yes. The district derives substantial benefits from the prevention of potential groundwater pollution, and the benefit to the private landowner is incidental by comparison.

Does the public purpose doctrine (and K.S.A. § 8-301, which prohibits use of publicly-owned vehicles for "private business or pleasure") permit an employee of a PWWSD to drive a district owned pickup home on evenings and weekends when that employee may be called out to work? The answer is yes, per Attorney General Opinion 1994-28. The importance of having the employee equipped 24/7 with the appropriate vehicle, tools and equipment benefits the district and its customers. The employee's benefit for having use of the vehicle for the employee's commute to work is comparatively incidental.

Returning to the utility superintendent whose governing body authorized him to take the front-end loader home on weekends to use in his son's construction business – does that violate the public purpose doctrine? How about the water district employees who are authorized to take home scrap metal? Or the PWWSD employee who takes a district pickup home at night but with supervisor's permission also takes it on a family vacation? Those are all certain violations of the public purpose doctrine.

In each case, the employee or the employee's family is receiving the principal benefit, not the public. The only conceivable public benefit is to characterize those uses as a form of compensation to the employee in lieu of cash payment, but this does not offset the obvious private benefit being given.

Most of the cases involving the public purpose doctrine have to do with expenditures for economic development or social welfare such as health care. While these cases are generally not directly applicable to public water and wastewater systems in Kansas they illustrate an important point. Systems



may be solicited for donations to charitable and community organizations. As worthwhile as these causes may be, under the public purpose doctrine, per Attorney General Opinion 82-229, a governmental subdivision generally has no authority to make a gift or donation (disallowing gifts to local businesses in recognition of their contributions to the community).



do only what is authorized by statute. After statutory or home rule authority is found for an expenditure or use of property, the question then turns to whether the expenditure or use satisfies the public purpose doctrine.

Conclusion

State law restricts the use of public funds and

In addition to the public purpose doctrine as a test for whether an expenditure or use of property is proper, entities must also look to their general legal authority. For cities this step is much easier as not only do cities have many specific statutory sources for authority, cities also have constitutional home rule authority which essentially authorizes cities to do anything not prohibited by state statute. RWDs, PWWSDs and sewer districts lack home rule and can

property. Some of these uses are illegal and may even constitute crimes punishable by jail and fines. All uses must satisfy the public purpose doctrine, a court made rule that looks to see if the expenditure or use is primarily for the benefit of the public or for the benefit of some private interest. The public purpose doctrine, together with applicable constitutional and statutory authority, serves as the foundation for insuring that public funds and property are used for appropriate purposes and that the public's trust is maintained.

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