

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES
JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR
GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

To: Speaker Michael R. O'Neal
From: Mary Torrence, Theresa Kiernan and Gordon Self
Date: April 20, 2010
Re: Availability of Unencumbered School District Moneys

This memorandum addresses your question regarding the availability of unencumbered school district moneys. The memorandum relies on applicable law and the information contained in the school district fund survey ("survey") conducted by the Department of Education.

GENERAL BACKGROUND

Moneys Derived Under Federal Programs (\$848,177)

The state board of education and school districts receive moneys under several federal programs which may or may not allow discretion in the expenditure of those funds. The survey does not identify the particular federal programs under which these federal moneys were received.

In addition, the survey includes the following funds which contain moneys received under federal programs: The food service fund, composed of federal moneys, state moneys and student fees; the vocational education fund, composed of federal moneys (Carl Perkins Act) and state moneys; and the special education and special education cooperative funds composed of federal moneys received under the Individuals with Disabilities Education Act (IDEA), state moneys appropriated for special education and general fund moneys of the school district.

School districts may spend 15% of federal moneys received under IDEA to develop and implement early intervention services for students who have not been identified as needing special education or related services. State law requires all moneys appropriated for special education to be expended for the purpose of providing special education or related services to children who have been identified as needing special education or related services.

Without information regarding the specific federal programs under which moneys have been received, it is not possible to determine whether moneys in any of these funds are legally encumbered or if the moneys are available as discretionary moneys. It also is not possible to determine whether the legislature could direct the state board of education or school districts to expend discretionary moneys received under a federal program without further review of the federal law governing the specific program.

Moneys Derived from Gifts or Grants (\$13,840,318)

The survey does not indicate what limitations, if any, have been imposed by donors

300 SW TENTH AVE - STE 24-E, Statehouse—TOPEKA, KANSAS 66612-1592
PHONE (785) 296-2321 FAX (785) 296-6668 E-mail: Revisor'sOffice@rs.state.ks.us

**PLAINTIFFS'
EX. 341**

LEG000031

of gifts and grants. Without knowing the specific limitations or restrictions imposed by the donors, it is not possible to determine whether moneys derived from a gift or grant would be available as discretionary moneys or whether they are legally encumbered.

The definition of local effort in K.S.A. 72-6410 could be amended to include amounts received by a school district in the form of a gift or grant.

Moneys Derived from Locally-Imposed Property Tax Levies

The following funds consist, in whole or in part, of moneys derived from a property tax imposed by a school district for the purpose of funding that school district's needs: The supplemental general fund, the capital outlay fund, the adult education fund, the special liability expense fund and bond and interest funds. School districts also impose local property tax levies to pay no-fund warrants and special assessments.

Section 5 of Article 11 of the Constitution of the State of Kansas provides that "No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied." This provision has only been applied to property taxes. [*Farmer Union C.C.E. v. Director of Revenue*, 163 Kan. 266 (1947)] It has been applied to both property taxes assessed for state purposes and to property taxes assessed at the local level for local purposes. [*State v. Board of Thomas County Comm'rs*, 122 Kan. 850 (1927)] The purpose of this constitutional provision is to ensure that funds raised by property taxes levied for a specific purpose which such levy was authorized by statute and approved by a popular vote of the electors are actually used for that specific purpose. (*Id.*) There are numerous examples where the courts have held it to be a violation of Section 5 of Article 11 for the legislature to direct property tax moneys held in specific funds to be used for purposes other than authorized by statute and approved by the voters. [*State ex rel. Board of Crawford County Comm'rs v. Crawford Tp.*, 139 Kan. 553 (1934); *Board of Saline County Comm'rs*, 128 Kan. 437 (1929); and *Smith v. Haney*, 73 Kan. 506 (1906); along with numerous Attorney General Opinions]

The Kansas Supreme Court has recognized that a transfer of surplus held in a special fund for a special purpose is allowed. Surplus occurs when more revenue is raised than is necessary to accomplish the specific purpose. Funds such as the capital outlay fund are designed for purposes that run indefinitely and the transfer of any of these moneys for other purposes would most likely not be allowed. The amendment of law to create new purposes for the use of funds would be applicable only to moneys raised after the passage of the change in law. The transfer of moneys in these funds which were not derived from the levy of a property tax is not subject to the provisions of Section 5 of Article 11.

Without knowing the specifics of each property tax levy or special assessment supporting the funds provided in the collected data, it is not possible to give an absolute opinion related to the object of the tax analysis under Section 5 of Article 11.

Mixed Source Moneys

Most school district funds consist of moneys derived from various revenue sources. Use of unencumbered moneys in funds consisting of moneys from various revenue sources would require a segregation of the moneys to avoid: Use of unencumbered federal

moneys in violation of federal law; use of unencumbered moneys derived from a locally-imposed property tax levy in violation of Section 5 of Article 11 of the Constitution of the State of Kansas; and use of unencumbered moneys derived from a gift or grant in contradiction of the directives of the donor.

Funds Containing State Aid

The following funds may consist of moneys provided as state aid to equalize the locally-imposed property tax levies of school districts: The supplemental general fund, the capital outlay fund and bond and interest funds. The use of unencumbered moneys in these funds would not constitute a violation of Section 5 of Article 11 of the Constitution of the State of Kansas if the moneys are attributable to state aid. However, because state aid is appropriated to address wealth-based disparities among school districts, the use of those moneys for other purposes might raise other constitutional issues.

Categorical Funds

Categorical funds of a school district include: The special education fund, food service fund, driver training fund, adult education fund, adult supplementary education fund, area vocational school fund, professional development fund, parent education program fund, summer program fund, extraordinary school program fund and educational excellence grant program fund.

K.S.A. 72-6427 requires a school district to deposit or credit moneys of the district in a categorical fund (or program weighted fund or capital outlay fund) if the moneys are not required to be deposited or credited to a specific fund.

K.S.A. 72-6428 allows a school district to transfer moneys from the general fund to any categorical fund of the district in any school year.

Limitations on the use or availability of unencumbered moneys in categorical funds will be addressed below in the discussion of the specific funds.

Program Weighted Funds

Program weighted funds of a school district include: The vocational education fund, preschool-aged at-risk education fund, at-risk education fund and bilingual education fund.

K.S.A. 72-6427 requires a school district to deposit or credit moneys of the district in a program weighted fund (or categorical fund or capital outlay fund) if the moneys are not required to be deposited or credited to a specific fund.

K.S.A. 72-6428 allows a school district to transfer moneys from the district general fund to any program weighted fund of the district. These moneys cannot be transferred prior to maturation of the obligation necessitating the transfer and the amount transferred cannot exceed the amount of the obligation. An obligation is mature when the payment of an expense has been approved by the local school board. At the monthly meeting, a school board will be presented with expenses which must be approved. Generally, a school board will approve the transfer of the moneys from the general fund to the program weighted fund at the same time that it approves the expense. The moneys in the fund become encumbered at the time the board approves the expense.

Limitations on the use or availability of unencumbered moneys in program weighted funds will be addressed below in the discussion of the specific funds.

Miscellaneous Moneys

Under K.S.A. 72-6427, unless moneys are required by law to be deposited in or credited to a specific fund of a school district, any moneys received by a school district are deposited in or credited to a program weighted fund or a categorical fund of the district or to the district's capital outlay fund.

Moneys earned from the investment of an activity fund of a school district may be deposited in or credited to the particular activity fund.

Either of these types of moneys may be deposited in or credited to the district's general fund in any school year for which the allotment system authorized under K.S.A. 75-3722 has been inaugurated and applied to appropriations made for general state aid or in any school year for which any portion of appropriations made for general state aid are lapsed by act of the legislature. In these cases, the amount deposited in or credited to the district's general fund shall not exceed an amount equal to the amount of the reduction in the district's general state aid entitlement as a result of the application of the allotment system or the lapse of appropriations.

Moneys received by a school district from the federal government as the district's share of proceeds derived from sale by the federal government of its rights to oil, gas and other minerals located beneath the surface of lands within the district's boundaries may be deposited in the bond and interest fund of the district and used for the purposes of that fund. If at any time all indebtedness and obligations of that fund have been fully paid and canceled, these moneys are deposited in or credited to a program weighted fund or categorical fund of the district or to the district's capital outlay fund.

SCHOOL FUNDS SURVEY

The following is a description of the specific school district funds in the order that the funds are listed on the survey. There is brief overview of the source of the moneys in each fund, the purposes for which the moneys may be expended, concerns relating to the use of these moneys and suggestions for addressing those concerns. The general background section of this memo addresses general concerns regarding the use of unencumbered federal moneys and unencumbered moneys derived from gifts or grants. Therefore, comments concerning the category of funds listed on the survey as "Federal Funds" and the category of funds listed on the survey as "Gifts and Grants" are not repeated in this part of the memo.

General Fund (\$19,575)

The general fund consists of moneys derived from the twenty-mill statewide property tax levy, general state aid, tuition payments received under K.S.A. 72-7105a and federal impact aid. K.S.A. 72-6431 requires each school district to impose a twenty-mill property tax for the purpose of: Financing that portion of a school district's general fund not financed from any other source; paying a portion of the costs of operating and maintaining public schools in partial fulfillment of the constitutional obligation of the legislature to finance the educational interests of the state; and paying a portion of tax increment finance (TIF) bonds issued by cities to finance projects in TIF districts established prior to July 1, 1997.

K.S.A. 72-6428 allows a school district to transfer moneys from the general fund of the district to the following funds of the district: The categorical fund, program weighted fund, contingency reserve fund; capital outlay fund, special reserve fund, special liability expense fund or textbook and student materials revolving fund.

K.S.A. 72-6429 allows a school district to transfer back to its general fund any moneys which had been transferred from the general fund to another fund. The transfers must be made in the same school year and the amount transferred back to the general fund cannot exceed the amount originally transferred from the general fund.

If the stated purpose of a property tax levy is to transfer a specific portion of the proceeds to the state to fund the needs of other school districts, there would be no violation of Section 5 of Article 11 of the Constitution of the State of Kansas. Moneys in the general fund of a school district which are derived from the statewide levy may be transferred to the state to meet the needs of other school districts or the state because, as noted above, one of the stated purposes of the statewide levy is to pay a portion of the costs of operating and maintaining public schools in partial fulfillment of the constitutional obligation of the legislature to finance the educational interests of the state.

Supplemental General Fund (LOB) (\$24,701,502)

The supplemental general fund consists of moneys derived from a school district property tax levy and supplemental general state aid.

Moneys in the supplemental general fund may be expended for any purpose for which expenditures from the general fund are authorized or may be transferred to any program weighted fund or categorical fund of the district. Moneys in the supplemental general fund attributable to any percentage over 25% of state financial aid determined for the current school year may be transferred to the capital improvements fund of the district or the capital outlay fund of the district.

Use of moneys in the supplemental general fund attributable to a property tax levy for any purpose other than to fund the district's LOB most likely would be a violation of Section 5 of Article 11 of the Constitution of the State of Kansas. K.S.A. 72-6435 authorizes a school district to levy a property tax for the purpose of funding the district's LOB and the proceeds of the property tax cannot be transferred to the state to meet the needs of other school districts or the state. (Attorney General Opinion 91-142)

Adult Education Fund (\$992,282)

The adult education fund consists of moneys derived from a school district property tax levy and moneys transferred from the general fund of the school district.

Use of unencumbered moneys in the adult education fund attributable to a property tax levy for any purpose other than to fund the district's adult education fund most likely would be a violation of Section 5 of Article 11 of the Constitution of the State of Kansas. K.S.A. 72-4523 authorizes a school district to levy a property tax for the purpose of funding the district's adult education fund and the proceeds of the property tax cannot be transferred to the state to meet the needs of other school districts or the state. (Attorney General Opinion 91-142)

At-Risk Education Fund, Four-Year Old (\$883,992)

The at-risk fund, four-year old, consists of moneys transferred from the general fund of the school district. Moneys in this fund may be carried forward in the fund from school year to school year. Moneys in the fund may be expended to pay the costs of providing: Preschool-aged at-risk assistance or programs and K-12 at-risk, bilingual and vocational education programs and services. Moneys are transferred from the general fund to the preschool-aged at-risk fund at the maturation of the obligation of the fund necessitating the transfer.

The use of moneys in this fund for purposes other than those stated above would require amendment of state law.

Adult Supplemental Education Fund (\$181,354)

The adult supplemental education fund consists of fees and moneys transferred from the general fund of the school district. The cost of instruction for adult supplementary education programs are paid from the adult supplementary education fund.

The use of moneys in this fund for purposes other than that stated above would require amendment of state law.

At-Risk Education Fund, K-12 (\$7,634,402)

The at-risk fund, K-12, consists of moneys transferred from the general fund of the school district. Moneys in this fund may be carried forward in the fund from school year to school year. Moneys in the fund may be expended to pay the costs of providing: At-risk assistance or programs, including programs and services for non-proficient at-risk pupils, preschool-aged at-risk, bilingual and vocational education programs and services and full-day kindergarten. Moneys are transferred from the general fund to this fund at the maturation of the obligation of the fund necessitating the transfer.

Use of moneys in this fund for purposes other than those stated above would require amendment of state law.

Bilingual Education Fund (\$1,495,360)

The bilingual education fund consists of moneys transferred from the general fund of the school district. Moneys in this fund may be carried forward in the fund from school year to school year. Moneys in the fund may be expended to pay the costs of providing: Bilingual education assistance or programs and at-risk and preschool-aged at-risk education programs and services. Moneys are transferred from the general fund to the fund at the maturation of the obligation of the fund necessitating the transfer.

Use of moneys in this fund for purposes other than those stated above would require amendment of state law.

Virtual Education Fund (\$944,113)

The virtual education fund consists of state moneys received in the form of virtual school state aid. Virtual school state aid is deposited in the general fund of the school district and transferred to the virtual school fund. Moneys in this fund may be carried forward in the fund from school year to school year. Expenses of a district attributable to virtual schools offered by the district are paid from the fund.

Use of moneys in this fund for purposes other than that stated above would require amendment of state law.

Capital Outlay Fund (\$280,200,883)

The capital outlay fund consists of moneys derived from a school district property tax levy, capital outlay state aid and moneys transferred from other school district funds.

K.S.A. 72-6427 requires school districts to deposit in or credit to the capital outlay fund (or categorical fund or program weighted fund) any moneys not required to be deposited or credited to a specific fund of the district.

K.S.A. 72-6433 allows school districts to transfer to the capital outlay fund any moneys in the supplemental general fund attributable to any percentage over 25% of state financial aid determined for the current school year.

Use of moneys in the capital outlay fund attributable to a property tax levy for any purpose other than to pay for capital outlay expenses of the school district as described by the resolution adopted by the board of education of the district most likely would be a violation of Section 5 of Article 11 of the Constitution of the State of Kansas. K.S.A. 72-8801 authorizes school districts to levy a property tax for the purpose of paying the capital outlay expenses of the district, the proceeds of the property tax cannot be transferred to the state to meet the needs of other school districts or the state. (Attorney General Opinion 91-142)

Driver Training Fund (\$5,095,299)

The driver training fund consists of moneys received from student fees and charges for driver training courses, distributions from the state safety fund and the motorcycle safety fund and moneys transferred from the general fund of the school district. Expenses of a district directly attributable to driver training are paid from the fund.

Use of moneys in this fund for purposes other than that stated above would require amendment of state law.

Declining Enrollment Fund (\$0)

The declining enrollment fund consists of moneys derived from a school district property tax levy and declining enrollment state aid. The moneys derived from the levy and the state aid, if any, are used to finance costs incurred by the state that are attributable to the assignment of the declining enrollment weighting to the enrollment of the district. School districts which impose the levy remit all moneys in the fund to the state treasurer who deposits the entire amount in the state treasury to the credit of the state school district finance fund.

Because all moneys in this fund are transferred to the state immediately upon receipt by the school district, the unencumbered balance in this fund will always be \$0.

Extraordinary School Program Fund (\$1,316,285)

Moneys in the extraordinary school program fund consist of fees charged to pupils required to attend extraordinary school programs and moneys transferred from the school district's general fund. Expenses of operating extraordinary school programs are paid from

the fund. These programs include before and after school classes to provide pupils with additional time to achieve learner exit or improvement plan outcomes, provide remedial instruction or independent study assistance, provide an opportunity to strengthen or attain mastery of basic or higher order thinking skills and conduct special projects and activities which are designed to enrich and enhance the educational experience of pupils.

Use of moneys in this fund for purposes other than those stated above would require amendment of state law.

Food Service Fund (\$26,737,882)

The food service fund consists of federal moneys, state moneys and student fees. Expenses of a school district attributable to food service are paid from this fund. K.S.A. 72-5119 prohibits the transfer of moneys from the food service fund to any other fund.

Use of moneys in this fund for purposes other than that stated above or the transfer of moneys from the fund would require amendment of state law.

Professional Development Fund (\$8,116,394)

The professional development fund consists of state moneys received in the form of professional development state aid and moneys transferred from the general fund of the school district. The legislature did not appropriate any moneys for professional state aid last session and none has been appropriated this session. Expenses of a school district attributable to the provision of professional development programs are paid from this fund.

Use of moneys in this fund for purposes other than that stated above would require amendment of state law.

Parent Education Program Fund (\$1,647,435)

The parent education program fund consists of state grants and moneys transferred from other funds of the school district. Districts are required to match 65% of the state aid.

Expenses of a school district attributable to the provision of parent education programs are paid from this fund.

Use of moneys in this fund for purposes other than that stated above would require amendment of state law.

Summer School Fund (\$3,549,285)

The summer school fund consists of fees imposed on pupils attending summer programs and moneys transferred from the general fund of the school district.

Expenses of a school district attributable to the provision of summer programs are paid from this fund. These programs include programs operated during the summer months for the purpose of giving remedial instruction to pupils or for conducting special projects and activities designed to enrich and enhance the educational experience of pupils.

Use of moneys in this fund for purposes other than that stated above would require amendment of state law.

Special Education and Special Education Cooperative Funds (\$121,733,104 and

\$21,427,542)

The special education fund consists of state moneys appropriated for the provision of special education or related services under K.S.A. 72-979, 72-983 and 72-998, federal moneys received under IDEA, moneys received by a district pursuant to cooperative agreements entered into under K.S.A. 72-968 and moneys transferred from the general fund of the school district. School districts are allowed to enter into interlocal cooperative agreements or to form an interlocal to provide special education or related services. Except for that portion of IDEA moneys that may be used to provide early intervention services to children who do not have an IEP, all moneys in the special education fund or the special education cooperative fund must be expended to provide special education or related services to exceptional children.

Use of moneys in this fund for purposes other than that stated above would require amendment of state law.

Cost of Living Fund (\$0)

The cost of living fund consists of moneys derived from a school district property tax levy. The moneys derived from the levy are used to finance the costs incurred by the state that are attributable to the assignment of the cost of living weighting to the enrollment of the district. School districts which impose the levy remit all moneys in the fund to the state treasurer who deposits the entire amount in the state treasury to the credit of the state school district finance fund.

Because all moneys in this fund are transferred to the state immediately upon receipt by the school district, the unencumbered balance in this fund will always be \$0.

Vocational Education Fund (\$5,965,233)

The vocational education fund consists of federal moneys and moneys transferred from the general fund of the school district and may include tuition, fees and charges, if imposed. Moneys in this fund may be carried forward in the fund from school year to school year. Moneys in the fund may be expended to pay costs of providing vocational education programs. Moneys are transferred from the general fund to the fund at the maturation of the obligation of the fund necessitating the transfer.

Use of moneys in this fund for purposes other than that stated above would require amendment of state law.

Special Liability Expense Fund (\$7,194,470)

The special liability expense fund consists of moneys derived from a school district property tax levy and moneys transferred from other funds of the school district. Moneys in this fund are used for the purpose of paying costs of defense of the school district and district employees pursuant to the Kansas tort claims act and paying claims and judgments under the Kansas tort claims act. Moneys in the fund may be carried forward from school year to school year.

If moneys in this fund are attributable to a property tax levy and are used for any purpose other than those stated above, use of those moneys for any purpose other than those stated above most likely would be a violation of Section 5 of Article 11 of the

Constitution of the State of Kansas. K.S.A. 72-8248 authorizes school districts to levy a property tax for the purpose of funding the district's special liability expense fund and the proceeds of the property tax cannot be transferred to the state to meet the needs of other school districts or the state. (Attorney General Opinion 91-142)

School Retirement Fund (\$358,289)

K.S.A. 72-1726 *et seq.* provides property tax authority to the board of education of a city of the first class to provide for and maintain a public school teachers' retirement fund. This provision was enacted in 1911, which was long before the Kansas Public Employees Retirement System and the State School Retirement System were established. These provisions relate to local retirement plans for teachers employed prior to 1971. At that time, teachers could elect to remain under the local plan or become KPERS members. Teachers hired after that date become KPERS members. Kansas City is the only city levying property tax under this authority to fund a public school teachers' retirement fund. The necessity to levy a property tax pursuant to this authority will diminish over time.

The use of moneys in this fund for purposes other than that stated above would most likely be a violation of Section 5 of Article 11 of the Constitution of the State of Kansas.

Extraordinary Growth Facility Fund (\$0)

The ancillary facilities weighting fund consists of moneys derived from a school district property tax levy. The moneys derived from the levy are used to finance the costs incurred by the state that are attributable to the assignment of the ancillary facilities weighting to the enrollment of the district. School districts which impose the levy remit all moneys in the fund to the state treasurer who deposits the entire amount in the state treasury to the credit of the state school district finance fund.

Because all moneys in this fund are transferred to the state immediately upon receipt by the school district, the unencumbered balance in this fund will always be \$0.

Special Reserve Fund (\$75,346,958)

The special reserve fund consists of moneys transferred from other funds of the school district. Moneys in this fund are used to: Pay claims, judgments, expenses and other purposes relating to health care services, disability income benefits and group life insurance benefits; pay costs relating to uninsured losses; and pay costs of workers compensation insurance, workers compensation claims, awards, expenses and other purposes authorized by the workers compensation act.

Use of moneys in this fund for purposes other than that stated above would require amendment of state law.

KPERS Special Retirement Contributions Fund (\$0)

K.S.A. 74-4939a provides a procedure by which moneys are appropriated for the department of education for the payment of Kansas Public Employees Retirement System ("KPERS") employer contributions for school districts. The department distributes these moneys to each school district in an amount equal to the amount certified by KPERS for

that school district's participating employer's obligation to the system. The amounts are to be deposited in a special retirement contributions fund of the school district. The school district is then to remit to KPERS that amount to meet the participating employer obligation of the school district. By providing for the use of moneys for this purpose, it is essentially the legislature's intent to ensure that these KPERS employer contributions are recognized as state school funding. The moneys never appear as part of an unencumbered balance as such moneys move from the state to the department to the school districts to KPERS. This happens within a matter of days. The use of these moneys for other purposes would require amendment of state law, subject to the limitation that, if done in a manner which threatened retirement benefit payments, the amendment might constitute an impairment of contractual obligations of the state to KPERS members.

Contingency Reserve Fund (\$141,623,968)

The contingency reserve fund consists of moneys transferred from the general fund of the school district. Moneys in this fund are to be used for the payment of expenses of a district attributable to financial contingencies as determined by the board of education of the school district.

K.S.A. 72-6426 allows school districts to maintain an amount equal to 10% of the general fund budget of the school district in the contingency reserve fund. In school year 2012-2013 and in school years thereafter, the maximum amount that may be maintained in this fund will be 6% of the general fund budget of the school district. Under certain conditions, school districts are allowed to exceed the limitations imposed by K.S.A. 72-6426.

Use of moneys in this fund for purposes other than that stated above would require amendment of state law.

Textbook and Student Materials Revolving Fund (\$35,010,302)

The textbook and student materials revolving fund consists of student fees for the purchase of textbooks and other materials and moneys transferred from the general fund of the school district. Moneys in this fund are used for the purpose of: Purchasing textbooks, workbooks and materials supplemental to textbooks used in specific courses, specialized clothing and towels for use in physical education, shop and science courses, musical instruments for use in band or orchestra, instructional materials for the use of technology in specific courses and materials or supplies which are consumed in specific courses or projects or in which a pupil may retain ownership upon completion of specific courses or projects and paying the cost of materials or other items used in curricular, extracurricular or other school-related activities.

Use of moneys in this fund for purposes other than that stated above would require amendment of state law.

Bond and Interest Funds #1 and #2 (\$350,781,237 and \$14,564,157)

The bond and interest funds consist of moneys derived from a school district property tax levy, capital improvement state aid and moneys transferred from the supplemental general fund of the school district. Moneys in these funds are used for the payment of bonds issued by the school district and interest on those bonds.

K.S.A. 72-6433 allows school districts to transfer to the bond and interest fund any moneys in the supplemental general fund attributable to any percentage over 25% of state financial aid determined for the current school year.

Use of unencumbered moneys in the bond and interest fund attributable to a property tax levy for any purpose other than to pay for capital improvements expenses of the school district as described by the resolution adopted by the board of education of the district most likely would be a violation of Section 5 of Article 11 of the Constitution of the State of Kansas. K.S.A. 10-113 authorizes school districts to levy a property tax for the purpose of paying bonds issued by the district and interest on those bonds, the proceeds of the property tax cannot be transferred to the state to meet the needs of other school districts or the state. (Attorney General Opinion 91-142)

Use of capital improvement state aid would not violate Section 5 of Article 11 of the Constitution of the State of Kansas but use of this state aid might be construed as an impairment of the bonds which have been issued by school districts.

No-Fund Warrants (\$0)

School districts make property tax levies pursuant to K.S.A. 79-2939 to pay no-fund warrants issued by school districts to pay emergency unforeseen expenses of school districts. The use of these moneys for any purpose other than that stated above would most likely be a violation of Section 5 of Article 11 of the Constitution of the State of Kansas.

Special Assessments (\$4,449,359)

Article 6A of Chapter 12 of the Kansas Statutes Annotated grants broad authority to cities for undertaking all types of municipal works or improvements. Municipal works or improvements include improvements to streets, sidewalks, crosswalks, curbs, storm water drains, sanitary sewer systems, street lights, waterworks, bridges, asbestos control, and many other municipal projects. K.S.A. 12-6a10 provides for the levy of a special assessment or special property tax against property in addition to general property taxes to pay the cost of those improvements. Governmental entities, including school districts, are exempt from general property taxes but are not exempt from paying special assessments for any such municipal works or improvements. School districts pay special assessments levied upon school property like any other property owner located in the area benefitted by such municipal works or improvements. The use of these moneys for any other purpose other than that stated above would most likely be a violation of Section 5 of Article 11 of the Constitution of the State of Kansas.

CONCLUSION

Because state, federal and local property tax levy moneys are commingled in most school district funds, it is impossible to determine those unencumbered moneys which are available for purposes other than that specified for the fund in which the moneys are held. With further information regarding the sources of these moneys, it would be possible to better determine the amounts available for such other purposes. In addition, by amending statutes as indicated above, moneys in some school district funds may be made available for purposes other than that specified by the statute.