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September 6, 2018

ATTORNEY GENERAL OPINION NO. 2018- 12

Georgia Ransone, Trustee
Mark Reed, Treasurer
Marilyn Sommers, Clerk
Silver Lake Township
4100 NW Sunset Lane
Silver Lake, KS 66539

Re: Townships and Township Officers—General Provisions—Townships; Corporate Status; Powers

Synopsis: Townships derive their powers from the legislature. A township may not exercise a power not granted by the legislature. Cited herein: K.S.A. 12-1928; 12-1683; 12-1691; 19-101; 80-101; 80-104; 80-301; 80-2518; Kan. Const. Art. 12, Sec. 5.

* * *

Dear Ms. Ransone, Mr. Reed, and Ms. Sommers:

As the township officers for Silver Lake Township, you ask our opinion on a matter related to the powers of townships. Specifically, you ask whether a township may solicit and receive donations. For the reasons discussed below, we conclude the answer to your question is "no."

In your letter, you provide background for your question. You describe a water well owned by the township that is experiencing declining production. You explain that the water is not used for municipal drinking water, but rather for maintenance of township equipment and other light industrial and agricultural purposes. After having the well and its related systems inspected, you determined that the well was insufficient to continue serving township needs and that the water it provides should be replaced by a connection to a rural water system, at an estimated cost of $10,000. You note that this would strain the

township's budget, and ask for our opinion on whether the township may use donations to finance the cost of this project.[1]

You correctly note that local governments may exercise only those powers specifically granted by the legislature. This is referred to as Dillon's Rule,[2] which provides:

> It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation.[3]

By constitutional amendment in 1961, Kansans "stood Dillon's Rule on its head by providing a direct source, from the people, of legislative power for cities."[4] The legislature granted home rule to counties in 1974.[5] Townships have not been granted home rule.

The legislature granted townships the power to: sue and be sued; purchase and hold real and personal property; sell, convey and dispose of real and personal property; and "make all contracts that may be necessary and convenient."[6] The legislature has not granted townships the power to accept gifts and donations generally.[7]

However, your letter inquires whether the power to accept gifts could be implied by other powers, such as the duty of the trustee to "superintend all the financial concerns of the township."[8] In order to answer your question, we must turn to a well-known canon of statutory construction.

> The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. We first attempt to ascertain legislative intent by reading the plain language of the statutes and giving common words their ordinary meanings. When a statute is plain and unambiguous, we do not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it.[9]

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[1] Georgia Ransone, Mark Reed, and Marilyn Sommers, Correspondence, June 18, 2018.
[2] *See General Bldg. Contractors, L.L.C. v. Bd. of Shawnee Cty. Comm'rs*, 275 Kan. 525, 533-34 (2003).
[3] Dillon, *Municipal Corporations*, § 237 (5th ed. 1911).
[4] Kansas Legislator Briefing Book, Home Rule, at 2 (2015). *See* Kan. Const. Art. 12, Sec. 5.
[5] K.S.A. 19-101.
[6] K.S.A. 80-101.
[7] But *see* K.S.A. 80-104 (township may "accept land in the form of a gift, donation or devise").
[8] K.S.A. 80-301.
[9] *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 918 (2013), quoting *Stewart Title of the Midwest v. Reece & Nichols Realtors*, 294 Kan. 553, 564-65 (2012) (internal citations omitted).

The power to "superintend" is the ministerial power "to have or exercise the charge and oversight of."[10] We do not believe it is necessary to imply the power to accept gifts and donations in order for the township trustee to exercise this ministerial power; doing so would require us to read into the statute an additional grant of power not readily found in it. We are also mindful of the fact the legislature *has* granted other municipal corporations the power the accept gifts and donations generally.[11] This creates a fair, reasonable, and substantial doubt that this power is implied in any of the other grants of power to townships. Pursuant to Dillon's Rule, this doubt must be resolved against the township.

In summary, townships have only the powers granted to them by the legislature. The legislature has not granted townships the power to accept gifts and donations generally. The power to accept gifts and donations generally cannot be fairly implied in any of the other powers granted to townships. For these reasons, we opine that a township does not have the power to solicit and accept donations.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/s/Craig Paschang

Craig Paschang
Assistant Attorney General

DS:AA:CP:sb

[10] http://www.merriam-webster.com/dictionary/superintend, accessed on August 17, 2018.
[11] *E.g.*, K.S.A. 12-1928 (recreation commission); K.S.A. 12-1683 and 12-1691 (museum boards); K.S.A. 80-2518 (hospital board).