



Posted on Tue, Aug. 27, 2013

Questions are raised about Kansas City tax allocations

By CHRISTINE VENDEL
The Kansas City Star

After Kansas City voters approved a quarter-cent public safety sales tax in 2002, all of the money generated the first few years went to public safety projects.

But in recent years, city officials have found two ways to divert millions of dollars to the city's general fund.

One of the practices — keeping about \$1.3 million annually in interest generated by the tax — might violate state law.

The other practice — diverting revenue from a merchant-paid tax tied to the sales tax — appears to be legal. But some civic leaders question whether it is appropriate for the city to take the money, \$8 million so far. That tax is expected to generate \$30 million more before it expires in 2026 along with the sales tax.

Voters first approved the sales tax to build a police academy and make other public safety improvements in the largest building program in the Police Department's history. Voters renewed the tax in 2010 to build new police stations, upgrade Police Headquarters and build a new state-of-the art crime lab.

Now the crime lab project is facing a budget shortfall that could require its size to be slashed by nearly 25 percent to save nearly \$6 million. Police commissioners are scrambling to find money to save the lab's planned size, noting that a 71,000-square-foot lab was a centerpiece of the tax renewal campaign.

But the millions of dollars that the city is keeping aren't available for the lab, city officials said. They say the money belongs to the city's general fund, so any money sent to police projects would require cuts to another city department or service.

City officials aren't hiding the fact that they are keeping the money, but they aren't exactly publicizing it either. Some police commissioners reached by The Star didn't know about the funds until a reporter showed them the city's budget documents. They hadn't asked for the money because they didn't know it existed.

"If it was available to us, it certainly would make an easy solution to a very difficult problem," said Board of Police Commissioners President Lisa Pelofsky.

Sales tax

Interest from a special sales tax belongs to the projects that voters were trying to support, one municipal budget expert said.

"My understanding is you use that for projects," said Richard Sheets, deputy director of the Missouri Municipal League. "This is a specific tax and you derive some sort of income. I really believe that would be part of the fund."

The state law that authorizes Kansas City to levy the public safety sales tax says the revenue "shall be deposited in a special trust fund and shall be used solely for capital improvements."

But since the law doesn't explicitly say that interest must be retained in the fund, Assistant City Attorney Steve Walsh said the city believes it can allocate the interest earned to the general fund.

When asked how taxpayers can know for sure whether the diversion of interest is legal, Walsh said: "There really isn't an advisory board you can go to for an opinion. That's what the courts are for. Sometimes people disagree on the meanings of laws."

Local use tax

The bulk of the revenue that the city is keeping comes from the city's "local use tax," which is a replacement for sales tax on large purchases made across state lines, mostly by businesses.

Items bought in Kansas City require sales tax to be paid. But items such as office furniture or computers that Kansas

City business owners buy outside the state avoid Kansas City's sales tax. In those instances, the local use tax is applied to purchases of more than \$2,000.

According to a city ordinance, when the sales tax rate goes up or down, the local use rate also rises or falls by the same amount. So when voters approved a quarter-cent sales tax to raise money for public safety projects, the local use tax also went up by a quarter-cent.

The public safety sales tax generates about \$17.3 million annually, while the increase to the local use tax generates about \$3 million annually.

The two types of taxes are mentioned together throughout Missouri statutes, which note that local use taxes should be distributed in the same manner as sales taxes.

But Kansas City officials believe they are entitled to the local use portion, since it's not a "sales tax."

Sheets, of the Missouri Municipal League, agreed and said the state law regarding local use taxes was written to provide cities with flexibility. Although voters may prefer to have revenue tied to specific projects, it can be stifling for city officials trying to adjust to shifting priorities, he said.

"The money is still being spent on public projects," he said. "But goals and objectives change, and cities only have a limited amount of resources."

Critics think such "flexibility" violates the spirit of the tax increase.

"All the local use tax is, is a tax on interstate sales," said Dan Cofran, a lawyer, former city councilman and former finance committee chair. "They're taking a hyper-technical view of the whole thing."

The Police Department isn't the only department losing local use funds. The city also keeps about \$4 million annually in local use money from a Parks and Recreation sales tax.

But the city has allowed, and continues to allow, the Kansas City Fire Department to keep local use funds associated with its 15-year sales tax, approved by voters in 2001.

The city manager believes the Fire Department needs the money to help pay salaries, said Danny Rotert, the city's main spokesman. Even with the local use money thrown in, expenses paid from the fire tax exceeded revenues last year by more than \$3 million. That's in part why fire officials need the local use money, Rotert said.

The city's new practice of keeping the police-related local use tax money "makes absolutely no sense," said former police board President Karl Zobrist, who served on the board during the first public sales tax period and campaigned for its renewal.

"It sounds like there's two sets of rules that kicked in," he said. "I'm not aware of anything in the 2010 sales tax that began in 2011 that justifies the city changing the rules."

At least one police board member did not want to criticize the city's financial decisions, fearing budgetary repercussions. The Police Department is overseen by a police board comprised of the mayor and four local residents appointed by the governor in a "state control" model. But city officials decide how much money to give the department each year, and the city owns all the police facilities.

Police Chief Darryl Forté said he has accepted the city's position on the local use tax.

"If we get that money," Forté said of the local use tax, "I'm confident the city will take it back somewhere else from our annual budget. There's no reason to play a money shuffling game."

Rotert said as much in emails to The Star.

He said the city could give the use tax revenue to police "and then reduce the contribution from the General Fund in a corresponding amount ... But this is a case of being careful what you wish for."

To reach Christine Vendel, call 816-234-4438 or send email to cvendel@kcstar.com.