



ATTORNEY GENERAL OPINION
2020-9

The Honorable Brent Howard
Oklahoma State Senate, District 38
2300 N. Lincoln Blvd., Room 536
Oklahoma City, OK 73105

May 14, 2020

Dear Senator Howard:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

Does 11 O.S.2011, § 22-159 allow a municipality to use revenue in excess of its expenses to support a school located within the municipality when the sources of such excess revenues are municipal sales tax proceeds and utility sales?

I.
BACKGROUND

Until the passage in 1999 of what is now codified as Title 11, Section 22-159, a municipality was not directly authorized to provide funding for public school districts. In its current form, Section 22-159 provides as follows:

Municipalities may support any public school system located in whole or in part within the corporate limits of the municipality or any public school system located outside and completely surrounded by the corporate limits of the municipality, including without limitation by the expenditure of municipal revenues for construction or improvement of public school facilities. In furtherance of municipal support for any public school system, as authorized by this section, the municipal governing body may take all actions necessary to effectuate such support.

11 O.S.2011, § 22-159. Section 22-159 was upheld by the Oklahoma Supreme Court against various constitutional challenges in *Grimes v. Oklahoma City*, 2002 OK 47, 49 P.3d 719, a case involving two municipal ordinances that apportioned sales tax revenues to support local school districts. The Court further held that while Section 22-159 does not explicitly authorize

municipalities to levy a sales tax, that authority was implicitly granted under the municipality's broader authority to "support" a local public school system. *Id.* ¶¶ 17-18, 49 P.3d at 726.¹ Specifically, the Court stated "'Support,' as used in § 22-159, implies financial support, which necessarily implies the power to levy taxes." *Id.* ¶ 18, 49 P.3d at 726.²

II. DISCUSSION

You ask whether a municipality may use general fund revenues derived from sales tax revenues and utility sales, which are in excess of its expenses, to fund day-to-day operations of the public school located within the municipality. Because revenues from a municipal sales tax are subject to different restrictions than revenues from utility sales, we address them separately.

A. **Title 11, Section 22-159 generally permits a municipality to expend sales tax revenues in excess of its expenses to support its local public school system.**

Section 2701 of Title 68 permits the State's municipalities to assess, levy, and collect taxes, other than *ad valorem* taxes, "for general and special purposes of municipal government" subject to certain restrictions and limitations. 68 O.S.2011, § 2701(A). If a municipality levies such a tax for a *limited* purpose, the projects or expenditures for which the tax is levied must be specified in the relevant municipal ordinance, and money collected can be expended only for the purposes stated in the ordinance. *Id.* §2701(B). If the tax is levied for *general* purposes, the revenues derived from the tax "shall be deposited in the municipal general fund." *Id.* § 2701(A)(7).³ A municipality's general fund is used to "account for all monies received and disbursed for general municipal government purposes[.]" 11 O.S.2011, § 17-212. Since you indicate in your request that the sales tax revenues are in the municipality's general fund, we assume for purposes of this Opinion that the revenues derive from a general purpose sales tax.

As you explain in your request, the revenues collected by the municipality are in excess of its expenses, resulting in an end-of-year carryforward. Under the Municipal Budget Act, revenues remaining in a fund at the end of a fiscal year shall be carried forward to the credit of the fund for the next fiscal year. 11 O.S.2011, § 17-211(A). If there is revenue in the general fund of the municipality in excess of its expenses, it is permissible to utilize those revenues for any lawful purpose, which includes supporting of a public school system as expressly permitted by Section

¹ The Court in *Grimes* also held that Section 22-159 was enacted as a new provision of law, and was not a part of the Oklahoma Municipal Utility Bond Act ("the Act."), 11 O.S.2001, §§ 22-151 to 22-158. In so doing, the Court implicitly overruled portions of 2000 OK AG 59 and 2001 OK AG 40, but only to the extent that they concluded that Section 22-159 is a part of the Act.

² Shortly after the *Grimes* decision was issued, this office was asked about the permissible uses of municipal funding provided under Section 22-159. The office concluded that, while Section 22-159 explicitly mentions "construction or improvement of public school facilities" as a permissible use, the statute's language was broad enough to allow a municipality to provide funding for a public school system's day-to-day operations, including teacher salaries. *See* 2003 OK AG 6.

³ The municipal general fund is one of several funds that may be created after a municipality adopts the provisions of the Municipal Budget Act. *See* 11 O.S.2011, § 17-212.

22-159. However, any such appropriation made under the Municipal Budget Act must be properly accounted for and appropriated in accordance with the municipal budget process. *See id.* §§ 17-207, 17-209.⁴

B. Utility revenues collected by a municipality and deposited into its general fund may be used by the municipality to support a local public school system under Title 11, Section 22-159.

You also ask whether, under Section 22-159, a municipality may use the excess general fund revenues derived from utility sales for the benefit of the local school within the municipality. The text of Section 22-159 does not identify or limit the sources from which municipal support for a local school system may be drawn. It simply states that “[m]unicipalities may support” local school systems and that “the municipal governing body may take all actions necessary to effectuate such support.” 11 O.S.2011, § 22-159.

Both the Oklahoma Constitution and statutes grant a municipality broad power to provide public services to its residents. OKLA. CONST. art. X, § 27; 11 O.S.2011, §§ 22-104, 37-102. Municipalities are specifically empowered to provide utility services to their residents and collect revenue for utility sales. *Id.*⁵

The Court in *Grimes* and this office in Attorney General Opinion 2003-6 concluded that municipal sales taxes *are* a permissible revenue source for municipal support of the local school system under Section 22-159, but did not conclude that municipal “support” could *only* derive from sales tax revenues. The language of Section 22-159 is nonspecific, utilizing terms such as “support” and the “expenditure of municipal revenues” without mention of permissible (or impermissible) revenue sources to fund such support (beyond the already discussed Constitutional and statutory limitations on limited-purpose sales tax revenues). Moreover, the Legislature again employed broad language in authorizing municipalities to take advantage of this provision: “In furtherance of municipal support for any public school system, as authorized by this section, the municipal governing body may take all actions necessary to effectuate such support.”

Based on the broadly-worded text of Section 22-159, and without any evidence suggesting the Legislature intended to permit only certain funding sources to be used for municipal support of a

⁴ By contrast, if the tax revenues derived from a limited purpose sales tax, they would be subject to further restriction under Title 68, Section 2701 and the Oklahoma Constitution. *See* 2003 OK AG 6 (citing 68 O.S.2001, § 2701(B) and OKLA. CONST. art X, § 19). For example, money collected under the tax could be spent only for the purposes specifically described in the taxing ordinance as approved by the voters. *Id.*

⁵ The Oklahoma Supreme Court has acknowledged the general rule that “the fixing of rates of municipally owned utilities is a legislative function and in the absence of a clear showing that the rates are unjust, unreasonable, or discriminatory, the courts may not interfere.” *Okla. City Hotel & Motor Hotel Ass’n v. Okla. City*, 1974 OK 94, ¶ 6, 531 P.2d. 316, 318. Accordingly, for purposes of this Opinion we do not address the propriety of municipal utility rates that result in revenues in excess of the municipality’s expenses. Moreover, any such analysis would require a level of fact-finding that goes beyond the proper scope of an Attorney General opinion. *See* 74 O.S.Supp.2019, § 18(b)(A)(5) (requiring the Attorney General “[t]o give an opinion in writing upon all *questions of law*” that are submitted to this office (emphasis added)).

public school system as outlined in that provision, we conclude a municipality may use excess general fund revenues derived from utility sales to support a local public school system.⁶

It is, therefore, the official Opinion of the Attorney General that:

- 1. A municipality may use sales tax revenue in excess of its expenses to support a local public school system pursuant to 11 O.S.2011, § 22-159 so long as (a) that use was included in the voter-approved ordinance that levied the tax, if the sales tax was for a limited purpose, or (b) the voter-approved ordinance that levied the tax was for a general purpose and those funds are available from the general fund. *See* 68 O.S.2011, § 2701(A), (B); OKLA. CONST. art X, § 19; 2003 OK AG 6. Whether a particular municipality may use the portion of excess revenues derived from those tax levies to support the school system depends on the language of the specific tax ordinance.**
- 2. A municipality may use revenue from utility sales in its general fund in excess of its expenses to support a local public school system pursuant to 11 O.S.2011, § 22-159.**

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⁶ This opinion does not address whether a school that receives monies pursuant to Section 22-159 would be impacted by the provisions of the Formula for State Aid as outlined in Title 70, Section 18-200.1. Any such determination would depend on facts not before us and could change over time as the figures set forth in Section 18-200.1 change for any particular school.