

STATE OF KANSAS  
LEGISLATURE



**SEN. TY MASTERSON**      **REP. RON RYCKMAN**  
PRESIDENT OF THE SENATE      SPEAKER OF THE HOUSE

---

August 16, 2021

Governor Laura Kelly  
300 SW 10<sup>th</sup>, 241-S  
Topeka, Kansas 66612

Governor Kelly,

It has come to our attention that in fiscal year (FY) 2022, federal coronavirus relief moneys are being expended that were not otherwise specifically authorized by law. We have great concerns that this is occurring in violation of state law.

As you are aware, during the 2020 legislative special session, House Bill No. 2016 Section 4 was enacted, authorizing federal coronavirus relief moneys to be expended by state agencies during FY 2020 and 2021 following state finance council (SFC) approval of such expenditures. At the June 16, 2020, SFC meeting, the SFC approved a list of proposed expenditures from the SPARK task force, plus any additional federal coronavirus relief grants that are in existing agency federal funds. [SFC Resolution No. 20-704]

During the 2021 legislative session, House Bill No. 2007 Section 197(c) was enacted, providing that the provisions in Section 197(a) and (b) allowing the Governor to authorize the expenditure of federal grants in FY 2022 do not apply to federal coronavirus relief moneys.

Further, 2021 Senate Bill No. 159 Section 63 provides that the SPARK Executive Committee will make recommendations to the SFC prior to the SFC authorizing expenditures, when SFC action is required.

Pursuant to K.S.A. 75-3711a, SFC authorization is required for a state agency to receive and expend federal funds if not otherwise specifically authorized by law. The federal coronavirus relief moneys are not otherwise appropriated by law for FY 2022. This is the known legislative policy concerning the federal coronavirus relief moneys for FY 2022.

From discussions with Will Lawrence and Clay Britton, it is our understanding that your position is that SFC Resolution No. 20-704 controls. Mr. Lawrence stated it was his opinion that SFC Resolution No. 20-704 applied to FY 2021 and FY 2022 (the resolution does not state a specific FY), and by that logic, such resolution approves the expenditures of any additional coronavirus relief grants that pass through existing agency federal funds. The resolution bases its' authority on 2020 Special Session House Bill No. 2016 Section 4. Such section specifically states it is for FY 2020 and FY 2021, it is NOT for FY 2022. Further, in the fifth "WHEREAS" clause, it states such action is not contrary to known legislative policy as required by K.S.A. 75-3711c(c)(2). This resolution is contrary to known legislative policy.

During the 2021 Legislative Session, the legislature passed, and you signed, provisions in House Bill No. 2007 and Senate Bill No. 159 which clearly provided a mechanism for the SPARK Executive Committee to review and recommend and the SFC to approve the FY 2022 coronavirus relief funds that were not accounted for in your budget and adopted by the Legislature in such bills.

The following are examples of federal coronavirus relief moneys that are currently being expended in a manner that does not comply with state law:

1. During FY 2022, the Kansas Department of Health and Environment paid \$4.0 million to the Boston Consulting Group in a no-bid contract for COVID-19 consulting services from the Immunization Grant Federal Fund. COVID-19 related spending from this fund has already exceeded the amount reviewed and approved by the Legislature by \$1.5 million, only 6 weeks into the fiscal year. Spending amounts for COVID-19 from federal funds will substantially exceed the amount originally budgeted and specifically authorized by the Legislature. These expenditures must be recommended by the SPARK Executive Committee and approved by the SFC pursuant to 2021 Senate Bill No. 159 Section 63.

2. During FY 2021, subsequent to the 2021 Legislative Session, and in FY 2022, the Kansas Department of Health and Environment has paid \$3.7 million for Public Service Announcements related to COVID-19 from the Disaster Grants and Public Assistance Federal Fund of KDHE. (FY 2021 \$1.3 million; FY 2022 \$2.3 million) No expenditures were budgeted by the Legislature for FY 2022 from this fund and expenditures should not have occurred without prior approval by the SPARK Executive Committee and the SFC for any COVID-19 related expenditure. While the source of the funding was Federal Emergency Management Authority, the purpose of the funds was COVID-19 response and this program and any expenditures must be recommended by the SPARK Executive Committee and approved by the SFC pursuant to 2021 Senate Bill No. 159 Section 63 prior to implementation and funding.

3. Pursuant to ARPA, the US Department of the Treasury provided \$167.4 million from the federal Coronavirus Local Fiscal Recovery Fund to the Office of Governor for payment to local non-entitlement units (NEUs) of government to address the economic and health consequences of the COVID-19 pandemic. (NEUs are generally defined as local governments serving populations less than 50,000.) This money was not budgeted and specifically authorized by the Legislature during the 2021 Session for FY 2022. On June 17, 2021, the Office of Recovery hosted a webinar providing NEUs with initial instructions to request funds from the Office of Governor, to be submitted by July 26, 2021. As of August 11, 2021, an amount of \$82.7 million was expended in FY 2022 as payment to NEUs without a recommendation from the SPARK Executive Committee and approval of the SFC pursuant to 2021 Senate Bill No. 159 Section 63.

We have consulted the Attorney General concerning this matter and following his review, the Attorney General agrees with our legal analysis. Attached is a copy of the Attorney General's letter confirming the above analysis.

On behalf of the people of Kansas we hereby demand that you immediately stop expending any funds that were not otherwise specifically authorized by law and follow the agreed upon procedure which you signed into law not once, but twice pursuant to 2021 House Bill No. 2007 and Senate Bill No. 159. Respect for the rule of law compels you to cease your attempt to circumvent the will of the people as expressed by the Legislature and approved by your own hand.

As former President Obama said, “One of the challenges of a democratic government is making sure that even in the midst of emergencies and passions, we make sure that rule of law and basic precepts of justice and liberty prevail.” If you continue to expend these funds in a manner that breaks state law, we will be forced to explore all necessary legal actions to see that the rule of law is upheld and this challenge to our Kansas system of government is reined in. We look forward to hearing from you with your assurance that you will begin to follow the law of the State of Kansas.



Senator Ty Masterson  
Senate President



Representative Ron Ryckman  
Speaker of the House of Representatives



Senator Rick Billinger,  
Senate Ways and Means  
Committee Chairman



Representative Troy Waymaster,  
House Appropriations  
Committee Chairman