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Subject

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STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

February 13, 1974

Opinion No. 74- 53

Mr. William B. Buechel
Attorney at Law
Law Building
P.O. Box 327
Concordia, Kansas 66901

RE: Authorized tax levies under K.S.A. 12-1737

Dear Mr. Buechel:

Your letter of January 30, 1974, requests an opinion from this office interpreting the tax levy provisions of K.S.A. 12-1737. You have specifically asked two questions: (1) Where a second class city has previously established a building fund with a ten year, one mill annual tax levy, may said city subsequently, by resolution, levy an additional one mill for the same purpose and (2) In the alternative, may such a second class city under the same circumstances adopt an amending resolution authorizing a two mill annual levy for its building fund?

Essentially these questions appear to pivot on a common issue: may a city change its mind under the provisions of K.S.A. 12-1737 with regard to the annual levy for its building fund, and increase said levy to the statutory limit?

K.S.A. 12-1737 provides in pertinent part as follows:

"The governing body of any city may, for the purposes hereinbefore authorized and provided [K.S.A. 17-1236]:

(d) Make an annual tax levy of not more than one (1) mill for any city of the

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first class, and not more than two (2) mills for any city of the second or third class, which tax levy may be made for a period of not to exceed ten (10) years upon all taxable tangible property in such city for the purpose of creating a building fund to be used for the purposes herein provided;

". . . No levies shall be made for the purpose of creating a building fund under the provisions of this act until a resolution authorizing the making of such levies shall be adopted by the governing body of the city. Such resolution shall state the specific purpose for which such tax levy is made, a total amount proposed to be raised, the number of years such tax levy shall be made, and shall be published once each week for three (3) consecutive weeks in the official city paper.

"The levy herein authorized shall be in addition to and not limited by any other act authorizing or limiting the tax levies of such city. Such building fund may be used for the purposes as in this act provided at any time after the second levy has been made"

The authorization for establishing a special building fund via annual tax levies is specific and clear. And, we find no limitation on the authority of a city utilizing K.S.A. 12-1737 to alter its initial tax levy by resolution providing that any additional mill levies do not exceed the statutory limit or circumvent the necessary requirements for establishing the initial fund, i.e., a resolution stating the specific purpose for which a tax levy is to be made, the total amount proposed to be raised, the number of years such tax levy is to be made, and the publication of said resolution once each week for three consecutive weeks in the official city paper.

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Accordingly, it is the opinion of this office that a city may increase a previously established mill levy for a special building fund authorized by K.S.A. 12-1737, or it may proceed to pass a new resolution for a new building fund altogether. However, one caveat must be observed. In order to proceed with alterations of an established mill levy the city must adhere strictly to the delineated requirements for establishing a special building fund in order that the additional levy is compatible with the statute. In other words, a city may not so alter or enlarge a mill levy under K.S.A. 12-1737 which would in effect produce revenue in excess of what it should have produced with a maximum levy from the date of the initial authorization.

I hope this has answered your questions, and should you have any further inquiries please feel free to contact us.

Very truly yours,



VERN MILLER
Attorney General

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