

Subject Special Office
General
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Legislature 1974



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

June 13, 1974

Opinion No. 74- 188

Charles V. Hamm
General Counsel
Legal Division
State Department of Social
and Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Dear Mr. Hamm:

Section 1 of 1974 House Bill 1873 states thus:

"Whenever a petition containing the signatures of not less than five percent (5%) of the registered voters of any city or county is filed with the appropriate election officer requesting an election on the question of whether a specified levy of not more than one (1) mill shall be made on all of the taxable tangible property in the city or county for the purpose of creating or continuing a service program for the elderly operated by municipalities as defined in K.S.A. 10-101 or non-profit organizations, such proposition shall be submitted to the voters of the city or county at a question submitted election held in accordance with the provisions of K.S.A. 10-120. The proposition submitted shall be in the following form: 'Shall an annual tax of _____ mill be levied in (city or county) to fund a service program for the elderly.' If a majority of the qualified electors voting on the proposition vote 'yes' such tax levy shall be made annually on all of the taxable tangible property within the city or county approving the proposition. No city which has approved a service program for the elderly at an election held pursuant to the authority granted herein shall be included in a county service program for the elderly so long as such city service program is in operation."

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You inquire, first, whether the levy which may be authorized hereunder is subject to the aggregate levy limitation imposed by K.S.A. 79-5001 et seq. K.S.A. 79-5003 states in pertinent part thus:

"All tax levies now or hereafter authorized by law to be made by taxing subdivisions subject to the provisions of this act, except levies specifically excluded under the provisions of section 11 [79-5011] of this act, shall be subject to the aggregate limitation prescribed hereunder unless the provisions of the act authorizing the levy specifically states that such levy is exempt from the limitation imposed under the provisions of section 1 to 16 [79-5001 to 79-5016], inclusive, of this act."

House Bill 1873 contains no language exempting the levy from the aggregate limitation of K.S.A. 79-5001 et seq., and any levy authorized thereunder is accordingly subject to the aggregate levy limitation.

You inquire, secondly, whether there are any specific requirements regarding the carrying, signing and filing of the petition. The sufficiency of the petition must be determined by the county election officer in accordance with K.S.A. 25-3601 et seq. K.S.A. 25-3604 states in part that

"signatures to petitions which assert that the petitioners are 'legally qualified electors' or words of like effect in conformity with the applicable statute shall be accepted, by the officer determining the sufficiency of petition signatures, as proper signatures, so long as persons of the same names or ones of such similarity as to reasonably appear to be the same persons are contained in the registration books, and so long as the address of the petitioner is furnished, unless such official has reasonable evidence that the asserted signature is not in fact the signature of the person it purports to be, or that the signature though genuine is not the signature of a duly qualified elector."

In determining whether signatures bear sufficient similarity to names appearing in the registration book, the county election officer must follow the rules and regulations promulgated by the Secretary of State for this purpose.

There are no specific requirements regarding the carrying of the petition. Notarization is not required by the person carrying the petition, although it is a practice which may be desirable

in order to forestall technical and unsubstantial objections to the form of a given petition. Filing of the petition is governed by K.S.A. 25-3602, which states thus:

"Each petition shall consist of one or more documents pertaining to a single issue or proposition under one distinctive title, and such documents shall be filed with the county election officer or other official, if another official is designated in the applicable statutes, such filing to be made at one time all in one group. Later or successive filings of documents relating to the same issue or proposition shall be deemed to be separate petitions and not a part of any earlier or later filing."

You inquire, thirdly, as to who is responsible for administration of the funds, i.e., whether the board of county commissioners administers them for a county program and the city governing body, if the levy is made only by the city. In our view, the funds are to be administered by the governing body to whom the petition is addressed, of either the city or county, thus, by the governing body which levies the tax.

Section one specifies that the levy may be made for creating or continuing a service program for the elderly "operated by municipalities as defined in K.S.A. 10-101 or non-profit corporations" Although the program proposed to be funded by the levy authorized hereunder may be operated by a private non-profit corporation, the funds derived from the remaining public funds are to be administered solely by the governing body of the taxing subdivision under the authority of which said funds are raised. Funds may be made available to a nonprofit corporation which operates or sponsors a service program pursuant to appropriate contract or agreement between the governing body and the corporation.

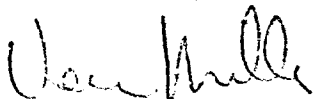
Lastly, you point out that the bill contains no definition of a "service program for the elderly," and inquire as to the scope of the term. Wisely, perhaps, the Legislature did not attempt a rigorous definition which would restrict innovative and imaginative proposals extending new and varied programs to the elderly. In large measure, the determination whether a given project falls within the scope of the term lies within the judgment of the governing body, applying a standard of reasonableness. It would be premature and somewhat adventurous for this office at this time to hazard a comprehensive definition of projects and services permissible under this act.

The concern has apparently been expressed in some quarters that the lack of specificity of the act concerning one or more of the above-mentioned items renders the bill subject to question on

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constitutional grounds. We do not share that concern. Certainly, the bill is not a model of precision. However, the bill directs that proceeds from the levy shall be for a specified object, i.e., services for the elderly. The class of "elderly" is not defined by precise age qualification. There is room for the exercise of judgment by each governing body in defining the class of beneficiaries of services funded by the levy authorized hereunder, whether the "elderly" to be served by a given program are those, e.g., over sixty years of age, over sixty-five, over seventy, and so on. Certainly, this determination in given communities may be based somewhat upon the perceived needs of the citizens of the community. Similarly, the kinds of services which may be funded by the levy are not described. Broadly speaking, these services may be described as social services. The needs of the elderly have undergone much and deserved consideration in recent times, and the programs which may provide genuine service to the special needs of the elderly are undergoing continuing reassessment. Failure of the Legislature to specify precisely the kinds of services which may be supported by the bill does not, in our view, constitute an omission which is fatal to the constitutionality of the bill. To some extent, certainly, the kinds of service programs which may be funded by the bill are predetermined by the class of persons who are to be served, i.e., the elderly. Transportation, Meals on Wheels, visitation, telephone contact programs, and other projects have been found useful by both governmental and volunteer organizations. The Legislature chose not to enumerate a restrictive category of programs which might be supported by the levy. The lack of such an enumeration does not render the bill fatally ambiguous, or hopelessly impossible of reasonable construction and application. You are correct that, in our view, the lack of specificity concerning any or all of the foregoing items does not affect the constitutional validity of the bill.

Yours very truly,



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Attorney General

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cc: Dr. Jim Seever, North Central Kansas Guidance Center
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Mr. Pat Hanlon, Commissioner of Finance, Department of
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