



Subject

FILE  
*J. Strain*  
*Distribution of*  
*Tax Monies*

Copy to

STATE OF KANSAS

*Office of the Attorney General*

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

VERN MILLER  
Attorney General

July 15, 1974

Opinion No. 74- 229

Mr. Lee Hornbaker  
Milford City Attorney  
707 North Washington Street  
Junction City, Kansas 66441

Dear Mr. Hornbaker:

We have your letter of June 5, enclosing both Mr. Strain's letter of June 3, and your very able reply, dated June 5. As you very correctly observe, the questions which he raises are both interesting and difficult.

You indicate that the voters of Geary County will pass upon the proposition of a countywide retailers' sales tax, to be submitted at the time of the August primary election. In preparing a budget for the following fiscal year, questions have arisen concerning the sales tax revenue to be anticipated from this source, should it be approved by the voters.

Insofar as pertinent to the question you pose, K.S.A. 12-177(a), enacted as § 22, ch. 393, L. 1973, provides for the distribution thus:

"(1) one-half of all revenue received by the county treasurer shall be apportioned among the county and each city and community junior college district all or a part of which is located in such county in the proportion that the total tangible property tax levies made in such county in the preceding year for all funds of each such governmental unit, except funds, tax levies for which are not subject to the limitations imposed by this act, bear to the total of all such levies made in the preceding year . . . ." [Emphasis supplied.]

Mr. Strain questions whether the levies made by the City of Milford in 1973 were subject to the limitations of ch. 393, or

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subject to a charter ordinance. The difficult question here is to identify those "limitations imposed by this act" referred to above.

Ch. 393, L. 1973, comprises Senate Substitute for Senate Bill 11. It includes the aggregate levy limitations (generally §§ 1-16, found now at K.S.A. 79-5001 through -5017), fund levy limitations for cities of the first class having a population of more than 128,000 (§ 30, amending K.S.A. 79-1948), for cities of the first class having a population of more than 150,000 (§ 31, amending K.S.A. 79-1949), cities of the first class having a population of more than 60,000 and less than 130,000 (§ 32, amending K.S.A. 79-1950), cities of the first class having a population of less than 50,000 (§ 33, amending K.S.A. 79-1951), cities of the second class (§ 34, amending K.S.A. 79-1952), and cities of the third class (§ 35, amending K.S.A. 79-1953).

K.S.A. 79-1953, by its terms, is applicable only to cities of the third class, and fund levy limitations therein are subject to alteration or exemption by charter ordinance. Any limitation thus altered or exempted by charter ordinance is entitled under Article 12, § 5 of the Kansas Constitution to recognition as a lawful limitation in lieu of the statute fixing the limit initially. Accordingly, we agree fully with you that the exceptions referred to by the underscored language above does not refer to the levy limitations contained in K.S.A. 79-1953. Rather, as you state, the exception provides that no allocation of sales tax funds shall be made based upon the levies which are not subject to the aggregate tax levy limitations, such as those enumerated in section 11 of that enactment, now K.S.A. 79-5011, and any levy which by the terms of the statute authorizing the same is exempted from the lid, pursuant to the second sentence of K.S.A. 79-5003. All levies enumerated in K.S.A. 79-1953 were, of course, subject to the aggregate levy limitations, and accordingly, although the specific levy limits of particular funds may have been altered by charter ordinance, the funds derived from such levies remain lawfully to be computed in determining the revenue properly apportioned to the city under § 22, ch. 393, L. 1973.

In short, we agree fully with the conclusions which you have reached and stated so ably in your own letter to Mr. Strain.

Yours very truly,

  
VERN MILLER  
Attorney General

VM:JRM:jsm