STATE OF KANSAS

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CURT T. SCHNEIDER
*Attorney General*

July 22, 1975

ATTORNEY GENERAL OPINION NO. 75- 304

Mr. Donald J. Curry
Office of the County Clerk
Johnson County Courthouse
Olathe, Kansas 66061

Re: Taxation--Aggregate Levy Limitations--Cities

Synopsis: Having no "taxes levied for the base year," as defined by K.S.A. 1974 Supp. 79-5002, the limitations imposed by K.S.A. 1974 Supp. 79-5003 are applicable to the City for taxes levied for fiscal 1976, and the city is not exempt from such limitations by virtue of the exemption provided by K.S.A. 1974 Supp. 79-5010(a).

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Dear Mr. Curry:

You inquire concerning the application of the aggregate tax levy limitations of K.S.A. 1974 Supp. 79-5001 *et seq.* to levies proposed to be made by the City of Westwood for fiscal 1976.

The city has levied no general fund taxes for either 1968 or 1969, or for any year since, due to substantial receipts of intangible tax proceeds. Anticipating declining revenues from that source, however, the city proposed to levy a general fund tax for the coming year. K.S.A. 1974 Supp. 79-5003 states in pertinent part thus:

> "Except as otherwise hereinafter provided, no taxing subdivision shall certify to the county clerk of the county any tax levies upon

> tangible property, excluding taxes levied as special assessments and excluding levies specified in section 11 [79-5011] of this act . . . which in the aggregate will produce an amount in excess of the amount which was levied by such taxing subdivision for the *base year*. . . ." [Emphasis supplied.]

The present quandary of the City arises from the fact that no "taxes [were] levied for the base year," as that phrase is defined in K.S.A. 1974 Supp. 79-5002. Thus, there is no established amount derived from "taxes levied for the base year" by which an aggregate limitation for proposed 1976 taxes may be determined.

K.S.A. 1974 Supp. 79-5010 prescribes a method for the computation of an aggregate limitation for taxing subdivisions for which no taxes subject to the limitation were levied for the base year. Subsection (a) prescribes the method for taxing subdivisions located in counties all or part of which have been reappraised as required by law: subsection (b) applies to those taxing subdivisions in counties where there has been no reappraisal. You advise that Johnson County reappraisal was first placed on the rolls in 1969. Accordingly, section (a) applies.

Section (a) provides in pertinent part thus:

> "For the purpose of fixing the aggregate limitation on the amount which can be produced by the levy of taxes by any taxing subdivision, all or part of which is located in a county which has been reappraised as required by law, and for which subdivision there were no taxes levied for the base year, the county clerk shall determine the amount that would have been produced by taxes levied for the year preceding the reappraisal by applying the maximum lawful levy or levies which could have been made by such taxing subdivision in such year to the total of the following . . . ."

There follow four factors to be considered by the county clerk, the first of which raises the problem here:

> "The amount that the equalized assessed valuation of real property, exclusive of state assessed real property, would have been in the taxing subdivision for the year preceding the reappraisal, *if such taxing subdivision had been in existence at that time* . . . ." [Emphasis supplied.]

A taxing subdivision may have "no taxes levied for the base year," as that term is defined by K.S.A. 1974 Supp. 79-5002(b), for two reasons -- it was not in existence in either of those years, or else it was in existence, but had sufficient revenue from alternative sources that no general fund levy was required or made. The latter is the case here. The question presented is whether K.S.A. 1974 Supp. 79-5010(a) provides a means of computing the aggregate levy limitation for only those taxing subdivisions which had no "taxes levied for the base year" for the reason that they were not in existence, or whether it extends also to municipalities which had no "taxes levied for the base year" because, although in existence during the base year, no general fund levy was necessary to produce sufficient revenue for its operations, due to sufficient proceeds from alternative sources.

The underscored language quoted above, from subsection (a), specifies with some clarity that the method prescribed therein for computing the levy shall be based, in part, upon the amount which the equalized assessed valuation of real property "would have been" in the taxing subdivision during the year preceding county reappraisal "if such taxing subdivision had been in existence at that time . . . ."

In *Claflin v. Walsh*, 212 Kan. 1, 509 P.2d 1130 (1973), the court reiterated a familiar rule of statutory construction thus:

> "When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law." 212 Kan. at 8.

Similarly, in *Gnadt v. Durr*, 208 Kan. 783, 494 P.2d 1219 (1972), the court again recited thus:

> "It is a fundamental rule of statutory construction, to which all others are subordinate, that the purpose or intent of the legislature governs when that intent can be ascertained from the statute, even though words, phrases or clauses at some place in the statute must be omitted or inserted." 208 Kan. at 785.

See also *Wolf v. Mutual Benefit Health & Accident Association*, 188 Kan. 694, 366 P.2d 219 (1961); *Hunziker v. School District*, 153 Kan. 102, 109 P.2d 115 (1941). Despite its frequent recital, it is less often actually invoked as the basis of decision, and indeed, in each of those cases, the court was not called upon to excise plain and unambiguous language from the statutes before it to decide the questions presented.

The method prescribed by K.S.A. 1974 Supp. 79-5010(a) for computing an aggregate levy limitation for the City of Westwood for 1976 is available only if we disregard the direction in subparagraph (1) thereof that there be included in such computation the amount that the equalized assessed valuation of real property "would have been" in the taxing subdivision for the year preceding reappraisal "if such taxing subdivision had been in existence at that time. Inferentially, if the taxing subdivision was in existence during the year preceding reappraisal, there is no occasion for resort to subsection (a). Certainly, the so-called "tax lid" was enacted and reenacted with an abundantly clear and manifest legislative purpose to prescribe aggregate levy limitations for existing taxing subdivisions, and to impose upon them limitations tied to either of two base years, 1968 or 1969. No taxing subdivision subject to the act should be relieved of those limitations unless the act provides a clear and express provision for their avoidance. Indeed, the purpose of the act would be substantially frustrated in its application to the City of Westwood were it to be freed of the restrictions and limitations applicable to every other city in the state and avail itself of the same taxing freedom afforded by the act to taxing subdivisions not in existence during either of the base years.

K.S.A. 1974 Supp. 79-5003 provides that no taxing subdivision shall certify to the county clerk any tax levies on tangible property, with exceptions not pertinent here, which in the aggregate will produce an amount in excess of the amount which was levied by the taxing subdivision for the base year. This prohibition applies, in our judgment, to any and every taxing subdivision which was in existence during either base year, and which was at that time legally privileged to levy taxes. K.S.A. 1974 Supp. 75-5010(a) prescribes a method for the computation of an aggregate levy limitation for taxing subdivisions according to levies which would have been permitted "if such taxing subdivision had been in existence at that time," and is applicable, in our judgment, only to taxing subdivisions which indeed were not in existence during either base year.

Accordingly, we cannot but conclude that the City of Westwood is prohibited by K.S.A. 1974 Supp. 79-5003 from making any general fund levy for fiscal year 1976, and that K.S.A. 1974 Supp. 79-5010(a) does not exempt the City from that prohibition.

Yours very truly,

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