



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

September 18, 1975

ATTORNEY GENERAL OPINION NO. 75- 368

Mr. Tom M. Reeves
Marshall County Attorney
1017 Broadway
Post Office Box 103
Marysville, Kansas 66508

Re: Counties--Buildings--Courthouses

Synopsis: Proceeds of levies "for the purpose of acquiring a site, building, furnishing and equipping of a courthouse and jail" may not be used to remodel existing courthouse and jail.

* * *

Dear Mr. Reeves:

You enclose copies of two resolutions, one dated March 30, 1959, and the second July 2, 1969.

On March 30, 1959, the board of county commissioners of Marshall County authorized a levy of not to exceed one mill, pursuant to Gen. Stat. 1957 Supp. 19-1569, for a period of ten years

"for the purpose of acquiring a site, building, furnishing and equipping of a courthouse and jail."

On July 2, 1969, the board again authorized an annual levy of not to exceed one mill for a period of not to exceed ten years, for the purpose of "acquiring a site, building, furnishing and equipping of a courthouse and jail," the identical language used to describe the purpose of the 1959 levy. In each instance, the resolution recited that

Mr. Tom M. Reeves
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the present courthouse building and jail were "antiquated, a fire hazard and are not susceptible of remodeling or reconditioning."

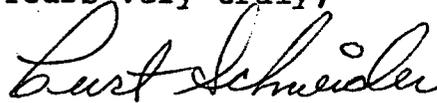
Due to inflation and interest by the Kansas Historical Society in the present courthouse, the question has arisen whether the proceeds of the levies described above may be used to remodel and refurbish the present courthouse and build additional jail and office facilities, or whether the money must be used for a completely new courthouse and jail.

I enclose copies of two opinions issued by Attorney General Robert C. Londerholm, to Rep. Jess Taylor and Mr. Ben Hartloff, dated February 13, 1967, and December 1, 1967, respectively, concluding that the proceeds of a levy authorized by K.S.A. 19-1569 for the purpose of acquiring a site, building and equipping a courthouse and jail may not be used for the remodeling of existing facilities. I also enclose a copy of an opinion from Attorney General William M. Ferguson to Rep. W. R. Brown, dated January 29, 1963, who reaches the same conclusion.

I join in those opinions, and likewise conclude that monies levied for the purpose of acquiring a site, building and equipping a new courthouse and jail may not be used for the purpose of remodeling existing facilities. I would note that although the 1969 resolution was adopted under different statutory authority from that relied upon in 1959, the language of the authorizing resolutions is identical, and the use of the proceeds from the 1969 levy are thus subject to the same restrictions of those on the 1959 levy.

Concerning possible special legislation which may be needed, I enclose a copy of an opinion from General Londerholm to Mr. John E. Lang, then Pottawatomie County Attorney, dated February 23, 1968, in which Mr. Londerholm questions the constitutionality of any such legislation authorizing the use of ad valorem tax proceeds for a purpose other than for which they were levied. Article 11, § 5 of the Kansas Constitution at first blush would seem to prohibit such legislation. It does not mean quite what it says, however. See *State ex rel. Jackson v. Board of County Commissioners*, 77 Kan. 527, 94 Pac. 1004 (1908).

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj
Enclosures



STATE OF KANSAS

Office of the Attorney General

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

February 23, 1968

Mr. John E. Lang
Pottawatomie County Attorney
Court House
Westmoreland, Kansas

Re: Court House - Building Fund Levy

Dear Sir:

In your letter of February 19, 1968, you state that the board of county commissioners adopted a resolution in 1960 as authorized by G.S. 1949, 19-1569 creating a special fund for the purpose of acquiring a site for, and the building, equipping and furnishing of a court house and jail. The resolution provided such levy was to be in the amount of one mill for a period of ten years. You have asked our opinion concerning four questions:

1. Can the fund created by virtue of the resolution be used for the repair and remodeling of the present court house? This office has consistently been of the opinion that such use of the fund would not be authorized. In this connection, we are enclosing herewith copies of opinions dated January 29, 1963, February 13, 1967, and December 1, 1967.
2. Can the board of county commissioners at any time terminate the annual levy provided in the 1960 resolution? It is our opinion that the board of county commissioners could terminate the levy by simply failing to certify the levy to the county clerk.
3. Should the county commissioners now by resolution determine that a new court house will not be built, can constitutional legislation be enacted authorizing the county to set over the special fund heretofore accumulated into the county general fund to be used for general county purposes, including the remodeling of the existing court house? Kansas Constitution,

Art. 11, §5 provides that "no tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied." We fail to see how valid legislation could be adopted authorizing the diversion of monies accumulated for a building fund to purposes other than those for which the levy was made.

4. If the answer to question number 3 is "no," can such money be used for any other purpose? We believe the answer to question number 3 applies also to question number 4.

Very truly yours,

ROBERT C. LONDERHOLM
Attorney General

ORS/sj
Enc.

Opinion to Hon. Jess Taylor, Tribune, Kansas, February 13, 1967
Opinion to Mr. Ben Hartloff, Leoti, Kansas, December 1, 1967
Opinion to Hon. W. R. Brown, Jr., Representative, January 29, 1963

December 1, 1967

Mr. Ben Hartloff
Wichita County Attorney
Court House
Topeka, Kansas

Re: K.S.A. 19-1569

Dear Mr. Hartloff:

Your letter of November 9, 1967, brought to our attention resolution by the Wichita County Commissioners of July 21, 1958, stating in part:

"That Wichita County, Kansas, shall create a special fund to be used in acquiring a site for, and the building, equipping and furnishing of a courthouse and jail, or for any one or more of such purposes, by means of an annual tax levy of one mill upon all taxable tangible property of said county pursuant to Section 19-1569. . . ."

You have inquired whether under this resolution the county commissioners may now change their plans and use the acquired funds to remodel the old courthouse and add on a new jail. The pertinent wording of K.S.A. 19-1569 as followed in the commissioners resolution provides in part:

". . . for the purpose of creating and providing a special fund to be used in acquiring a site for, and the building, equipping and furnishing of a courthouse and jail or for any one or more of such purposes:"

It is our opinion that the aforesaid statute applies only to the building, equipping and furnishing of a new courthouse and/or jail. Therefore, the funds acquired thereunder

could not be used for the remodeling of an old courthouse or jail. Moreover, such statute does not authorize the use of such funds to construct an addition to the existing courthouse. However, a part of the funds could be used for the construction of a new jail.

We hope this information will be of assistance to you.

Very truly yours,

ROBERT C. LONDERHOLM
Attorney General

REC/sj

January 29, 1963

The Honorable W. R. Brown, Jr.
Representative, 39th District
House of Representatives
BUILDING

Dear Representative Brown:

RE: Counties - Buildings,
Tax Levy, Purpose Of

Pursuant to your recent request we have reviewed the resolutions of the Board of County Commissioners of Pottawatomie County, dated June 27, 1960, wherein a levy for accumulating a fund for the construction of a new courthouse was established. The resolutions appear regular on their face and must be presumed to represent the board's resolve. The publication of these resolutions, since no protests appear to have been made, is tantamount to an adoption of the resolutions by the electors (State, ex rel. v. Board of County Commissioners of Lyon County, 173 Kan. 544, 548, 250 P.2d 556 (1952)) and it would thus seem immaterial to the validity of the resolutions that they might not have fully represented the action the board desired to take.

The resolutions thus being proper, the fund accumulated thereunder, can only be used in the manner authorized thereby and by the statutes under which the resolutions were adopted. Neither the statutes nor the resolutions authorize amendment of the resolutions or expenditures from the accumulated fund to repair or to build an addition to the old courthouse.

In summary, it is the opinion of this office that under existing statutes the fund accumulated under these resolutions may only be used for the purposes expressed therein.

Very truly yours,

WILLIAM M. FERGUSON
Attorney General

ABP:lrh

February 13, 1967

Honorable Jess Taylor
Representative 112th District *Sent to House of Rep.*
Greeley County *By Mail*
Tribune, Kansas

Dear Mr. Taylor:

We have examined the resolution establishing the Greeley County Court House Building Fund. It provides that the proceeds of the tax levy are to be used "in acquiring a site for, and the building, equipping and furnishing of a courthouse and jail or for anyone. . ." of such purposes.

As you know, Article 11, Section 5 of the Kansas Constitution provides that "no tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied." In the light of this provision, we do not believe the Greeley County Building Fund could be used to repair the present courthouse, unless such repairs were of such an extensive nature as to be tantamount to the building of a new courthouse.

I hope this sufficiently answers your question.

Very truly yours,

ROBERT C. LONDERHOLM
Attorney General

JRF/akf