



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

September 24, 1975

ATTORNEY GENERAL OPINION NO. 75- 377

Mr. Ronald H. Baxter
Assistant City Attorney
City of Topeka
215 East 7th Street
Topeka, Kansas 66603

Re: Cities--Funds, Use of--Industrial and Economic
Development

Synopsis: A city may expend funds from properly budgeted monies in the general fund for the purpose of attracting industries and economic development, without approval of a levy therefor pursuant to K.S.A. 13-1441.

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Dear Mr. Baxter:

You inquire whether the city may lawfully spend properly budgeted monies from the general fund of the city for the purpose of attracting industries to establish facilities in the Topeka area.

The question arises in regard to K.S.A. 13-1441, which provides in pertinent part thus:

"Incorporated cities are hereby authorized to levy annually upon all the taxable tangible property within said city a tax not to exceed one (1) mill for the purpose of creating a fund to be used in securing industries or manufacturing institutions for such city or near its environs: *Provided*, No such levy shall be made until the city commissioners or governing body

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shall be instructed to do so by a majority of all the votes cast on this proposition at an election held in such city or cities for such purpose, or by submitting the proposition above mentioned to the voters of such city or cities at any city or general election."

The levy authorized by this section

"shall be in addition to all other levies authorized by law and shall not be subject to any of the limitations prescribed by article 19 of chapter 79 of the General Statutes of 1949 or acts amendatory thereof and supplemental thereto."

You advise that no election has been held under this section in Topeka, and that accordingly, no levy has been made thereunder. The question which arises is whether, in the absence of voter approval of a special levy for the purpose of attracting industry under this particular section, the city is authorized to make expenditures for that purpose from the general fund.

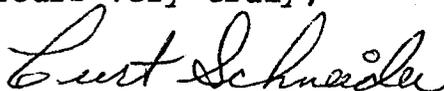
The question which is submitted to the voters under this section is whether the city shall levy a tax of not to exceed one mill "for the purpose of creating a fund to be used in securing industries or manufacturing institutions for such city or near its environs." The question which is submitted is *not* whether the city shall undertake efforts to attract industry, but whether it shall make a one mill levy for that purpose which is exempt from statutory levy limitations in article 19, ch. 79, K.S.A. The question which is submitted, thus, is a revenue question, whether a tax shall be levied for a particular purpose, in addition to all other levies authorized by law. If the city has monies available from other sources, such as levies for the general fund, which are properly budgeted for expenditure for the purpose of attracting industries and manufacturing institutions to establish in the city, the city may so use those funds. Such a purpose is demonstrably a public purpose, and if the governing body of the city declares it to be in public interest

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that the city undertake such activities, and funds are otherwise available, there is no occasion to resort to an election for approval of a levy to create a fund for that purpose.

Apparently, there are some who question whether K.S.A. 13-1441 entitles the people to vote on the entire question whether any public funds whatever shall be spent for the purpose of attracting industries. This view construes the statute too broadly. It commits to the people only the question whether a one mill levy should be made, in addition to all other levies authorized by law, for the purpose. If there is no revenue question to submit to the people, i.e., if there are funds available from other sources, the city governing body is free to engage in such activities of industrial development as it deems appropriate from funds lawfully available to it, such as from the general fund.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj