ATTORNEY GENERAL OPINION NO. 75-415

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

Re:
Taxation--Levies for Services to the Elderly--Elections

Synopsis: A city or county may, in the exercise of its constitutional or statutory powers of self-government, respectively, submit the question of a levy for services to the elderly to the voters on the initiative of the governing body, without the filing of a petition therefor, and any such levy approved at such election on the basis of the proposition submitted as specified and set forth in K.S.A. 1974 Supp. 12-1680 as amended is exempt from the aggregate levy limitations of K.S.A. 1974 Supp. 79-5001 through -5016.

Dear Mr. Hamm:

K.S.A. 1974 Supp. 12-1680, as amended by ch. 70, L. 1975, provides in pertinent part 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 tax
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 munici-
palities 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. . . . 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. Such tax levy shall be in
addition to all other tax levies authorized
or limited by law and shall not be subject
to or within the limitations upon the levy
of taxes imposed by K.S.A. 1974 Supp. 79-5001
to 79-5016, inclusive, and amendments thereto."

You inquire whether the local governing body, of either the city
or county, may through the exercise of its home rule powers
dispense with the requirement of a voter petition before placing
the issue on the ballot. I enclose a copy of Opinion 74-303,
in which the Attorney General concluded that it was within the
lawful exercise of county home rule powers, K.S.A. 19-101a, to
provide for the levy of a tax for which there was no express
authority provided.

On the face of the statute quoted above, it provides merely a
procedure whereby the voters of a city or county may compel
submission of the question of a levy for service programs for
the elderly by the governing body of the city or county. Nothing
in the statute prohibits the city or county governing body from
providing by ordinary ordinance or resolution for the submission
of the question of such a levy to the voters on the initiative
of the governing body itself, and omitting the requirement of
the filing of a petition as a prerequisite therefor. It would
not be necessary to adopt a charter resolution or a charter
ordinance to effect this purpose. An "ordinary" ordinance, or
a resolution adopted pursuant to K.S.A. 19-101a(b) would
be sufficient to provide this authority for action by the govern-
ing body, for the effect of such a resolution or ordinance would
not be to exempt the city or county from K.S.A. 1974 Supp. 12-1680,
but merely to provide a supplemental procedure for submission
of the question of the levy.
The remaining question is whether a levy for service programs for the aging which was submitted to the voters by the governing body of a county or city on its own initiative, and without a petition being filed therefor, would be exempt from the aggregate levy limits of K.S.A. 1974 Supp. 79-5001 et seq. The 1975 amendment to K.S.A. 1974 Supp. 12-1680 provides that "[s]uch tax levy" shall be exempt from the aggregate levy limitations. This phrase refers, in my judgment, to any levy for services to the aging which is submitted to the voters of the city or county upon the proposition specified in K.S.A. 1974 Supp. 12-1680, whether the election itself is initiated by the filing of a petition or by action of the governing body itself taken pursuant to its constitutional home rule authority, in the case of cities, or pursuant to its statutory powers of self-government, in the instance of counties.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

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