



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 5, 1975

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

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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 municipalities 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 governing 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.

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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

CTS:JRM:kj