



STATE OF KANSAS

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Curt T. Schneider
Attorney General

April 26, 1976

ATTORNEY GENERAL OPINION NO. 76- 135

Mr. John Dekker
Director of Law
City Hall - 13th Floor
455 North Main
Wichita, Kansas 67202

Re: Taxation--Aggregate Levy Limitations--Improvements

Synopsis: The increased valuation of real property resulting from new improvements thereon may not be considered as a part of the value of new improvements which is required by K.S.A. 1975 Supp. 79-5006 to be considered separately in determining the additional aggregate levy authority and limitations permitted under that section.

* * *

Dear Mr. Dekker:

You inquire concerning application of certain provisions of K.S.A. 1975 Supp. 79-5001 *et seq.*, the act imposing aggregate levy limitations commonly known as the "tax lid."

The specific question posed is whether the increase in value of land which directly results from the construction of improvements thereon may be used to determine the adjusted tax base of the taxing subdivision under K.S.A. 1975 Supp. 79-5006.

The subject of concern is a tract of land which is located within the city, which was assessed as unimproved land when the "base year" of the city was established. As such, it became a part of the "taxable assessed valuation" for that base year. Since 1973, the tract was developed as the site of a highly successful shopping center. The assessed valuation of the property rose as a result, due both to the value of the improvements constructed on it, and

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also because of the success of the shopping center, the demand for business locations there has caused the market value of the land on which it is located to increase.

K.S.A. 1975 Supp. 79-5006 provides for determination and application of the aggregate tax levy limitations of a taxing subdivision when its taxable assessed tangible valuation is increased "by new improvements on real estate and by increased personal property valuation." When such increases occur, the levy permitted under the act must be determined in a two-stage process. First, the aggregate tax levy limitation shall be computed in accordance with K.S.A. 1975 Supp. 79-5003, *i.e.*, at a rate "which in the aggregate will produce an amount in excess of the amount which was levied . . . for the base year," omitting the assessed valuation of such new improvements and added personal property. The rate so computed shall then be applied to the assessed valuation of the new improvements and added personal property. Thereupon, the taxing subdivision may levy the amount permitted under K.S.A. 1975 Supp. 79-5003, and in addition thereto, the amount produced by application of the levy computed as described above, to all the "new improvements on real estate" and such "added personal property."

Because of the importance of its particular language, K.S.A. 1975 Supp. 79-5006 is set out in full:

"Whenever the taxable assessed tangible valuation of any taxing subdivision is increased by new improvements on real estate and by increased personal property valuation over the amount of such valuation in the base year, the amount which would be produced by the aggregate tax levy of such subdivision shall be computed first in accordance with the provisions of section 3 [79-5003] of this act, omitting the assessed valuation of such new improvements and such added personal property, and the rate of the levy so computed shall then be applied to the assessed valuation of such new improvements and such added personal property, and the taxing subdivision may then levy the amount permitted under section 3 [79-5003] of this act and in addition thereto the amount produced by a levy on such new improvements and such added personal property as provided in this section."

This entire section applies only when the taxable assessed valuation of a taxing subdivision is "increased by new improvements on real

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estate and by increased personal property valuation." [Emphasis supplied.] This phrase, standing alone, may be construed restrictively, to apply only to increased valuation consisting of new improvements to real estate and added personal property, or it may be construed more broadly, to include increased valuation consisting not only of new improvements to real estate and added personal property, but also other increased valuation attributable thereto, such as the increased valuation of the realty comprising the shopping center site in question.

In my judgment, the language of this provision requires the restrictive interpretation. For, as stated above, the increased aggregate revenue which is permitted to be raised by levies under this section must be computed first, by determining the amount which will be produced by the aggregate levy permitted under K.S.A. 1975 Supp. 79-5003, and in doing so, omitting the value of new improvements and added personal property." The value which is omitted in the first step of the computation is only that of "new improvements," and not the value of realty which comprised a portion of the taxable assessed tangible valuation of the taxing subdivision. The realty is by definition not a new improvement, and its increased valuation which results from a new improvement thereon, as in the shopping center instance, is derivative only, and is not itself a part of the valuation of the new improvement itself.

This section permits, and indeed requires, that the assessed valuation of new improvements on real estate be considered separately in determining the aggregate levy limitations, and revenue therefrom, permitted thereunder. The value of new improvements must be the value of the improvements themselves, and not the enhanced value of real property resulting from and dependent upon those new improvements.

Accordingly, it is my judgment that the increase in value attributed to real property upon which a new improvement has been constructed may not be regarded as part of the value of the new improvements themselves, and thus may not be utilized in computing the additional aggregate levy authority and limitations permitted under K.S.A. 1975 Supp. 79-5006.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj