



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 5, 1976

ATTORNEY GENERAL OPINION NO. 76-145

Mr. David L. Thompson
Montgomery County Attorney
Montgomery County Courthouse
Independence, Kansas 67301

Re: Counties--Taxation--Road Levy

Synopsis: The board of county commissioners may, in submitting a proposition to the electorate for approval of a levy under K.S.A. 68-5,100, specify in such proposition that the levy of not to exceed five mills shall be made annually for not to exceed a stated number of years.

* * *

Dear Dave:

K.S.A. 68-5,100 states in pertinent part thus:

"The board of county commissioners of any county is hereby authorized to levy an annual tax of not to exceed five (5) mills upon all taxable tangible property in the county for the purpose of providing funds for the construction, reconstruction, improvement, repair and maintenance of county roads: *Provided*, That before any county shall be authorized to levy a tax under the authority of this act, the board of county commissioners shall submit such proposition to the electors of the county at an election called and held for such purpose If a majority of the votes cast and counted on such proposition at any such election shall be in favor thereof, the board . . . may levy the tax provided for herein."

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You inquire whether, in submitting to the electorate a levy authorized by this provision, the board of county commissioners may submit the proposition so framed so as to authorize the levy for not to exceed a stated number of years. Stated otherwise, the proposition submitted to the voters would provide for a levy of not to exceed five mills annually for a period not to exceed a stated number of years.

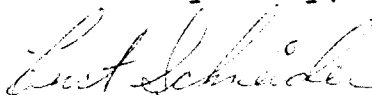
In my judgment, it is within the authority of the board to submit a proposition so framed. In effect, by framing the proposition to include the number of years during which authority is sought to make the levy, the board is merely advising the electorate of the time during which it is proposed to exercise the authority, if approved by the voters; approval of the proposition so framed would constitute the authority required by K.S.A. 68-5,100 for the levy, and constitute, at one and the same time, a voter-imposed limitation upon the time during which that authority shall continue. Such a proposition is, in my judgment, impliedly within the express authority granted by this provision.

If any additional or independent legal basis is sought for this action, the board may rely upon its statutory powers of self-government under K.S.A. 19-101a *et seq.* A limitation upon the duration of the tax is certainly a matter of "local legislation" which the board of county commissioners may determine under K.S.A. 19-101a. If it were argued that K.S.A. 68-5,100 did not furnish express authority for such a limitation, the board may furnish that authority by adoption of an ordinary resolution under K.S.A. 19-101a(b) which states in pertinent part thus:

"Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution in the official county newspaper."

Thus, if K.S.A. 68-5,100 were not deemed to provide implied authority, adoption of an ordinary resolution as provided in this section certainly would.

Yours very truly,



CURT T. SCHNEIDER
Attorney General