



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 28, 1976

ATTORNEY GENERAL OPINION NO. 76-197

Mr. Hugo Blaas
City Administrator
Office of the City Clerk
Spring Hill, Kansas 66083

Re: Taxation--Duties of County Clerk--Levy Adjustments

Synopsis: The county clerk may not, in the exercise of authority under K.S.A. 1975 Supp. 79-1965 and K.S.A. 1975 Supp. 79-5004, make adjustments in revenue estimates, estimates of balances carried forward, and budget authority for expenditures which may be satisfied by the taxing subdivision from non-property tax sources.

* * *

Dear Mr. Blass:

You inquire concerning the authority of the county clerk to make adjustments in tax levies and budgets, including estimates of balances carried forward and other revenue estimates included in an adopted budget.

The county clerk is empowered to make changes in levies which are certified to the clerk under two provisions, K.S.A. 1975 Supp. 79-1965, which was originally enacted as part of the 1933 budget law, and K.S.A. 1975 Supp. 79-5004, a part of the so-called tax lid. The former statute states thus:

"Any levy which may be certified to the county clerk which is in violation of the provisions of existing statutes, shall be unlawful, and in any such case it shall be unlawful for the county clerk of any

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county within the state to enter upon the tax roll of the county any such excessive levy; and in case of any such excess in any levy it is hereby made the duty of the county clerk and he is hereby required to reduce such levy and extend upon the tax roll only such part thereof as will comply with the provisions of existing statutes. In the event the county clerk determines it is necessary to change any levy or any amount in a budget certified to the county clerk, he shall give notice thereof to the taxing subdivision affected thereby at least seven days prior to making such changes."

Upon the latter provision, the clerk must reduce the aggregate tangible property tax levies to enforce the aggregate levy limitations imposed by the tax lid law.

These provisions define the extent of the authority of the clerk to reduce levies which are certified by the taxing subdivisions. A levy is unlawful if it is in excess of the rate prescribed by law applicable to that levy. K.S.A. 79-2930. A levy may also be unlawful if it will raise an amount which is greater than that portion of the budget attributable thereto. *City of Independence v. Smith*, 138 Kan. 484, 26 P.2d 268 (1933); K.S.A. 79-2930. Similarly, a levy may be unlawful if it is determined to be grossly excessive, as in *Kaw Valley Drainage District v. Zimmer*, 141 Kan. 620, 42 P.2d 936 (1935), where a levy was objected to on the ground that cash on hand was found by the state tax commission to amount to three and one half times the budgetary estimates of expenditures in the fiscal year involved, and any levy whatever for that year was determined to be grossly excessive.

Under K.S.A. 1975 Supp. 79-1965, any "levy . . . which is in violation of the provisions of existing statutes" is declared to be "unlawful," and the clerk is forbidden to enter upon the tax roll any "such excessive levy." The clerk is thus required to assure that any levy does not exceed the rate applicable thereto, such as the rates prescribed by article 19, ch. 79, K.S.A., and any other applicable statutes. Obviously, the clerk is not called upon to make decisions of a legal nature regarding the validity of any levy which is certified by a taxing subdivision on pain of removal from office and a prosecution for a misdemeanor if he should err in a legal judgment. The clerk is required, however, to assure that every levy which is certified by a taxing subdivision is not excessive, *i.e.*, it does not raise more revenue than is attributable to that levy in the budget, and it does not exceed the statutory

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rate applicable thereto. K.S.A. 79-2930. The duties of the clerk have repeatedly been held to be ministerial. In *Mobil Oil Corporation v. McHenry*, 200 Kan. 211, 436 P.2d 982 (1968), the court stated clearly, in paragraph 4 of its syllabus:

"The duties imposed upon the County Clerk and the County Treasurer in the taxing process concerning the imposition of ad valorem taxes, after exhaustion of the administrative remedies to the highest administrative tribunal, are clear, purely ministerial and in no sense discretionary."

Thus, the clerk has no discretionary authority to alter revenue estimates, estimates of balances carried forward, and fund totals in an adopted budget. The clerk has no statutory role in the budget process. The responsibility for the preparation and adoption of budgets of taxing subdivisions in this state rested with the governing body thereof. *E.g., State ex rel. Woodward v. Peal*, 136 Kan. 136, 13 P.2d 302 (1932).

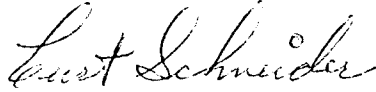
Once the clerk determines that a levy is excessive, the clerk may reduce that levy and the amount of dollars to be derived therefrom, but only after at least seven days' notice to the affected taxing subdivision. The taxing subdivision may adjust non-property tax receipts to replace the loss of ad valorem tax revenues, to satisfy its needs as reflected in the budgeted fund totals. If the clerk, in the course of reducing any particular levy or the aggregate levies were to go further to alter budget estimates for particular funds, this action might well usurp the budget-fixing authority of the subdivision, which may be able to augment its reduced ad valorem tax receipts with revenue from non-property tax sources, by increasing various fees and charges from which the city derives a portion of its revenue. The requirement of notice by the clerk to the taxing subdivision of any proposed levy reduction which was added to K.S.A. 79-1965 in 1973, see ch. 394, L. 1973, and the notice requirement of K.S.A. 1975 Supp. 79-5004 both are apparently designed to permit the governing body of any affected taxing subdivision to make any adjustments which may be necessary, which may well include adjustments in non-tax revenues.

Accordingly, it is my opinion that the authority of the clerk found in K.S.A. 1975 Supp. 79-1965 to "change any levy or amount in a budget certified to the county clerk" does not extend to adjustments of revenue estimates, estimates of balances carried forward and budget

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authority for expenditures which may be satisfied by the taxing sub-
division from non-property tax sources.

Yours very truly,

A handwritten signature in cursive script that reads "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj