



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 27, 1976

ATTORNEY GENERAL OPINION NO. 76- 232

Harold E. Lassman
President
Humboldt Recreation Commission
Humboldt, Kansas 66748

Re: Cities and Municipalities--Public Recreation and
Playgrounds--Tax Levy

Synopsis: The establishment of a recreation commission pursuant to K.S.A. 12-1901 et seq. requires and obligates the appropriate levying authority, either the city or the school district, to raise a tax, up to but not exceeding one mill, in an amount sufficient to meet the proposed budget. The levying authority may decline to levy the first one mill tax only if the proposed budget is non-certified or fails to be submitted within the appropriate time limitations. In the event the recreation commission proposes a budget necessitating a tax levy in addition to the first one mill, the levying authority is vested with discretion as to whether any additional mill levy above the first one mill should be made. If the levying authority refuses to make an additional mill levy pursuant to K.S.A. 19-1208(b), the operation of the recreation commission is restricted to the mandatory one mill tax under K.S.A. 19-1208(a).

* * *

Dear Mr. Lassman:

As President of the Humboldt Recreation Commission, you have requested an opinion as to whether the board of education of Unified School District No. 258 may disapprove the proposed

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budget certified by the recreation commission to the school district and thereby refuse to levy the one mill tax provided in K.S.A. 12-1908.

By way of factual background, the Humboldt Recreation Commission was established approximately ten years ago pursuant to K.S.A. 12-1901 et seq., and in particular, K.S.A. 12-1904. This latter statute provides:

"Except as otherwise provided in subsection (b) of K.S.A. 12-1908, whenever a petition signed by at least five percent (5%) of the qualified and registered voters of the city or school district shall be filed with the clerk thereof, requesting the governing body of the city or school district to provide, establish, maintain and conduct a supervised recreation system and to levy an annual tax therefor not to exceed one (1) mill, it shall be the duty of the governing body of the city or school district to cause such question to be submitted to the qualified voters thereof to be voted upon at the next regular or special election of the city or school district to be held more than thirty (30) days after the filing of such petition."

Upon passage of the proposition, K.S.A. 12-1906 goes on to provide:

"Upon the adoption of the proposition by a majority of those voting on it at the election, the governing body of the city or school district if acting independently or the joint governing bodies of a city and school district then acting jointly, shall by appropriate resolution or ordinance provide for the establishment, maintenance and conduct of such supervised recreation system as they deem advisable and practicable and which shall establish a commission to be vested with the powers, duties and obligations necessary for the conduct of such recreation system, the members of which shall serve without pay."

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Financial support for the recreation system is to be derived from a maximum one mill annual tax levied pursuant to K.S.A. 12-1908(a) which provides:

"Except as otherwise provided in subsection (b) of this section, when the provisions of this act shall have been adopted by an election the commission shall annually, and not later than twenty (20) days prior to the date for the publishing of the budget of such city or school district, certify its budget to such city or school district, which shall levy a tax sufficient to raise the amount required by such budget, but in no event more than one (1) mill or the amount set out in the petition provided for in K.S.A. 12-1904."

The language of this subsection is not merely directory but is couched in terms which make the levy mandatory. Under the express language of this subsection, the school district or city, whichever is larger, is obligated, upon presentation of a certified budget at least twenty days prior to the publishing date for the budget of the city or school district, to levy up to but not exceeding one mill for those purposes specified in the recreation commission's budget. The board of education is without statutory authority to approve or disapprove a recreation commission's budget and refuse to levy a tax pursuant to K.S.A. 12-1908(a) unless the budget is non-certified or fails to be submitted prior to twenty days before the publication of the city's or school district's budget. The electors are given authority to terminate the program in the same manner it was commenced.

K.S.A. 12-1908(b) vests the commission with one additional source of revenue by providing:

"After any city or school district has begun to operate such a supervised recreation system, it appearing to the satisfaction of the recreation commission of a particular school district or city or of a city and school district jointly, that the budget should be increased so as to adequately meet the needs of the city or school district, such recrea-

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tion commission may submit a proposed program with the budget for carrying out the same to the levying authority which may then levy a tax sufficient to raise the amount required by the expanded budget, but not to exceed one (1) mill, which levy shall be in addition to the one (1) mill authorized by K.S.A. 12-1901: Provided: Such additional one (1) mill levy shall not be deemed or considered a levy of such city or school district in determining the aggregate levy of such city or school district under any of the statutes of this state but shall be in addition to all other levies authorized by law and shall not be subject to limitations prescribed by law."

Conversely, the language of subsection (b) conditions the additional or second one mill levy upon the initial approval of the levying authority, in this case, the board of education of Unified School District No. 258. The statute clearly vests discretion in the levying authority as to whether any or all of the additional one mill levy be made. Although subsection (b) provides a protest and election procedure to contest the additional one mill tax, the protest period does not begin to run unless and until the levying authority votes to raise the additional tax.

Thus, the establishment of a recreation commission pursuant to K.S.A. 12-1901 et seq., requires and obligates the appropriate levying authority, either the city or the school district, to raise a tax levy up to but not exceeding one mill, in an amount sufficient to meet the proposed budget. The levying authority may decline to levy the first one mill tax only if the proposed budget is non-certified or fails to be submitted within the appropriate time limitations. In the event the recreation commission proposes a budget necessitating a tax levy in addition to the first one mill, the levying authority is vested with discretion as to whether any additional mill levy above the first one mill should be made. If the levying authority

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refuses to make an additional mill levy pursuant to K.S.A. 19-1208(b), the operation of the recreation commission is restricted to the mandatory one mill tax under K.S.A. 19-1208(a).

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv