



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

July 30, 1976

ATTORNEY GENERAL OPINION NO. 76- 237

Thomas H. Conroy
Attorney At Law
Porter Hotel Building
209 East Main Street
Beloit, Kansas 67420

Re: Taxation--Aggregate Levy Limitations--Levy for
Historical Purposes

Synopsis: The levy for historical purposes under K.S.A.
19-2651 is subject to the aggregate levy
limitations of K.S.A. 1975 Supp. 79-5001 et seq.
Failure to extend the levy for three years
following its authorization does not invalidate
that authorization, which remains as continuing
authority for the levy.

* * *

Dear Mr. Conroy:

On November 1, 1972, the Board of County Commissioners of Mitchell County, Kansas, passed a resolution pursuant to K.S.A. 19-2651 giving notice of their intention to levy an annual tax not to exceed two-tenths (2/10ths) mill on all taxable tangible property in Mitchell County. The notice further provided that the levy would be made unless a petition carrying ten percent (10%) of the total vote cast for the Office of the Secretary of State in Mitchell County at the last preceding election was not filed within sixty (60) days after date of the last publication of the resolution.

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Although no protests were filed within the sixty-day period, the tax levy has not yet been raised due to questions raised by auditors for the county, who queried whether the levy could lawfully be made consistent with the aggregate levy limitations of K.S.A. 1975 Supp. 79-5001 et seq., commonly known as the tax lid."

At the time the levy was authorized in 1972, K.S.A. 19-2651 provided in part as follows:

"In order to provide funds to carry out the provisions of this act, the board of county commissioners may levy an annual tax of not to exceed two-tenths of one mill on all the taxable tangible property in the county . . . Said tax levy shall be in addition to all other tax levies authorized or limited by law and shall not be subject to, or within, any of the specific tax levy limitations or aggregate tax levy limitation prescribed by K.S.A. 79-1947 and acts amendatory thereof."

By a 1975 amendment, the two-tenths mill limitation was removed from this provision. In lieu of the specific levy limitation, the provision as amended merely limits the levy made for the purposes of the act on and after July 1, 1975, to that which was authorized by law prior to July 1, 1975. If a greater levy is sought, a resolution therefor must be adopted, and, if a sufficient protest petition is filed, it must be approved by the electorate. If, of course, no protest petition is filed, any increased levy authorized by the resolution may be extended, consistent with any other applicable limitations.

Apparently, the real question raised was whether the levy is exempt from the tax lid. All levies are subject to the lid except those excepted by either of two means, as specified in K.S.A. 1975 Supp. 79-5003:

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"All tax levies now or hereafter authorized by law to be made by taxing subdivisions subject to the provisions of this act, except levies specifically excluded under the provisions of Section 11 [79-5011] of this act, shall be subject to the aggregate limitation prescribed hereunder unless the provisions of the act authorizing the levy specifically states that such levy is exempt from the limitations imposed under the provisions of Sections 1 to 16 [79-5001 to 79-5016], inclusive, of this act."

The levy authorized by K.S.A. 19-2651 is not enumerated in K.S.A. 1975 Supp. 79-5011 as specifically exempt from the aggregate levy limitations. Nor does the language of the act authorizing the levy, K.S.A. 19-2651 either prior to or after its 1975 amendment, exempt this levy from the aggregate levy limitations. Thus, I cannot but conclude that the levy for historical purposes authorized by K.S.A. 19-2651 is not exempt from the aggregate levy limitations of K.S.A. 1975 Supp. 79-5001 et seq.

I agree with you that the fact that the levy has not been made since its authorization in 1972 does not affect the validity of the proceedings taken at the time to authorize it, and that the authorizing resolution remains continuing authority for the levy this year. Thus, it may be extended, and included in the 1977 county budget, although the levy for historical purposes must be included in computation of the aggregate levy limits.

Very truly yours,

CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv