



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

August 23, 1976

ATTORNEY GENERAL OPINION NO. 76-262

Mr. W. B. Buechel
City Attorney
613 Washington
Post Office Box 327
Concordia, Kansas 66901

Re: Cities--Recreation--Levies

Synopsis: If the voters reject a levy in excess of one mill for the recreation commission at an election held pursuant to K.S.A. 12-1908(b), the limit on such levy reverts to one mill, notwithstanding levies in excess of one mill were made in prior years during which no sufficient petitions in opposition thereto were filed.

* * *

Dear Mr. Buechel:

As City Attorney for the City of Concordia, Kansas, you request my opinion concerning the additional tax levy permitted for the city recreation commission under K.S.A. 12-1908.

K.S.A. 12-1908(a) authorizes a levy of not to exceed one mill for the budget of the recreation commission. Subsection (b) permits an additional levy of not to exceed one mill to be made to fund an expanded budget of the recreation commission when necessary to meet adequately the recreational needs of the city or school district. Before the additional one-mill levy authority may be used, the city or school district, as the case may be, must adopt a resolution authorizing the additional levy and stating the purpose for which it is made. The resolution must be published once

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in the official city paper. If a sufficient petition in opposition thereto is filed, the question must be submitted to a vote of the people:

"If a valid petition is signed, it shall be the duty of the governing body of the city or of the school district to submit the question of levying the tax at the next regular city election or at a special election called for the purpose. When an election is held and a majority shall vote in favor of levying the tax, such tax may thereafter be levied. *If the majority shall vote against the tax levy, then such levy shall not be made.*"
[Emphasis supplied.]

You advise that by a resolution published on July 20, 1974, an additional levy of .748 mills was authorized. No petition in opposition was filed, and the levy was made. Again, in 1975, an additional levy of .883 mills was authorized by a duly adopted and published resolution, and the levy was made when no petition in opposition thereto was filed.

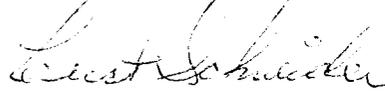
By a resolution published July 9, 1976, an additional levy of .907 was authorized, and a petition opposing the levy has been filed. A special election has been called for the purpose of submitting this additional levy. The question arises whether, if the additional .907 mill levy is rejected by the voters, whether the tax levy reverts to the maximum of one mill, or to the maximum levy which was made last year, *i.e.*, one mill plus .883 mills, as authorized by resolution in 1975.

Under K.S.A. 12-1908(b), the voters are entitled upon the filing of a sufficient petition to pass upon the making of any levy in excess of the one mill levy authorized by subsection (a). If the proposition is rejected this year, the levy for the commision may not exceed one mill, in my judgment. The failure of the electors to file sufficient petitions in opposition to levies in excess of one mill in 1974 and 1975 does not waive the statutory right of those electors in subsequent years to protest by petition and seek elections upon levies in excess of the statutory one-mill limit. This provision contemplates that levies in excess of one mill shall be subject to protest and election, and that statutory right is not forfeited by default, in my opinion. Thus, in my judgment, if the additional levy of .907 mills is rejected by the voters,

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the levy limit reverts to the maximum of one mill established by
K.S.A. 12-1904 and -1908(a).

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj