

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 26, 1976

ATTORNEY GENERAL OPINION NO. 76-272

Mr. Tom M. Reeves
Marshall County Attorney
916 Broadway
P.O. Box 386
Marysville, Kansas 66508

Attn: Mr. Terry Blaser

Re: Counties - Buildings - Courthouses

Synopsis: In the exercise of county home rule powers, the board of county commissioners may authorize and call an advisory election to be held upon a question of public importance in the county, including whether to renovate an existing courthouse or to erect an entirely new structure. Monies raised under a levy authorized by resolution adopted pursuant to K.S.A. 19-1569 may be used for a new jail and administrative offices alone, provided the language of the resolution is cast in the language of the statute. Thirdly, again in the exercise of county home rule powers, the board of county commissioners may adopt a resolution authorizing renovation of the existing courthouse structure.

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Dear Mr. Reeves:

You advise that several years ago, a resolution was adopted by the board of county commissioners of Marshall County pursuant to K.S.A. 19-1569, authorizing a levy to create a fund to be used for

"the building, equipping and furnishing of a courthouse and jail or for any one or more of such purposes"

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Since that time, the feasibility of preserving the existing courthouse has been reviewed. In the course of these deliberations, the question has arisen whether the board of county commissioners may authorize and call an advisory election, to be held at the time of the November general election, on the question whether to erect a new courthouse or to renovate the existing structure.

I enclose a photocopy of an opinion dated May 3, 1972, addressed by Attorney General Vern Miller to Joe L. Levy, then city attorney of the City of Coffeyville, concluding that it is within the lawful authority of a city governing body, in the exercise of constitutional home rule powers vested in the city under Article 12, § 5 of the Kansas Constitution, to authorize the holding of an advisory election upon a question of public importance. In that opinion, it was pointed out that counties had no such power, and must look in each instance to express statutory authority.

Since that time, of course, counties have been granted broad powers of "local legislation and administration" to transact county business as they deem appropriate. In my view, the comments in the enclosed opinion concerning cities now apply equally to counties. In the exercise of their general legislative and administrative powers, the board of county commissioners may authorize the holding of an advisory election upon a question of local public importance. Certainly, the decision to erect a new courthouse or to preserve the existing building is a matter of county business, and it is a local question. There being no statutory prohibition against advisory elections, the board is free to call one by adoption of the appropriate resolution and to authorize the expenditure of county funds therefor.

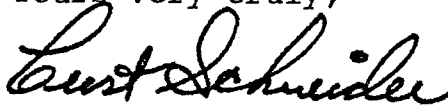
Secondly, you inquire whether the funds derived from the levy made pursuant to the old resolution, adopted under K.S.A. 19-1569, supra, may be used for the construction of a new jail and administrative offices only.

The language of K.S.A. 19-1569 authorizes use of the funds for the building, equipping and furnishing of a courthouse and jail or "for any one or more of such purposes." Assuming that the language of the resolution is cast in the language of the statute, the proceeds from the levy may be used for a new courthouse or a new jail or both, and the use of the proceeds for jail and administrative offices alone would be fully within the authority of the board.

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Lastly, the question is raised whether a resolution may be adopted for renovation of the old courthouse. Once again, such a resolution is clearly within the general legislative and administrative powers respecting county business granted by K.S.A. 19-191a et seq. This resolution, as well as the resolution authorizing and calling the advisory election, should be adopted pursuant to K.S.A. 19-101a(b).

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS/JRM/ksn

Enclosure