



STATE OF KANSAS

## Office of the Attorney General

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

Curt T. Schneider.  
Attorney General

September 29, 1976

ATTORNEY GENERAL OPINION NO. 76- 304

Mr. T. A. Blaser  
Marshall County Attorney's Office  
Marshall County Courthouse  
Marysville, Kansas 66508

Re: Counties--Buildings--Courthouses

Synopsis: Funds derived from a levy adopted under the authority of K.S.A. 19-1569, since repealed, under a proposition which stated the proceeds would be used for "the purpose of acquiring a site, building, furnishing and equipping a courthouse and jail" may not be used for construction of a jail and administrative offices alone.

\* \* \*

Dear Mr. Blaser:

You request clarification of Opinion No. 76-272 in its application to resolutions of the Marshall County board of county commissioners adopted March 30, 1959 and renewed May 9, 1966.

These resolutions were adopted under the authority of K.S.A. 19-1569, since repealed, which authorized a levy to create a fund to be used for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." [Emphasis supplied.]

Since the adoption of those resolutions, the board has reconsidered the feasibility of preserving the existing courthouse, and questions have been raised whether the proceeds of the levies imposed pursuant

Mr. T. A. Blaser  
Page Two  
September 29, 1976

to these resolutions may be applied to the construction of a jail and administrative offices.

The statute authorizes a levy to build, equip and furnish a "courthouse and jail," or "any one or more of such purposes." In Opinion No. 76-272, I suggested that if the resolution which was adopted was cast in the language of the statute, it would authorize the expenditure of proceeds from the levy for the construction of a jail and administrative offices alone, with none to be spent for the courthouse.

You enclose copies of the resolutions with your letter. The levy was authorized, according to their terms, to create a fund "for the purpose of acquiring a site, building, furnishing and equipping a courthouse and jail." [Emphasis supplied.] The further language of the statute, permitting use of the fund for *both* the courthouse and jail, or *either* of them, is omitted.

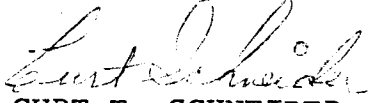
The proposition controls the use of the funds derived from the levy which it authorized. Under K.S.A. 19-1569, since repealed, the voters were entitled to compel an election on the question of the levy by the filing of a sufficient petition. No petition was filed, and hence, the voters must be deemed to have tacitly approved the levy of funds for the purpose stated in the proposition. It called for the expenditure of \$500,000 for both a courthouse and jail. If the proposition had been framed in the language of the statute, permitting use of the funds for both the courthouse and jail, or either of them, voters might well have protested on the grounds that a half million dollars was an excessive sum to be spent on a jail alone, or for a courthouse alone. The reasonableness of the sum was, presumptively, judged only by the purposes to which it was to be applied, *i.e.*, to a courthouse and a jail. Because the voters had an opportunity to pass upon the proposition authorizing the levy and the use of the proceeds only as applied to the courthouse and jail conjunctively, the proposition does not provide authority for the expenditure of the entire sum upon either of the projects singly, in my judgment.

Some courts have questioned whether a single proposition for the issuance of bonds for a "courthouse and jail" constitutes a dual proposition. See Annot., 4 A.L.R.2d 617 at 641. Here, the form of the proposition conforms to that expressly authorized by law, and accordingly, there is no question of dual propositions here. However, having been announced to the voters as a unitary proposition, *i.e.*, the use of the funds for a courthouse and jail jointly, the purposes may not now be severed, and funds spent for one purpose in disregard of the other, for the voters are deemed to have tacitly approved the proposition as authorizing funds for a single and unitary project, a courthouse and jail.

Mr. T. A. Blaser  
Page Three  
September 29, 1976

Accordingly, you are correct, that the resolution does not come within the second paragraph of page 2 of Opinion No. 76-272. I conclude that funds derived from the levies authorized by the 1959 and 1966 resolutions may not be utilized for a jail and administrative offices alone.

Yours very truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj