



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 22, 1977

ATTORNEY GENERAL OPINION NO. 77-136

The Honorable E. Richard Brewster
State Representative
5334 Southwest Wanamaker
Topeka, Kansas 66610

Re: Townships--Fire Protection--Levies

Synopsis: The levy authorized by K.S.A. 80-1903 may be used only for the operation and maintenance of a fire department which is created and operated by the township board which levies the tax, and may not be used for the purchase of fire protection services from other townships or township fire districts.

* * *

Dear Representative Brewster:

You advise that a number of years ago, pursuant to statutory authority Topeka and Tecumseh townships in Shawnee County formed a joint township fire district, which contracts with several other townships, including Mission, to furnish fire protection. That township now levies one mill to meet its obligations under the contract to the joint township fire district, and it has recently learned that additional funds will be needed in the future to obtain the contractual fire services from the district. As a result, it is exploring alternative sources of revenue.

K.S.A. 1976 Supp. 79-1962 prescribes a levy limitation in pertinent part as follows:

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"The governing body of any township is hereby authorized and empowered to levy taxes in each year for township purposes but said governing body shall not fix a rate of levy in any one year on each dollar of assessed tangible valuation of such township in excess of the following named rates:

	*	*	*
Fire protection, joint with cities or townships.			1.00 mill
	*	*	*
Fire department: As authorized by K.S.A. 80-1093			2.00 mills
Townships in counties between 150,000 and 250,000			4.00 mills"

You raise the question whether Mission township may use the 4 mill levy in this section to pay the costs of purchasing fire protection services from the joint township fire district.

K.S.A. 80-1903 was initially enacted as section 3 of ch. 348, L. 1939. Section 2 of that act, now found at K.S.A. 80-1902, authorizes certain townships to create by resolution a "township fire department, to furnish fire protection within such township, such fire department to be operated under the direction of the township board of such township." K.S.A. 80-1903 authorizes a levy for such townships, and its purpose thus:

"The township board of any such township shall have power to levy a tax . . . for the purpose of paying the expense of equipping, operating, and maintaining such fire department" [Emphasis supplied.]

The phrase "such fire department" refers to the fire department authorized to be created in the preceding section, K.S.A. 80-1902 i.e., a fire department created by the township board itself, and operated under direction of the township board. K.S.A. 80-1904 goes on to elaborate the powers of the township board respecting the operation of its fire department.

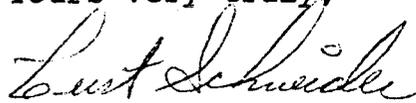
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Thus, the levy authorized by K.S.A. 80-1903 may be applied only to the operation and maintenance of the fire department created by the township board which makes the levy, and which department operates under its supervision and direction. Article 11, § 5 of the Kansas Constitution states thus:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied."

Thus, the levy authorized by K.S.A. 80-1903 may not be used for any other purpose, including the purchase of fire protection services from another township or joint township fire district.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj