

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

November 1, 1977

ATTORNEY GENERAL OPINION NO. 77- 353

Mr. Dale M. Dennis
Assistant Commissioner for
Financial Services
State Department of Education
120 East 10th Street
Topeka, Kansas 66612

Re: School Districts--Recreation Commission--Levies

Synopsis: A board of education may make a levy for the public employees' retirement expense of employees of a recreation commission established under K.S.A. 12-1901 et seq. which levy may be in addition to that authorized by K.S.A. 12-1908 and exempt from the limitation imposed by that statute; however, the board may not make any additional such exempt levy for the social security, workmen's compensation and unemployment compensation expense of the recreation commission.

* * *

Dear Mr. Dennis:

K.S.A. 12-1908(a) provides that upon the adoption of the act, K.S.A. 12-1901 et seq., the recreation commission shall annually certify its budget to the city or the school district, as the case may be, which shall then levy a tax sufficient to raise the amount required by such budget, not to exceed one mill or, if authorized by subsection (b), two mills. The question is raised whether the board of education may make a separate levy, in addition to the one or two mill levy permitted by law, for the social security, unemployment compensation, workmen's compensation, and KPERS expense of the recreation commission.

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K.S.A. 74-4920(4) provides in pertinent part thus:

"[E]ach participating employer which is not by law authorized to levy taxes as described above, but which prepares a budget for its expenses for the ensuing year and presents the same to a body which is authorized by law to levy taxes as described above, may include in its budget an amount sufficient to make its contributions under this act which may be in addition to all other taxes authorized or limited by law and the governing body to which the budget is submitted for approval may levy a tax sufficient to allow the participating employer to make its contributions under this act which tax may be in addition to all other taxes authorized or limited by law"

Under this provision, the city or board of education is authorized to make a separate levy for the KPERS expense of the recreation commission, in addition to the levy authorized and limited by K.S.A. 12-1908.

Concerning levies for social security expense, K.S.A. 40-2305(e) provides in pertinent part thus:

"Each political subdivision, other than an instrumentality of the state, shall pay its contributions required under the provisions of subsection (c) of this section from the same fund that the wages for which said contribution is made are paid or from any other funds available to it for such purpose: Provided, That each political subdivision, other than an instrumentality of the state, which is by law authorized to levy taxes for other purposes, may levy annually at the time of its levy of taxes for other purposes, a tax, which may be in addition to all other taxes authorized or limited by law . . . for the purpose of making its contributions under subsection (c) of this section, which tax together with any other funds available to such political subdivision for such purpose shall be sufficient to enable it to make such contributions." [Emphasis supplied.]

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The school district is authorized, thus, to make a separate and additional levy, not subject to certain other statutory limitations, for its own social security expense. It has no authority, however, to make an additional levy, in addition to those authorized and limited by law, for the social security expense of another employer, such as the recreation commission.

Concerning levies for workmen's compensation coverage, K.S.A. 1976 Supp. 44-505c provides in pertinent part thus:

"Any city, county, school district or other political subdivision or municipality is hereby authorized to pay the cost of workmen's compensation coverage for its employees as provided by this act and may pay such costs from the various funds from which compensation is paid to its employees, or may levy annually at the time of its levy of taxes an additional tax therefor Such tax shall not be subject to any tax levy limit prescribed by article 19 of chapter 79 of the 1973 Supplement to the Kansas Statutes Annotated . . . [and] from the limitations imposed under the provisions of article 50 of chapter 79 of the 1973 Supplement to the Kansas Statutes Annotated." [Emphasis supplied.]

This provision authorizes the school district to make a levy exempt from the aggregate levy limitations of K.S.A. 1976 Supp. 79-5001 et seq., or from the levy limits of ch. 79, article 19, K.S.A. for workmen's compensation coverage for its own employees. It does not, however, authorize the school district to make a separate and exempt levy for workmen's compensation coverage for persons other than its own employees, such as employees of a recreation commission established under K.S.A. 12-1901 et seq. Thus, a levy by a school district for the workmen's compensation expense of a recreation commission remains subject to the one or two mill limit.

Section 8, ch. 181, L. 1976, authorizes cities, counties, school districts and other governmental entities to budget and pay the costs of providing unemployment insurance benefits for its employees from the various funds from which compensation is paid to its employees and,

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"if otherwise authorized by law to levy taxes, may levy, annually, beginning in 1977, an additional tax therefor, which, together with any other funds available, shall be sufficient to provide the cost thereof."

Subsection (b) of this section exempts from the aggregate levy limitations of K.S.A. 1976 Supp. 79-5001 any taxes which are levied

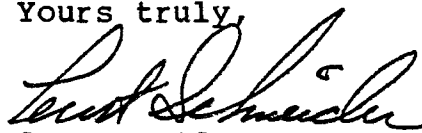
"by counties, cities and community junior college districts to fund unemployment insurance payments as a contributing employer, reimbursing employer or rated government employer as required by this act"

Once again, a school district is authorized to levy additional and exempt taxes to provide unemployment insurance benefits to its own employees as a contributing employer, but not for the employees of another political subdivision or employer for which the school district is authorized to levy taxes.

To capitulate, in my judgment, the board of education is authorized to levy a tax for the KPERS expense of a recreational commission which is in addition to the levy authorized by K.S.A. 12-1908, and which is exempt from the limitations imposed by that statute. However, the board of education is not authorized, in my judgment, to levy a tax in addition to that authorized by the cited statute for social security, workmen's compensation coverage, and unemployment compensation coverage expense of recreation commissions for which the board levies taxes.

The authority of the board of education to levy taxes for the recreation commission is entirely statutory. The board has no authority to include monies in its own levies for social security, workmen's compensation, or unemployment compensation for other than its own employees, and thus cannot incorporate in its own levies for those purposes monies to be remitted to the recreation commission or to be paid by the school district on the commission's behalf for those purposes, for there is no statutory authority for the board to do so.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj