



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

July 19, 1978

ATTORNEY GENERAL OPINION NO. 78-238

Mr. Michael H. Haas
Sheridan County Attorney
Sheridan County Courthouse
Hoxie, Kansas 67740

Re: Counties--Home Rule--Elections

Synopsis: The board of county commissioners may call an election, which would be entirely advisory in nature, to solicit the wishes of the electorate whether a levy should be authorized for airport purposes under K.S.A. 3-121.

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Dear Mr. Haas:

You advise that the Sheridan County board of county commissioners is considering the establishment of a joint city-county airport pursuant to K.S.A. 3-119a *et seq.* K.S.A. 3-121 provides that the governing bodies may pay the expenses of purchasing or acquiring such airports from the general fund, may issue bonds therefor, or in lieu of issuing bonds, the

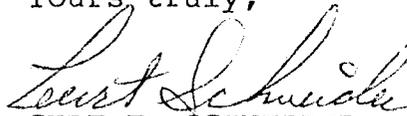
"governing body may levy an annual tax of not to exceed one mill on the dollar on all the taxable tangible property in such municipality for not to exceed three (3) years for the purpose of creating a special fund to be used to pay the expenses of purchasing or acquiring such airports or flying fields"

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However, the statute makes no provision for an election to authorize this levy. The board of county commissioners wish to authorize such a levy, however they wish to do so only with the approval of the voters. You ask whether, pursuant to its statutory home rule powers or some other provision, the board may call an election to determine whether the voters wish to approve such a levy.

The power to levy taxes is a legislative power. K.S.A. 3-121 vests that power, with regard to this particular levy, in the board of county commissioners. The board may not delegate that authority, but must exercise that power directly. Thus, it cannot delegate that decision to the result of an election. We have concluded, however, in previous opinions, that in the exercise of the statutory county home rule powers at K.S.A. 19-101a, the board may call an advisory election upon any question which it determines to be of public importance. If, as here, the election were held upon the question whether a levy should be imposed under this statute, the election would not be legally binding upon the board, because the decision to levy the tax rests by statute with the board, and with the board alone. However, the board could certainly call an election upon the question, which would be entirely advisory in nature, *i.e.*, in effect, an informal poll of the popular wishes of the voters which the board may or may not choose to follow.

Yours, truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj