

STATE OF KANSAS

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October 13, 1978

ATTORNEY GENERAL OPINION NO. 78- 324

Edwin H. Bideau III
Neosho County Attorney
123 Main Street
Chanute, Kansas 66720

RE: Taxation - Intangible Tax - Reduction or Elimination - Referendum, K.S.A. 79-3109(b), K.S.A. 1977 Supp. 19-117(c).

SYNOPSIS: A board of County Commissioners may adopt a resolution fixing at a reduced rate the intangible tax levied for the benefit of such county or eliminating that tax. No provision is made for the submission to the voters of an advisory referendum. If, within the statutory time a proper petition is filed, the question of adopting or rejecting such resolution is submitted to the electors of such county, and the result of such election is binding upon the Board. But, if the Board adopts no resolution to reduce or eliminate the intangible tax, then under another statute the qualified electors by petition may require the Board to submit to a referendum such a resolution and if the majority of electors voting at such election approve such a revenue measure, the Board must carry it out.

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Dear Mr. Bideau:

You ask if your Board of County Commissioners may, without deciding themselves, submit by referendum the question whether to reduce or eliminate intangible tax? You also ask if such a referendum is advisory or binding?

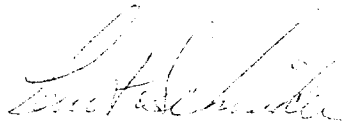
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K.S.A. 79-3109(b) simply states the Board of County Commissioners "may" adopt a resolution reducing or eliminating the intangible tax within the county. This is not compulsory. Nor is there any provision in this statute for submission of an "advisory" referendum to the electorate. Under this law, the Board must decide to pass a resolution or do nothing. If a resolution to reduce or eliminate the intangible tax is passed, then it must be published and, within the statutory time, electors of the county have a right to circulate and file a petition to call an election, and the resolution shall not become effective unless it is approved by a majority of the electors voting in that election.

However, in the 1977 session, the Kansas Legislature passed K.S.A. 1977 Supp. 19-117(c). This law provides that "The Board of County Commissioners shall be required to submit to a referendum the question of levying any tax or other revenue measure, ...", when a petition signed by not less than 5% of the qualified electors of such county, or a resolution signed by the governing bodies of one or more cities containing 25% of the population of the county, is filed with the Board. This law is compulsory and, if such a petition or resolution is filed with the Board, an election must be called.

We understand that such a petition has been now filed with your Board. This relieves the Board from adopting an affirmative resolution on the question of reducing or eliminating the intangible tax, but it is more than just "advisory". The Board must follow the result of the election.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw