



STATE OF KANSAS

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ATTORNEY GENERAL

October 26, 1978

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CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 78-347

Mr. Robert C. Johnson
City Attorney
Post Office Box 32
Herington, Kansas 67449

Re: Recreation Commission--Levy--Reorganization

Synopsis: Under ch. 65, § 2, L. 1978, before exercising the additional levy authority created by new subsection (c) thereof, the reorganization resolution required by new subsection (d) is to be adopted by the recreation commission itself, rather than by the levying authority.

* * *

Dear Mr. Johnson:

You advise that a recreation commission has been established in the City of Herington, pursuant to K.S.A. 12-1901 *et seq.* The commission was created jointly by the city and school district. You inquire concerning certain amendments to K.S.A. 1977 Supp. 12-1908.

Under subsection (a) thereof, a levy of one mill is authorized. Subsection (b) authorizes an additional levy of one or two mills, under certain conditions. The 1978 legislature amended this section by adding two further subsections, (c) and (d). Ch. 65, § 2, L. 1978. Subsection (c) provides additional levy authority thus:

"Any recreational commission established by a city, school district or both, acting jointly, which has been operating for at least

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three (3) years on the maximum levies authorized by K.S.A. 12-1904 and subsection (b) of this section, may submit a proposed program, with the budget for carrying out the same, to the levying authority, which may then levy a tax sufficient to raise the amount required by such budget, but not to exceed one (1) mill."

Subsection (d) requires that before this additional levy authority may be exercised, the recreation commission must be reorganized as provided therein. In pertinent part, it provides thus:

"In any city or school district in which a recreation commission has been established, before the levying authority shall make any additional levy authorized by subsection (c) of this section, it shall adopt a resolution reorganizing the recreation commission as follows: . . . (3) where the recreation commission was established by a city and school district jointly, five (5) members shall be appointed as provided in K.S.A. 12-1907, two (2) members shall be duly elected members of the city governing body and two (2) members shall be duly elected members of the board of education of the school district." [Emphasis supplied.]

You inquire by whom the reorganizational resolution is to be adopted, whether by the levying authority, which in this instance is the school board; by the city governing body and board of education jointly, because they jointly created the commission in the first instance; or by the recreation commission itself. Under the act, the levying authority is either the city or the school district, "whichever shall be the larger." In any given instance, whether the levying authority is the city or the school district depends, thus, upon an accident of geography, i.e., the size of their respective territories.

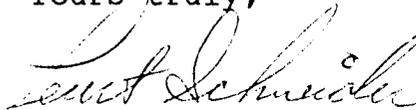
The term "it," as it appears in the underscored language, refers to an antecedent in the preceding language, either the "recreation

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commission" which has been established, or the "levying authority." In my opinion, the requisite resolution is required to be adopted by the recreation commission itself. It is the commission which prepares and submits a budget which may call for the additional levy of not to exceed one mill authorized by new subsection (c). The adoption of a resolution reorganizing the commission is a condition precedent to the levy of that additional mill. There is little reason to assume that the legislature intended that the resolution reorganizing the recreation commission to be adopted by the levying authority, which may or may not have been the entity creating the commission in the first instance. In many instances, in which the levying authority is the school district, the recreation commission may have been created by the city acting independently, and there is little reason to believe that the legislature intended that a creature of the city governing body should be reorganized independently by an entirely separate body, merely because it is the levying authority. Likewise, here, the commission was created by the city and school district acting jointly, and there is little reason to vest in the school district the power to reorganize, independently, a commission which was created by it acting jointly with the city.

Considering the alternative antecedents to the pronoun "it," and choosing between the recreation commission itself and the levying authority, it is my judgment that the commission itself should be deemed the appropriate body to adopt the resolution required by this section as a condition precedent to the exercise of the additional levy authority created by new subsection (c).

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj