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May 16, 1979

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ATTORNEY GENERAL OPINION NO. 79-84

Mr. James W. Bouska
Assistant County Counselor
Johnson County Counselor
General Square Center, Suite 480
9800 Metcalf Avenue
Overland Park, Kansas 66212

Re: Cities and Municipalities--Countywide Retailers'
Sales Tax--Apportionment of Revenues

Synopsis: Pursuant to K.S.A. 1978 Supp. 12-192(a)(1), only those taxes levied for funds, either general or special, of the county or a city located therein are to be considered in determining the distribution of revenues earned from a countywide retailers' sales tax. Taxes levied to provide funds for other governmental units authorized to impose taxes are not to be included.

* * *

Dear Mr. Bouska:

On behalf of the Johnson County Treasurer, you request our opinion as to the meaning of K.S.A. 1978 Supp. 12-192(a) which provides the formula to be employed in apportioning the revenue earned from countywide retailers' sales tax.

Said statute, in relevant part, provides:

"All revenue received by any county treasurer from a countywide retailers' sales tax shall be apportioned among the county and each city located in such county in the following manner:
(1) one-half of all revenue received by the county treasurer shall be apportioned among

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the county and each city located in such county in the proportion that the total tangible property tax levies made in such county in the preceding year for all funds of each such governmental unit bear to the total of all such levies made in the preceding year for all funds of each such governmental unit . . ." (Emphasis added.)

By your inquiry, you question the meaning of the phrase "[t]otal tangible property tax levies made in such county in the preceding year for all funds of each such governmental unit." Specifically, your question, as we interpret it, is whether taxes levied by unified school districts, townships, community junior college districts and other such taxing districts located wholly or partly within the county are to be included in this computation? In short, we think not.

This statute refers only to "[t]otal tangible tax levies made in such county . . . for all funds of each such governmental unit." In our judgment, the word "such" is the controlling word in the phrase. As is explained by the Court in Missouri Pac. Rld. Co. v. Atchison County Commr's, 130 Kan. 554 (1930), when the word "such" is used, it refers to something which precedes it. In K.S.A. 1978 Supp. 12-192, the only antecedents to which reference is made by the use of the word "such," are the county and any city located therein. No reference is made to any other governmental unit. Thus, in our judgment, the language is clear, and the only tax levies to be considered in determining the distribution ratio provided in K.S.A. 1978 Supp. 12-192 are those taxes which are levied by the county or any city located therein. Taxes which are levied by other governmental units, such as school districts, townships, community junior college districts and other such taxing subdivisions, which merely certify their tax levies to the county clerks pursuant to K.S.A. 79-1801, are not to be included in calculating the "[t]otal tangible property tax levies made in such county" for all funds of the county or cities.

While the above is dispositive of the inquiry presented herein, we feel compelled, in light of the fact that our conclusion differs from yours, to discuss the argument you present in your letter of inquiry.

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In that letter, you express the opinion that enactment of K.S.A. 1978 Supp. 12-192 so modified the provisions of its precursor, K.S.A. 12-177 [now repealed], that the legislative intent was to have "[a]ll levies and all funds of the various governmental units" included in the determination of the total tangible property tax levies made in a county imposing a countywide retailers' sales tax.

As you indicate, prior to the enactment of K.S.A. 1978 Supp. 12-192 (L. 1978, ch. 56, §6), a distribution of the revenue realized from imposition of a countywide retailers' sales tax was governed by the provisions of K.S.A. 12-177. This statute, which was superceded by K.S.A. 1978 Supp. 12-192, in pertinent part, provided:

"[A]ll revenue received by any county treasurer from a countywide retailers' sales tax shall be apportioned among the county and each city and community junior college district, all or part of which is located in such county in the following manner: (1) one-half of all revenue received by the county treasurer shall be apportioned among the county and each city and community junior college district all or a part of which is located in such county in the proportion that the total tangible property tax levies made in such county in the preceding year for all funds of each such governmental unit, except funds, tax levies for which are not subject to the limitations imposed by this act" (Emphasis added.)
K.S.A. 12-177 [now repealed.]

The foregoing, emphasized exception pertained to the provisions of K.S.A. 79-5011. This statute exempts from the aggregate tax levy limitations imposed upon cities and counties by K.S.A. 79-5001 et seq., tax levies made by cities and counties to provide funds with which to pay principal and interest upon bonds and temporary notes; certain no-fund warrants; judgments rendered against the city or county; and certain rent payments. It also exempts tax levies imposed by cities and counties to pay for special assessments. Thus, levies made for these purposes by counties and cities were not included in determining the distribution ratio provided in K.S.A. 12-177; and, as you indicate, as a practical matter, the tax levies used to compute the distribution ratio of K.S.A. 12-177 were only those revenues which were deposited in the general fund of the county or city.

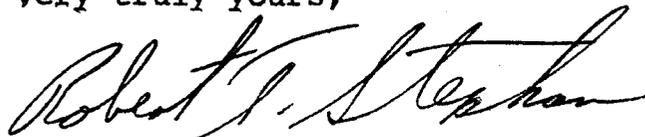
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To this point, we have no disagreement with any observation made in your letter. The disagreement arises only from your conclusion that the distribution ratio provided in K.S.A. 1978 Supp. 12-192 includes tax levies made by all the various taxing subdivisions located within the county.

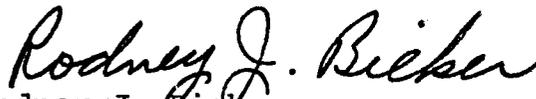
Your conclusion, it appears, is founded upon the fact that the exception clause provided in K.S.A. 12-177 was eliminated by the 1978 Legislature when it enacted K.S.A. 1978 Supp. 12-192. In our judgment, by elimination of this clause, the Legislature meant only to include within the ambit of K.S.A. 1978 Supp. 12-192(a)(1), tax levies made by counties and cities for the purpose of paying those items listed in K.S.A. 79-5011. It cannot discern any legislative intent to include taxes levied by taxing subdivisions other than the county or cities located therein.

Thus, in our opinion, K.S.A. 1978 Supp. 12-192 does little to affect the distribution ratio formerly provided in K.S.A. 12-177. Under the new statute, the treasurer totals all general fund tax levies and also totals all special fund tax levies, including those imposed to raise funds with which to pay those items specified in K.S.A. 79-5011. These totals are then added together and they equal "[t]he total tangible property tax levies" referred to in K.S.A. 1978 Supp. 12-192(a)(1). However, taxes levied by other governmental units are not to be included in determining the "[t]otal tangible property tax levies made in such county . . . for funds of such governmental units."

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:gk