



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

July 18, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79- 144

The Honorable Carlos M. Cooper
State Representative, Fortieth District
144 North Nettleton
Bonner Springs, Kansas 66012

Mr. Thomas C. Lysaught
Wyandotte County Counselor
600 Security National Bank Building
Kansas City, Kansas 66101

Re: Counties--County Commissioners--Referendum on the
Question of Imposing a Tax

Synopsis: The governing body of a city, which city has the requisite population mandated by the provisions of K.S.A. 1978 Supp. 19-117(c), may, pursuant to said statutory provisions, request the board of county commissioners of the county in which such city is located, to submit to a referendum the question of imposing a tax, excise, fee, charge or other exaction, although the city, itself, is prohibited from imposing the proposed tax.

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Dear Representative Cooper and Mr. Lysaught:

By means of separate letters, each of you has requested our opinion as to the constitutional propriety of the governing body of a city, pursuant to K.S.A. 1978 Supp. 19-117(c), requesting that the board of county commissioners submit to a referendum the

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question of imposing a tax which the city, itself, is proscribed from imposing. Your concern stems from the fact that K.S.A. 12-140 expressly prohibits any city from levying and collecting taxes on income. Thus, as the provisions of said statute apply uniformly to all cities, it is unquestioned that a city cannot, itself, even under its constitutional home rule powers (Kan. Const., Art. 12, Sec. 5.), impose such a tax. The question thus becomes: May the governing body of a city, pursuant to K.S.A. 1978 Supp. 19-117(c), require the board of county commissioners to submit to a referendum the question of imposing a tax which the city, itself, cannot lawfully impose?

K.S.A. 1978 Supp. 19-117(c), in relevant part, provides:

"The board of county commissioners shall be required to submit to a referendum the question of levying any tax or other revenue measure, authorized by the provisions of this act or other enactment referring to this act . . . upon receiving resolutions requesting such an election passed by the governing body of each of one or more cities within such county which contains a population of not less than twenty-five percent (25%) of the entire population of the county. If a majority of the electors voting thereon at such election shall approve the proposed tax or other revenue measure, the board of county commissioners of such county shall then provide by resolution for the levy of such tax or other revenue measure." (Emphasis added.)

While the statute is perhaps not the most artfully drafted piece of legislation, it is, in our judgment, sufficient to evince a clear legislative intent to allow the governing body of a city, located within the county and possessing the requisite population, to force the board of county commissioners to submit to a referendum the question of levying any tax or other revenue measure (excise, fee, charge, etc.) mentioned in K.S.A. 1978 Supp. 19-117(a). K.S.A. 12-140 precludes a city from

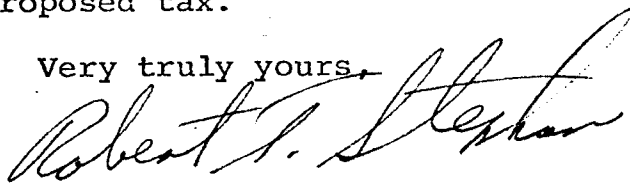
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imposing an earnings tax, but we find no conflict between this statute and 19-117. The latter statute authorizes a city to request that the board of county commissioners submit to a referendum the question of levying any tax or other revenue measure. If at said election, the voters approve the imposition of the proposed tax, then, and only then, is the tax imposed. Moreover, it is the county which is required to levy the tax; not the city. Consequently, any tax levied pursuant to 19-117(c) is a county tax and not a city tax.

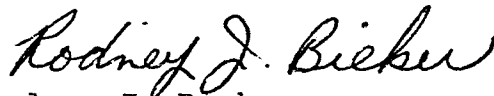
Nothing contained in Article 12, Section 5 of the Kansas Constitution mandates a contrary conclusion. While that constitutional provision subjects the exercise of cities' home rule powers to limitation or prohibition "by enactment of the legislature applicable uniformly to all cities of the same class," said provision, in our judgment, has no relevance to the issue posed herein. When the governing body of a city, pursuant to 19-117(c), requests the board of county commissioners to call a referendum on the question of imposing a tax, it is, by no means, itself, attempting to levy a tax. Said governing body is merely requesting that an election be held.

Thus, it is our opinion that the governing body of a city, which city has the requisite population mandated by the provisions of K.S.A. 1978 Supp. 19-117(c), may require the board of county commissioners of the county in which such city is located, to submit to a referendum the question of imposing any tax, excise, fee, charge or other exaction although the city, itself, is prohibited from imposing the proposed tax.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm