



STATE OF KANSAS

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August 1, 1979

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ATTORNEY GENERAL OPINION NO. 79-165

Leonard L. Buddenbohm
Atchison County Counselor
P. O. Box 194
Atchison, Kansas 66002

Re: Counties and County Officers--County Appraiser--
Publication of County Appraiser's Budget

Synopsis: K.S.A. 19-436 (as amended by L. 1979, ch. 52, §83) imposes an annual requirement to publish notice regarding the costs incurred pursuant to K.S.A. 19-430 et seq., providing for the appointment, qualifications, compensation, powers and duties of county appraisers. Further, if a timely protest petition is not filed in response to such notice, the taxes required to pay such costs must be excluded in computing a county's aggregate tax levies and thereby be exempt from "tax lid" limitations.

* * *

Dear Mr. Buddenbohm:

On behalf of the Board of Atchison County Commissioners, you have submitted two questions regarding the requirements imposed on the Board by the provisions of K.S.A. 19-436 (as amended by L. 1979, ch. 52, §83). In considering your request for our opinion, it should be noted that the 1979 amendments to K.S.A. 19-436 are not relevant to your inquiry, and as pertains to your first question the pertinent portions of this statute, which remain unchanged, read as follows:

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"The board of county commissioners of each county shall each year determine the total cost to be incurred by the county in complying with the requirements of this act and shall itemize and identify the same in the budget of the county. The board of county commissioners of the county shall publish a notice once each week for two consecutive weeks in the official county newspaper stating that all taxes levied to pay such costs . . . shall be exempt from the aggregate tax levy limitation of the county and if within sixty (60) days after the last publication thereof, a petition signed by electors of the county equal in number to not less than five percent (5%) of the total qualified electors of the county is filed in the office of the county election officer requesting an election thereon, such costs shall be within the aggregate tax levy limitation of the county unless a proposition to exclude the same from such limitation is submitted to and approved by a majority of the electors of the county voting at an election called and held thereon." (Emphasis added.)

The foregoing is the last in a series of statutes (K.S.A. 19-430 et seq.) which were enacted in 1974 (L. 1974, ch. 112) to provide for the appointment, qualification, compensation, powers and duties of county appraisers. As noted in a prior opinion of this office (Attorney General Opinion No. 76-168):

"K.S.A. 19-436 makes provision for the payment of the costs of compliance with the act. The board of county commissioners must determine the total cost to be incurred by the county in complying with the act, and itemize and identify those costs in the budget. A note must be published stating that 'all taxes levied to pay such costs' shall be exempt from the aggregate tax levy limitation of the county unless a sufficient petition is filed within sixty days after the second and last publication."

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It is to the statute's publication requirement your first question relates, inquiring whether such publication must be made annually. A similar question was addressed by another prior opinion of this office, Attorney General Opinion No. 77-317. That opinion recognized that an assumption had been made by a substantial number of county commissions that such publication had to be made only once, in the year the act became effective. In response to this widely-held assumption, Opinion No. 77-317 stated:

"Unfortunately this assumption is in error, for K.S.A. 19-436 directs that 'each year' the board of county commissioners will determine those costs, and publish a notice that all taxes levied to pay 'such costs' shall be exempt from the aggregate levy limitation of the county unless a sufficient protest petition is filed within sixty days of the second publication."

We agree with the foregoing conclusion. In our judgment, 19-436 requires that the notice specified therein be published annually. The first sentence requires the costs to be determined "each year" and that the board of county commissioners itemize and identify the same in the county's budget. This is clearly an annual function. Thus, it is equally apparent that the succeeding provisions of the statute, requiring publication of the notice regarding the taxes necessary to defray such costs, impose an annual duty on the board of county commissioners.

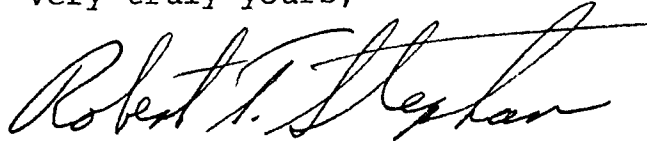
You also have inquired regarding the requirements of 19-436 as to the levying of taxes to pay the costs incurred pursuant to K.S.A. 19-430 et seq. Specifically, you have asked whether these taxes must be excluded from computing the county's aggregate tax levies and be exempt from the limitations of the "tax lid" (K.S.A. 79-5001 to 79-5016), if notice of such costs has been published and no protest petition has been filed within the time prescribed by 19-436. The following language of that statute is definitive in answering that question:

"If within such period no sufficient protest is filed or if the electors approve such proposition at an election called and held thereon that portion of the tax levies of such county which is levied for the purpose of paying costs incurred by the county in complying with the provisions of this act . . . shall not be included in computing the aggregate tax levies of the county and is exempt from the limitations imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive."
(Emphasis added.)

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It is apparent from the foregoing that if a sufficient protest has not been timely filed, the taxes in question must be excluded in computing the county's aggregate tax levies and thereby be exempt from "tax lid" limitations.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk