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August 22, 1979

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ATTORNEY GENERAL OPINION NO. 79- 182

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Re: Counties--Taxes--Referendum on Question of
Levying Earnings Tax

Synopsis: Upon receipt of a resolution passed by 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), the board of county commissioners must submit to an election the question of imposing a tax at the rate proposed by said governing body. However, the board of county commissioners need not, prior to said election, adopt a county revenue resolution levying such a tax. (Affirming Attorney General Opinion No. 79-144.)

* * *

Dear Mr. Watson:

Through a member of your staff, you have requested our opinion on two matters relating to the procedure to be followed in implementing the provisions of subsection (c) of K.S.A. 1978 Supp. 19-117. That subsection, in relevant part, provides:

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"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. An election held under the provisions of this section shall be scheduled and conducted in the same manner as if a resolution was being submitted to the electors, except that the proposition shall state the nature of the tax or revenue measure, the proposed rate and the date it would take effect."

Your request explains that the City of Kansas City, on June 6, 1979, adopted Resolution No. 31259 which called upon the Board of County Commissioners of Wyandotte County, Kansas, to submit to a referendum the question of imposing a countywide two percent (2%) earnings tax. As stated in your request: "Incorporated into that resolution was a proposed County Resolution authored by the City which set out fully the details and nature of the tax."

Upon submission of Resolution No. 31259 to the Wyandotte County Commissioners, counsel for the county questioned whether the City of Kansas City could make this request, since the city itself could not impose such a tax, due to the prohibition contained in K.S.A. 12-140. It was at this point in time that our office first became involved in this matter. Due to his concern as to the propriety of the City's request, the county counselor sought our opinion as to whether K.S.A. 12-140 barred the city from asking the county to submit to a referendum the question of imposing a countywide earnings tax. A similar request also was made of us by a state representative.

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In response to these requests, we issued Attorney General Opinion No. 79-144, concluding, in essence, that the City of Kansas City could legally make such a request of the county pursuant to K.S.A. 1978 Supp. 19-117(c). However, just prior to the issuance of that opinion, we were informed that Resolution No. 31259 had been repealed by subsequent action of the governing body of Kansas City, Kansas. Such action, we understand, was taken because uncertainty existed as to the procedure contemplated by the legislature when it enacted 19-117(c), and it is this uncertainty which prompts your inquiries.

It is our impression that your inquiry can be reduced to the following questions: (1) Under 19-117(c), must a county revenue resolution, complete in every detail so as to be a legally sufficient and proper law if approved by the voters, be adopted by a board of county commissioners prior to a vote of the people on the question of imposing a proposed tax? (2) If such a resolution must be completed prior to the election, must the board of county commissioners adopt a draft of such a law as prepared by the city which requested the election? (3) Specifically, must the Board of County Commissioners of Wyandotte County adopt the revenue resolution that was authored by the governing body of the City of Kansas City?

Regarding these questions, your request states:

"It is the position of this office that the County is required . . . to adopt the Resolution promulgated by the City and then to put that Resolution to a county-wide Referendum."

In support of this position, you note that the legislature employed the word "referendum," and that, technically speaking, "[t]he term 'referendum,' because of its definition, requires a previously adopted legislative action which is then placed to a vote of the citizenry for their decision whether to adopt or reject such action." In addition, you assert that, without the county commissioners' adoption of a complete and detailed resolution providing for the levy and collection of the tax prior to a vote of the electorate, said electorate cannot be fully informed and educated on the effect that the tax will have on each of them individually. Further, you maintain that K.S.A. 1978 Supp. 19-117(c) must be interpreted

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with reference to the initiative statute, K.S.A. 12-3013, as the "mechanism established [in 19-117(c)] is clearly initiative in nature." Finally, you assert that, if the county commissioners are not required to adopt a proposed resolution prepared by the city, said commissioners would be able "to continuously thwart the desires and needs of the electorate by again and again placing on the ballot unacceptable measures; for example, a ten percent (10%) earnings tax" when only a one percent (1%) tax was requested. While we understand the rationale for your position, we are constrained to differ with your conclusion. Your argument that the intent of the legislature when it enacted 19-117(c) was to require the county commissioners to adopt a resolution, then submit it to a vote of the people, is very well stated in your letter. However, based on our determination of legislative intent, we believe other factors--controlling factors--mitigate against the need for the county commissioners to adopt a revenue resolution prior to determining whether the county electorate want such tax to be imposed upon them.

There are two rules of statutory construction which we believe to be highly relevant in determining the legislative intent underlying enactment of K.S.A. 1978 Supp. 19-117(c). These rules were stated in the recent case of Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., 224 Kan. 357 (1978) where, at pages 367 and 368, the Court states:

"In determining legislative intent, courts are not limited to a mere consideration of the language employed, but may properly look to . . . the purposes to be accomplished, and the effect the statute may have under the various constructions suggested. [Citations omitted.]

"In construing a statute, the legislative intention is to be determined from a general consideration of the whole act. Effect must be given, if possible, to the entire statute and every part thereof. To this end, it is the duty of the court, so far as practicable, to reconcile the different provisions so as to make them consistent, harmonious and sensible." [Citations omitted.] (Emphasis added.)

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Consistent with the latter rule, we note that subsection (b) of K.S.A. 1978 Supp. 19-117, in pertinent part, provides:

"Any county election called under the provisions of this act shall be called within thirty (30) days and held within ninety (90) days after the filing of a petition demanding such election. The board of county commissioners shall pass a resolution calling the election and fixing the date, which resolution shall be published once in the official county newspaper.

. . . .

"The county election officer shall publish a notice of such election once each week for three (3) consecutive weeks in the official county newspaper Said notice shall state . . . the proposition which shall appear on the ballot. The proposition shall be: 'Shall revenue resolution No. _____ entitled (title of resolution) take effect?'" (Emphasis added.)

Construing the provisions of subsection (b) with those of subsection (c) so as to achieve a harmonious result, we are of the opinion that the legislature in enacting subsection (c), did not envision that the county adopt a resolution and then submit to the electors the question of adopting or rejecting the same. Such legislative intent is certainly not evidenced by the previously quoted provisions of 19-117(c), requiring that an election thereunder be held "in the same manner as if a resolution was being submitted to the electors." (Emphasis added.) Under your interpretation, no meaning is given to this language. Such interpretation ignores the previously quoted rule of statutory construction that "[e]ffect must be given, if possible, to the entire statute and every part thereof." Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., supra.

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In addition, we believe it is important to note that the legislature, in enacting 19-117(c), has not required the submission to the county commissioners of a "proposed resolution." Rather, 19-117(c) requires only that the proposition submitted to the electors as a result of a city's petition "shall state the nature of the tax or revenue measure, the proposed rate and the date it would take effect." This fact, in our judgment, shows that, while "[t]he mechanism established [by said subsection (c)] is clearly initiative in nature," it does not create in the governing body of a city the power of initiative, to the extent that the county must adopt, without amendment, any resolution drafted by the city.

In reaching this conclusion, it is necessary to disagree entirely with the suggestion of your office that "the only meaningful way" to discern the legislative intent underlying the provisions of 19-117(c) is by reference to the general initiative statute for cities, K.S.A. 12-3013. You have cited us to none, and we are aware of no rule of statutory construction that would dictate such a conclusion. Accordingly, we find no basis for construing together the provisions of 12-3013 and 19-117(c); they certainly cannot be considered as statutes in pari materia. While 12-3013 is a statute of general application to cities, 19-117(c) applies to counties under very specific circumstances, i.e., referendums regarding tax or revenue measures. Thus, we find it impossible to deem these statutes to be in pari materia, which would be the only justification for your suggested interpretation.

Our conclusion is emphasized further by the fact that 12-3013 is even inapplicable to comparable circumstances under city government. In the same act wherein the provisions of 19-117(c) were adopted (L. 1977, ch. 56), the legislature also made similar provisions applicable to cities (L. 1977, ch. 56, §3), which have been codified as K.S.A. 1978 Supp. 12-138a. In fact, except for necessary terminology changes and the obvious omission of the provision authorizing a city to petition the county, 12-138a and 19-117(c) impose identical requirements on the governing bodies of the respective political entities to which they apply. Considering this fact, together with your suggestion regarding the applicability of 12-3013, the question arises as to why 12-138a is necessary in light of 12-3013, and why no reference is made in 12-138a to the procedures prescribed by 12-3013. The answer is apparent from what has previously been stated herein--the legislature obviously has determined that 12-3013 does not contain an appropriate procedure for referendums regarding the levying of taxes or other revenue measures, and a specific procedure for these matters was necessary.

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Under these circumstances, it is difficult to conceive how 12-3013 can be relied upon to discern the legislature's intent in enacting 19-117(c). Even considering 12-138a and 12-3013 to be statutes in pari materia does not alter such conclusion. This is confirmed by a comparison of the respective provisions of K.S.A. 12-3013 and K.S.A. 1978 Supp. 12-138a. Pursuant to 12-3013:

"A proposed ordinance . . . may be submitted to the governing body of any city accompanied by a petition signed by electors

. . . .

"If the petition accompanying the proposed ordinance is signed by the required number of electors qualified to sign, the governing body shall either (a) pass such ordinance without alteration . . . or (b) if not passed . . . forthwith call a special election, unless a regular city election is to be held within ninety (90) days thereafter, and at such special or regular city election, if one is held, such ordinance shall be submitted without alteration to the vote of the electors of said city." (Emphasis added.)

In contrast to these requirements, 12-138a contains the following provisions which, except for the difference in terminology corresponding to the respective differences in legislative enactments of cities and counties, are identical to the provisions of 19-117(c):

"If a majority of the electors voting thereon [the question of levying any tax] at such election shall approve the proposed tax . . . , the governing body of such city shall then provide by ordinance for the levy of such tax" (Emphasis added.)

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The difference in the wording of these statutes is further evidence the legislature did not intend that a proposed county resolution, prepared by either the electors or the governing body of a city, be adopted, without alteration, by the board of county commissioners prior to an election being held. We are not prepared to disregard the plain language of 19-117(c) and "read into it" a requirement contained in another statute bearing no relevance to the statute under consideration. Rather, we are convinced the legislature intended that, when properly petitioned to do so, the board of county commissioners is required to submit to an election the question of whether or not the electors of the county want a tax imposed upon them. If the electors determine that question in the affirmative, then the board of county commissioners must by resolution provide for the levy of such tax.

Moreover, we believe your concerns about the county commissioners "thwarting" the request of the petitioners, by increasing the rate of tax requested, is unjustified and ignores the fact that the petition submitted to the county commissioners must petition for something. That "something," in our judgment, must be identical to the proposition to be submitted to the electors, i.e., "the nature of the tax, the proposed rate and the date it would take effect." That is the question upon which the referendum is to be held.

Furthermore, we are not persuaded by your concern that, should the county commissioners not be required to adopt a county revenue resolution prior to the election, the voters would not be fully informed and educated as to the matter upon which they are voting. In West v. Unified School District, 204 Kan. 29 (1969), the allegation was made that the notice of a special bond election was insufficient, because it did not adequately advise the voters of the proposition to be voted upon. In upholding the sufficiency of the notice, the Court said:

"The wording of the notice and the ballot went no further than the general wording of the purposes stated in the statute.

. . . .

"The fundamental principle running through all the cases is that the election laws contemplate that when a special proposition is submitted

to a popular vote, the ballot (as well as the notice) shall clearly state the substance of the question to be voted upon by the electors." (Emphasis by the Court.) Id. at 33, 34.

In K.S.A. 1978 Supp. 19-117(c), the legislature itself has "in its general wording" prescribed the matters to be stated in the proposition. In so doing, the legislature has provided "the substance of the question to be voted upon by the electors," and we are aware of no legal requirement that such proposition be expanded beyond "the general wording of the purposes stated in the statute." Id. In light of the foregoing, we cannot agree with your contention that failure of the county commissioners to adopt a revenue resolution prior to an election held pursuant to 19-117(c) would result in the electors having insufficient knowledge of the proposition to be voted upon.

In concluding, one further observation should be made. One of the previously quoted rules stated in Southeast Kansas Landowners Ass'n v. Kansas Turnpike Auth., supra, is that, in determining legislative intent, courts "may properly look to . . . the effect the statute may have under the various constructions suggested." 224 Kan. at 367. Under the construction you suggest, i.e., that the county is required by K.S.A. 1978 Supp. 19-117(c) to adopt a resolution promulgated by the city, the city would, in essence, be capable of doing indirectly what they cannot do directly, i.e., impose a tax on income.

K.S.A. 12-140 expressly provides: "No city shall have power to levy and collect taxes on incomes from whatever source derived." (Emphasis added.) In Attorney General Opinion No. 79-144, we said:

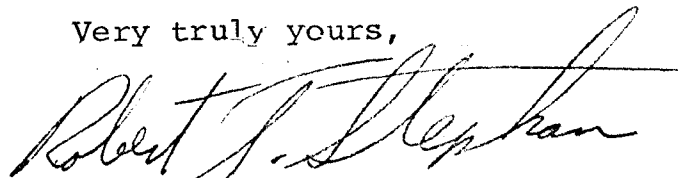
"[W]e find no conflict between this statute [12-140] and 19-117. The latter statute authorizes a city to request that the board of county commissioners submit to a referendum the question of levying any tax or other revenue measure. If at said election, the voters approve the imposition of the proposed 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." (Emphasis added.)

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To interpret 19-117(c) as requiring the county commissioners to adopt, without alteration, a county revenue resolution, drafted in toto by the city, would render meaningless, and be a failure to consider the entirety of the above statements. There, we said it is only after an affirmative vote of the people that the county commissioners must adopt a resolution imposing the tax so approved. We did not then, nor do we now, have in mind that a board of county commissioners has no discretion and is bound to merely "rubber stamp" a tax authored by the governing body of a city. Such a construction would attribute to the legislature an intent to allow a city to force the county to levy a tax for the benefit of the city while, on the other hand, the legislature has expressly prohibited the city itself from imposing the same tax for its own benefit. We will not attribute such an intent to the legislature.

Therefore, it is our opinion that if the Board of County Commissioners of Wyandotte County, Kansas, receives a resolution adopted by the governing body of the city of Kansas City, Kansas, asking that the question of levying a one percent (1%) countywide earnings tax to be effective on and after a certain date, the Board of County Commissioners must submit to an election the question of imposing such a tax, at the rate proposed, and to become effective on the date proposed in the city resolution. However, the Board of County Commissioners need not, prior to said election, adopt a county revenue resolution providing for the levying of such tax. Such resolution need be adopted only if, and after, the voters of Wyandotte County approve the question submitted to them.

Very truly yours,



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