



STATE OF KANSAS

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September 13, 1979

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Attorney General Opinion No. 79-206

Mr. Kenneth R. Heer
Kingman County Attorney
103 Avenue A East
Kingman, Kansas 67068

Mr. Leonard J. Dix
Rooks County Attorney
Rooks County Courthouse
Stockton, Kansas 67669

Re: Taxation--Aggregate Tax Levy Limitations--Tax
Levies Subject to Limitations

Synopsis: The tax levies authorized by K.S.A. 19-1561,
K.S.A. 1978 Supp. 19-1561b and 19-15,116(d)
(as amended by L. 1979, ch. 52, §§ 85, 86 and
89, respectively) are not exempt from the
aggregate tax levy limitations imposed by
K.S.A. 79-5001 et seq.

* * *

Gentlemen:

Both of you have asked for the Attorney General's opinion on the question whether certain county tax levies are exempt from the aggregate tax levy limitations, commonly known as the "tax lid" imposed by K.S.A. 79-5001 et seq. Because of the similarity of your requests, we have consolidated them for answer in one opinion.

Mr. Heer has inquired concerning the tax levy authorized by K.S.A. 19-1561 (as amended by L. 1979, ch. 52, §85), which section provides, in pertinent part:

"The tax herein authorized shall be in addition to all other levies authorized or limited by law."

Mr. Kenneth R. Heer
Mr. Leonard J. Dix
Page Two
September 13, 1979

Mr. Heer also has inquired concerning the levy authorized by K.S.A. 1978 Supp. 19-1561b (as amended by L. 1979, ch. 52, §86), and he advises that it is his opinion that, because of the above-quoted language, the tax levies authorized by K.S.A. 19-1561 (as amended) and by K.S.A. 1978 Supp. 19-1561b (as amended) are exempt from the "tax lid" limitations.

Mr. Dix asks whether the tax levy authorized by K.S.A. 1978 Supp. 19-15,116(d) (as amended by L. 1979, ch. 52, §89) is exempt from the "tax lid" limitations by virtue of the following portion of that section:

"All levies authorized under the provisions of this section shall be in addition to and not limited by any other act authorizing or limiting the tax levies of such counties."

K.S.A. 79-5003 provides as follows:

"Except as otherwise hereinafter provided, no taxing subdivision shall certify to the county clerk of the county any tax levies upon tangible property, excluding taxes levied as special assessments and excluding levies specified in K.S.A. 79-5011, and amendments thereto, which in the aggregate will produce an amount in excess of the amount which was levied by such taxing subdivision for the base year. All tax levies now or hereafter authorized by law to be made by taxing subdivisions subject to the provisions of this act, except levies specifically excluded under the provisions of K.S.A. 79-5011, shall be subject to the aggregate limitation prescribed hereunder unless the provisions of the act authorizing the levy specifically states that such levy is exempt from the limitation imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive." (Emphasis added.)

Mr. Kenneth R. Heer
Mr. Leonard J. Dix
Page Three
September 13, 1979

It should be noted that none of the tax levies under consideration are specifically excluded under the provisions of K.S.A. 79-5011, and none of the statutes authorizing those levies "specifically states that such levy is exempt from the limitation imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive," as provided by K.S.A. 79-5003. Since the levies in question are neither specifically excluded by the "tax lid" itself nor exempted from the "tax lid" by specific language in the authorizing statutes, it is our judgment that all of the levies in question are subject to the "tax lid" limitations.

It is important to note that the legislature has exempted particular tax levies from the "tax lid" limitations pursuant to K.S.A. 79-5003 in more than 30 enactments, each time by specific reference to the "tax lid" law. See Memorandum, Property Tax Levies Exempt From Tax Lid (Counties and Cities), Kansas Legislative Research Dept., June 1978 (enclosed). The legislature has not consistently employed any particular words or phrase to provide for such exemptions, but in each instance of which we are aware, the provisions of K.S.A. 79-5001 et seq. are explicitly referenced. For an example illustrating and confirming our conclusion, note the exemptive language of K.S.A. 12-1680, which statute authorizes a tax levy for service programs for the elderly. The statute provides, in pertinent part:

"Such tax levy shall be in addition to all other tax levies authorized or limited by law and shall not be subject to or within the limitations upon the levy of taxes imposed by K.S.A. 1975 Supp. 79-5001 to 79-5016, inclusive, and amendments thereto." (Emphasis added.)

It is our opinion that the express mention of the "tax lid" law in the above-quoted statute, and in the several other enactments providing for such an exemption from the "tax lid" is significant and the absence of such reference in the statutes in question equally significant.

Mr. Kenneth R. Heer
Mr. Leonard J. Dix
Page Four
September 13, 1979

For another example, compare the exemptions provided by K.S.A. 12-1688 and K.S.A. 79-1947b. In contrast, the exemptive language about which you both have inquired makes no specific reference to the levy limitations imposed by K.S.A. 79-5001 et seq., and for that reason the tax levies authorized by the statutes in question are not exempted from the "tax lid" limitations.

As further support for our conclusion, we note that, significantly, all of the enactments in question antedate the enactment of the "tax lid" law in 1970. Before 1970, tax levy limits and "aggregate tax levy" limitations referred to in the statutes in question were mill levy limitations. Since 1970, tax levy limitations have been imposed on the dollar amount which may be produced from ad valorem taxation, replacing, in large measure, the previous mill levy limitations prescribed for counties and cities. We find that only one of the statutes about which you have inquired has been changed to correspond with this significant change in the tax law, while the other statutes, though certainly the subjects of amendment after the enactment of the "tax lid" law, remain materially unchanged with respect to the issues you both have raised. All of the statutes in question, except K.S.A. 19-1561b, continue to refer to the former mill levy limitations.

K.S.A. 19-1561b has been amended five times since its original enactment in 1949 (L. 1949, ch. 201, §3). The original act authorized a tax levy to provide funds for additional equipment, and for maintenance and repairs of buildings constructed pursuant to K.S.A. 19-1561. In 1949, the statute provided, in pertinent part:

"[T]he board of county commissioners . . . is hereby authorized and empowered to levy annually a tax of not to exceed one-tenth mill . . . Said tax levy shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed by section 79-1947 of the General Statutes Supplement of 1947 or acts amendatory thereof or supplemental thereto."

Mr. Kenneth R. Heer
Mr. Leonard J. Dix
Page Five
September 13, 1979

In 1970, the statute was amended by removing the one-tenth mill limitation and replacing it with language limiting the board's power to levy the tax "in an amount not exceeding the limitation prescribed by K.S.A. 79-1947." L. 1970, ch. 100, §2. In 1975, in a series of enactments by which many of the mill levy limitations imposed by K.S.A. 79-1947 were eliminated, K.S.A. 19-1561b was again amended, this time eliminating the reference to the levy limitations prescribed by K.S.A. 79-1947 and deleting the above-quoted second sentence which referred to "all other levies authorized or limited by law." L. 1975, ch. 162, §7. See also, L. 1975, chs. 161, 162 and 163, passim.

By virtue of the 1975 amendment of K.S.A. 19-1561b, the tax levy authorized by that statute was no longer affected by any mill levy limitation, including the aggregate mill levy limitation. However, because this tax levy is neither specifically excluded nor exempted from the aggregate levy limitations imposed by the "tax lid" law, the levy of such tax is subject to the "tax lid" limitations. K.S.A. 79-5003.

Both K.S.A. 19-1561 and K.S.A. 1978 Supp. 19-15,116(d) have been amended a number of times, both before and after imposition of the "tax lid." In none of those amendments has the legislature sought to change or update the language relating to, and exempting levies from, the old mill levy limitations. Those statutes must be said to retain their original meaning and thus do not refer to the "tax lid" law, in light of the rule of statutory construction that

"the provisions of any statutes, so far as they are the same as those of any prior statute, shall be construed as a continuation of such provision, and not as a new enactment." City of Topeka v. Wasson, 101 Kan. 824, 826 (1917).

See also 73 Am.Jur.2d Statutes §322.

Importantly, we reiterate that in none of the statutes in question has the legislature explicitly referenced the levies in question to the "tax lid" law, as has been its custom in other enactments exempting levies from the "tax lid" limitations. We find that

Mr. Kenneth R. Heer
Mr. Leonard J. Dix
Page Six
September 13, 1979

"where express exceptions [to the operation of a general statute] are made, the legal presumption is that the legislature did not intend to save other cases from operation of the statute. Thus, the rule generally applied is that an exception in a statute amounts to an affirmation of the application of its provision to all other cases not excepted, and excludes all other exceptions or the enlargement of exceptions made. Under this principle, where a general rule has been established by a statute with exception, the courts will not curtail the former, nor add to the latter, by implication." 73 Am.Jur.2d Statutes §316.

Accordingly, we conclude that the tax levies authorized by K.S.A. 19-1561, K.S.A. 1978, Supp. 19-1561b and 19-15,116(d) (as amended by L. 1979, ch. 52, §§ 85, 86 and 89, respectively) are not exempt from the aggregate tax levy limitations imposed by K.S.A. 79-5001 et seq.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas


Steyen Carr
Assistant Attorney General

RTS:WRA:SC:gk

MEMORANDUM

PROPERTY TAX LEVIES EXEMPT FROM TAX LID

(COUNTIES AND CITIES)

Except as otherwise noted, levies listed below were exempted from the operation of the original (1970) tax lid law. There were 16 such exemptions, four of which no longer are applicable. Four exemptions were added in 1971, four in 1972, three in 1973, fifteen in 1974 (including two for junior colleges), five in 1975, three in 1976, and seven in 1977. Also in 1977, community junior college districts were exempted entirely from the property tax lid, and the maximum rates allowed for mental health and mental retardation levies (already exempt) were increased from .5 mills to .75 mills. Three exemptions were added in the 1978 session, *all three were added in 1979 and one in 1978*

The tax lid now applies only to counties and cities. Citations refer to K.S.A. or the latest supplement thereto, whichever is applicable.

Exemptions in Tax Lid Itself

Section 79-5011 provides that the tax lid shall not apply to or limit the levy of taxes for the payment of:

- a. principal and interest on bonds and temporary notes;
- b. no-fund warrants issued prior to April 3, 1970, or after that date but prior to April 30, 1973, with approval of the State Board of Tax Appeals on the basis of a finding of extreme emergency;
- c. no-fund warrants issued after April 30, 1973 when authorized by the Board of Tax Appeals subject to 79-2938, 2939, 2941 and 2951, and when in addition the Board finds that an extreme emergency exists;
- d. judgments rendered against taxing subdivisions;
- e. rent due under any lease with a public building commission authorized by 12-1757 to 12-1768, inclusive, which rent is for a facility specified in a resolution adopted prior to April 3, 1970, pursuant to 12-1767, and is pledged to retire bonds; or
- f. special assessments.

* In two August, 1977, opinions (77-253 and 77-272) the Attorney General held that, because the tax lid does not apply uniformly, cities and counties may exempt themselves from its provisions under their home rule authority.

Section 79-5011 further provides that the tax lid does not apply to property tax levies authorized or required under:

40-2305 - Employer social security contributions, as required by federal and state laws.

74-4920 - Employer KPERS (public employee retirement) contributions, as required by state law.

74-4967 - Employer KPF (police and firemen retirement) contributions, as required by state law.

- 2) 12-11a01 - Geary County and Junction City consolidated law enforcement, not to exceed 1/2 mill. Adoption subject to petition for election.
- 2) 13-1441(Now 12-1617h) - City industrial development programs, not to exceed 1 mill. Voter approval required.
13-14,100 - Pension funds, certain first class cities.
13-14a02 - First class city fire and police pensions.
- 2) 19-262 - County ambulance service, not to exceed 1 mill. Adoption subject to petition for election.
- 7) 19-262 - Ambulance service (Ellis County), not to exceed 2 mills; subject to petition for election.
- 1) 19-4004, 4011 - County mental health and mental retardation services: 3/4 mill for mental health; 3/4 mill for mental retardation, subject to petition for election; 1/4 mill for building, subject to petition for election.
- 3) 19-4102 - County economic development programs, not to exceed 1/2 mill. Each levy subject to petition for election.
- 2) 19-4443 - Riley County law enforcement. Voter approval was required to adopt.
71-301 - Community junior college out-district tuition charges paid by counties, as required by state law.
72-7074 - County school foundation fund as required by state law - 2 mills on 1971 adjusted valuation.
- 1) Employer contributions to any other employee retirement program in existence on July 1, 1970.

- 1) Exemption added in 1971.
- 2) Exemption added in 1972.
- 3) Exemption added in 1973.
- 7) Exemption added in 1977.

1) Section 79-5015 provides that levies required by law to be made by taxing subdivisions for political or governmental subdivisions not authorized to levy taxes on their own behalf (for instance, municipal libraries and agricultural extension councils) shall not be considered in computing the aggregate limitations on levies of the taxing subdivision (city or county) levying such tax. However, such levies remain subject to statutory millage limitations.

Exemptions in Other Statutes

A section of the tax lid law (79-5003) provides that all levies now or hereafter authorized to be made by units to which the lid applies shall be subject to the lid unless (1) specifically ~~excluded in 79-5011 (above)~~, or (2) the act authorizing the levy specifically exempts such levy from the limitation imposed by 79-5001 to 79-5016, inclusive. Levies that specifically have been exempted from the tax lid by other statutes are as follows:

- specific limitation*
- 4) 2-129i - Johnson County fair association, not to exceed 1/10 mill; subject to petition for election. ✓
 - 5) 2-1318 - County and city noxious weed eradication, not to exceed 1.5 mills. ✓
 - 7) 12-110b - Law enforcement purposes and ambulance and firefighting equipment (all second and third class cities and certain first class cities), not to exceed 2 mills; subject to petition for election. ✓
 - 8) 12-1256 - Library facilities (Johnson County), up to 1/2 mill, subject to petition for election. ✓
 - 5) 12-1680 - Service programs (by counties and cities) for elderly persons, not to exceed 1 mill; subject to voter approval. ✓
 - 4) 12-1688 - Mulvane community historical museum, 1-2 mills; subject to voter approval. ✓
 - 5) 12-1919 - City recreation agency (Topeka) replacing joint city-school commission, not to exceed 2.5 mills; levy in excess of 2 mills subject to petition for election.
 - 5) 12-4803 - Child care centers, not to exceed 1/2 mill in certain counties and cities therein; subject to petition for election.

- 1) Exemption added in 1971.
- 4) Exemption added in 1974.
- 5) Exemption added in 1975.
- 7) Exemption added in 1977.
- 8) Exemption added in 1973.

- 4) 13-10,143 - Restoration of flood damaged city property in Parsons, up to 2 mills; subject to voter approval;
- 4) 19-436 - Cost of new county appraiser office as required by state law beginning in 1977; subject to petition for election.
- 7) 19-15,142 - Maintenance and operation of Sedgwick County Coliseum, not to exceed .4 mill for not over two years; subject to petition for election.
- 5) 19-1801 - A certain county hospital, not to exceed 2 mills; subject to voter approval.
- 7) 19-1809 - Additional levies for certain county hospitals; subject to voter approval.
- 3) 19-2122 - Lincoln County home for the aged, not to exceed 1 mill; subject to voter approval.
- 6) 19-2651 - Pawnee County historical collection; not to exceed .3 mill; subject to petition for election.
- 7) 19-27,156 - Golf course in Stanton County, not to exceed 1 mill; subject to petition for election.
- 3) 19-28,112 - Sedgwick County zoo, not to exceed 1/2 mill; subject to voter approval.
- 4) 19-3905 - Johnson County youth service bureau, not to exceed 1/4 mill; subject to voter approval.
- 4) 19-4485 - Grant County consolidated law enforcement; subject to voter approval.
- 6) 20-356 - Costs of additional district court divisions or positions (court unification) necessitating issuance of no-fund warrants by counties.
- 4) 25-2201a - County direct election expenses not reimbursed by units for which conducted; subject to petition for election.

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- 3) Exemption added in 1973.
 - 4) Exemption added in 1974.
 - 5) Exemption added in 1975.
 - 6) Exemption added in 1976.
 - 7) Exemption added in 1977.

- 4) 44-505c - Workmen's compensation coverage for county and city employees, as required by state law.
- 7) 44-710e - Payment of employment security costs, as required by federal and state laws. ✓
- 4) 65-4302 - County (and one city) emergency medical service, not to exceed 2 mills; subject to voter approval.
- 8) 65-4302 - Emergency medical care (Newton), not to exceed 3 mills; subject to petition for election.
- 4) 68-5,100 - County roads, not to exceed 5 mills additional; subject to voter approval. ✓
- 8) 75-1122 - Costs incurred by third class cities in complying with new audit requirements; subject to petition for election. ✓
- [7) 75-4357a, 4358 - Payment of defense costs and judgments against officers and employees of counties and cities.
- 4) 79-1946 - Leavenworth and Riley County general funds, not to exceed 1 1/2 mills additional; subject to petition for election.
- 4) 79-1947b - Leavenworth County home for the aged; with voter approval, levy in excess of 1/2 mill exempt.
- 1) 79-2005 - Redemption of no-fund warrants issued by counties and cities for refund of taxes paid under protest.
- 4) 79-2925a - One-time authority for issuance and redemption of no-fund warrants to fund Shawnee County change to calendar year budget, as required by state law.
- 6) 82a-1425 - County (except Wyandotte) weather modification, not to exceed 2 mills; subject to petition for election.

Note: In 1974, the Legislature exempted from the tax lid junior colleges levies for vocational education (not to exceed 2 mills) and adult education (not to exceed 1/4 mill and subject to voter approval). Junior colleges were exempted entirely from the tax lid in 1977.

- 1) Exemption added in 1971.
- 4) Exemption added in 1974.
- 6) Exemption added in 1976.
- 7) Exemption added in 1977.
- 8) Exemption added in 1978.

Handled by

1979
 SB 449 re Salina
 SB 196 re Intergovernmental
 Tax Replacement
 Act
 Sub. SB 76 re Tort Claims
 Act