



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

September 26, 1980

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

ATTORNEY GENERAL OPINION NO. 80- 212

Evelyn Bussart  
Rush County Clerk  
Rush County Courthouse  
LaCrosse, Kansas 67548

Re: Cities and Municipalities--Tax Levy for Law  
Enforcement or Purchase of Ambulance and Fire-  
Fighting Equipment--Petitions Requesting Elections

Synopsis: If certain electors of a city do not desire an annual tax levy to be imposed for the purposes specified in K.S.A. 1979 Supp. 12-110b and called for in a resolution adopted by the governing body of the city, those electors must file a contemporaneous petition complying with the requirements of said statute. A petition filed previously with respect to a resolution which was repealed following the filing of such petition is no longer effective to require an election on any subsequent resolution. Cited herein: K.S.A. 1979 Supp. 12-110b.

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Dear Mrs. Bussart:

In your capacity as the Rush County Election Officer, you submit a question concerning certain actions taken by the governing body of the City of LaCrosse, Kansas, under the authority of K.S.A. 1979 Supp. 12-110b. This statute provides that the governing body of certain cities of the first class, and the governing body of any city of the second or third class, is authorized to make an annual tax levy of not to exceed two mills upon all the taxable tangible property in the city for the purpose of creating and providing a special fund to be used for law enforcement purposes or for the purchase of ambulance or

fire-fighting equipment for such city. However, the statute also provides, in relevant part:

"No city shall make an annual levy under the provisions of this section until the governing body of such city has adopted a resolution authorizing the making of such levy. Such resolution shall be published once each week for three consecutive weeks in the official city newspaper. Whereupon such annual levy may be made unless a petition requesting an election upon the proposition of levying said tax, signed by not less than five percent (5%) of the qualified electors of the city, is filed with the county election officer within thirty (30) days following the date of the last publication of the resolution. In the event such petition is filed, no such annual levy shall be made without such proposition having been submitted to and having been approved by a majority of the electors voting thereon at the next primary or general election, or if such primary or general election does not take place within sixty (60) days after the date the petition was filed, at a special election called and held thereon." (Emphasis added.)

In your letter of inquiry, you advise that the governing body of the City of LaCrosse, Kansas, at its October, 1979, meeting, passed a resolution to impose the annual tax levy authorized by K.S.A. 1979 Supp. 12-110b. Said resolution was published as required by law, with the final publication occurring on November 1, 1979. However, within thirty days of that date, a petition, requesting an election upon the proposition of levying the tax, in compliance with the requirements of 12-110b, was filed in your office. However, the proposition of levying said tax was not submitted to the electors of the city. Instead, when the governing body of the city learned a petition had been filed, it adopted a resolution repealing its resolution to impose said tax. Thus, the date passed on which an election would have been held and no tax was levied.

In August, 1980, however, the question of imposing this tax was resurrected. The governing body of the City of LaCrosse adopted another resolution to impose the tax. The language of this resolution was almost identical to the language used in the resolution adopted in October, 1979.

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Based upon these facts, you inquire whether the petition submitted to you in November, 1979, is sufficient to require the calling of an election on this proposition, or whether another petition must be filed in order to require an election.

In our opinion, the petition filed in your office in November, 1979, is ineffectual to serve as a request for an election in response to the governing body's resolution adopted in August, 1980.

The purpose of statutes which provide for "protest petitions" was discussed in Humphrey v. City of Pratt, 93 Kan. 413 (1914). While the statute involved in that case was not the same as involved herein, the former statute did provide for a protest petition. In discussing that law, the Court said:

"Under the commission government act electors, who need not be taxpayers, have ten days after the passage of an ordinance in which to protest against it and in this way to require a reconsideration of the ordinance by the board of commissioners, and if it be not entirely repealed, to require its submission to a vote of the people for acceptance or rejection. Such a protest raises the question whether or not there shall be an ordinance at all." (Emphasis added.)

The petition filed in your office in November, 1979, accomplished its purpose of requiring the governing body of the City of LaCrosse to reconsider its proposed action. Upon such reconsideration, said governing body decided to repeal the resolution adopted in October, 1979; hence, no tax was ever levied.

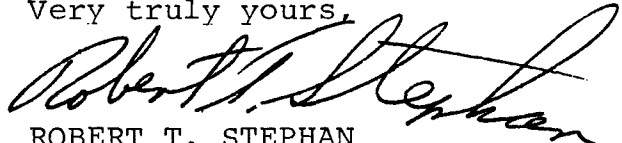
Nearly a year passed before the governing body of the city again proposed to levy a tax in accordance with K.S.A. 1979 Supp. 12-110b. The governing body of the city, in the exercise of its discretion, has again determined the tax authorized by K.S.A. 1979 Supp. 12-110b should be imposed. If certain residents of the city seek an election regarding this matter, they must do so by filing a petition in protest as provided by 12-110b. The statute clearly contemplates that the protest petition is to be filed within thirty (30) days "following" final publication of the ordinance. Nothing in the law suggests that protest petitions are to remain effective indefinitely. Indeed, if a vote had been held and the tax levy defeated, the city might again pass an ordinance calling for the same or a similar levy. Nothing in the law suggests the legislature intended a single protest petition to require elections for subsequent ordinances

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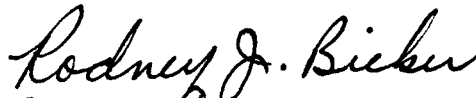
involving similar subjects. Attorney General Schneider reached a similar conclusion in Attorney General Opinion No. 75-375. (Attached.)

Thus, in response to your specific inquiry, it is our opinion that if certain electors of the City of LaCrosse, Kansas, do not desire an annual tax levy to be imposed for the purposes specified in K.S.A. 1979 Supp. 12-110b and called for in the resolution adopted by the governing body of the city according to said statute, those electors must file a contemporaneous petition complying with the requirements of said statute. A petition filed previously with respect to a resolution which was repealed following the filing of such petition is no longer effective to require an election on any subsequent resolution.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Rodney J. Bieker  
Assistant Attorney General

RTS:BJS:RJB:jm  
Enclosure