



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 3, 1980

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

ATTORNEY GENERAL OPINION NO. 80- 216

Mrs. Shelley D. G. Bloomer
Osborne County Attorney
202 West Main Street
Osborne, Kansas 67473

Re: Counties and County Officers--Hospitals--Tax Levies
for Operation and Maintenance

Synopsis: As the mill levy rate of the tax used for operation and maintenance of the Osborne County hospital was fixed at a rate of not to exceed one mill by the qualified electors of the county, the Osborne County Board of County Commissioners may not increase said mill levy until the question of doing so has been submitted to and approved by the qualified electors of the county. Cited herein: K.S.A. 1979 Supp. 19-1801, 19-1809, 19-1815d, 79-1947; L. 1965, ch. 204, §2.

* * *

Dear Mrs. Bloomer:

You advise us that the Osborne County Hospital was initially created and funded as a district hospital in 1959 pursuant to the General Statutes of Kansas, 1955 Supp. 80-2178 et seq. In 1966, said hospital was transferred from the hospital district to Osborne County, pursuant to K.S.A. 1965 Supp. 19-1815c and 19-1815d, both of which statutes have since been amended. At the time of the transfer, K.S.A. 19-1815d, as it then existed (L. 1965, ch. 204, §2), provided in relevant part:

"Whenever the governing body of any hospital district, having been authorized to do so by a majority vote of the qualified electors of such hospital district voting upon

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the proposition as provided by section 1 of this act, shall present to the board of county commissioners their offer to donate, transfer and convey to the county the hospital property owned by such hospital district, to be owned, managed, maintained and operated as a county hospital, the board of county commissioners shall submit to the qualified electors of the county . . . the question of establishing, operating and maintaining a county hospital with such hospital property and levying an annual tax of not to exceed one (1) mill on the dollar for the support, maintenance and improvement thereof, which tax shall be in addition to all other tax levies authorized by law and shall not be subject to any of the limitations prescribed by K.S.A. 79-1947, or any other law, which election shall be called, noticed, held and canvassed in the manner provided by K.S.A. 10-120 relating to bond elections insofar as the same can be made applicable. If a majority of the votes cast at such election shall be in favor of the proposition so submitted, the board of county commissioners shall levy such tax and shall appoint hospital trustees as provided in K.S.A. 19-1803, and all of the provisions of K.S.A. 19-1801 to 19-1815a, both sections inclusive, not inconsistent with this act shall be applicable to the hospital established under the provisions of this act." (Emphasis added.)

Pursuant to this law, an election was held whereby the qualified electors of Osborne County were asked the question of whether a county hospital should be established, operated and maintained using the property of Hospital District Number 1, and an annual tax of not to exceed one mill on the dollar levied for the support, maintenance and improvement thereof. The question was answered in the affirmative, so the county hospital was established and an annual tax levy of one mill has been imposed.

The Osborne County Board of County Commissioners and the board of trustees of the hospital believe the proceeds of the one mill tax levy authorized by the electors will no longer be sufficient to operate and maintain the hospital. Therefore, they wish to increase the mill levy rate to two mills, the maximum mill levy rate currently authorized under K.S.A. 1979 Supp. 79-1947, for tax levies imposed pursuant to K.S.A. 1979 Supp. 19-1801. Said boards question whether such an increase in the mill levy rate may be made without holding an election on the question of such an increase, although some members have suggested that an election may not be necessary because K.S.A. 19-1815d has been amended so as to eliminate the one mill levy limitation originally provided for therein.

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In our judgment, this suggestion must be rejected. The authority of the board of county commissioners to levy any rate of tax for the operation and support of the hospital is derived exclusively from a grant of power to do so from the qualified electors of Osborne County. Said electors have approved the imposition of a one mill levy only. To impose a levy greater than one mill would be to exceed the authority granted by the people. In our judgment, such cannot be done.

The board of county commissioners and the board of trustees of the hospital, however, are not without recourse in this matter. It is to be noted the provisions of K.S.A. 1979 Supp. 19-1815d, as they existed in 1965 and as they now exist, expressly provide that "all of the provisions of K.S.A. 19-1801 to 19-1815e, both sections inclusive, not inconsistent with this act shall be applicable to the hospital established under the provisions of this act." Pursuant to this language, the provisions of K.S.A. 1979 Supp. 19-1809 are applicable to the Osborne County Hospital. Said statute provides:

"In counties exercising the rights conferred by this act the board of county commissioners is hereby authorized to levy a tax each year in addition to the tax for hospital fund hereinbefore provided for, on all the taxable tangible property of said county for the operation, management, regulation, improvement, maintenance, furnishing and equipment of any public hospital so established and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 1979 Supp. 12-1774, and amendments thereto, by cities located in the county, such tax to be levied and collected as other taxes.

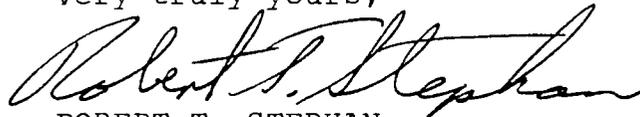
"No county authorized to increase its levies under the provisions of this act shall make such increased levy until the question of making such tax levy is submitted to and approved by a majority of the qualified electors of the county voting thereon at the next general election or at a special election called for such purpose. Any special election held under the provisions of this section shall be called and held in accordance with the provisions of K.S.A. 1979 Supp. 10-120. All tax levies approved by electors at elections called and held under the provisions of this section shall be exempt from the limitation imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive."
(Emphasis added.)

In express terms, this statute provides the recourse available to the Osborne County Board of County Commissioners in regard to the additional funds needed to operate and maintain the county hospital. However, this statute also expressly requires the approval of an increased tax burden by the qualified electors of the county.

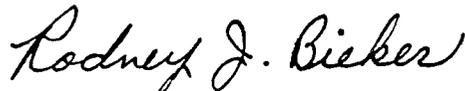
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Thus, in response to your inquiry, it is our opinion that, since the mill levy rate of the tax used for operation and maintenance of the county hospital was fixed at a rate of not to exceed one mill by a vote of the qualified electors of Osborne County, the Osborne County Board of County Commissioners may not increase the mill levy rate of said tax, until the question of doing so has been submitted to and approved by the qualified electors of the county, pursuant to K.S.A. 1979 Supp. 19-1809.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:phf