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June 18, 1981

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ATTORNEY GENERAL OPINION NO. 81- 134

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Re: Taxation -- Aggregate Tax Levy Limitations --
Applicability to Taxes Levied by Counties to
Support District Courts

Synopsis: The provisions of K.S.A. 79-5001 et seq. (the so-called "tax lid") have the effect of placing a ceiling on the aggregate amount which a county such as Sedgwick may raise through tax levies on tangible property. Levies may be excluded from the provisions of the tax lid either by being listed at K.S.A. 79-5011 or through the enactment of a statute specifically so stating, pursuant to K.S.A. 79-5003. If a county wishes to exclude from the tax lid that portion of its general fund levy used to support the district court (as mandated by various statutes), it may do so by seeking legislative action in either of the ways described above. Alternatively, as the tax lid was promulgated by an act which is not uniformly applicable to all counties, a county may, pursuant to K.S.A. 19-101b, exclude itself from the operation of the tax lid itself. In the absence of such measures, a county must observe the tax lid restrictions in paying those expenses of the district court which are imposed upon it by statute. Cited herein: K.S.A. 1980 Supp. 19-101a, K.S.A. 19-101b, K.S.A. 1980 Supp. 20-162, 20-348, 20-349, 20-356, 20-362, K.S.A. 20-613a, K.S.A. 1980 Supp. 38-554, 38-821, 79-1946, 79-1947, K.S.A. 79-5003, 79-5004, 79-5011.

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Dear Mr. Rustin:

As Sedgwick County Counselor, you have requested the opinion of this office on a series of inter-related questions dealing with the payment by Sedgwick County of the expenses of the district court which is located therein. While your request contains eight separate inquiries, we believe that all eight may be summarized by a single inquiry, namely: "May the taxes levied by the county to finance a judicial district be excluded from the aggregate tax levy limitations imposed by K.S.A. 79-5001 et seq.?" While we will attempt to answer each of your other concerns as well, we believe a resolution of the above will resolve the entire opinion request.

Much of your lengthy and informative request is devoted to enumerating what you perceive to be basic points of conflict between the aggregate tax levy limitations statutes ("the tax lid laws") and statutes which define the role of the county under the unified judicial system. Specific examples provided include K.S.A. 1980 Supp. 20-348 (counties are responsible for all district court expenses, except those paid by the state under statute), K.S.A. 20-613a (counties over 110,000 must furnish supplies and quarters for the district court), K.S.A. 1980 Supp. 38-554 (counties of 300,000 or more must provide funds for public youth residential facilities, which are operated under the district court's control) and K.S.A. 1980 Supp. 38-821 (guardian ad litem costs may be taxed to the county by the district court). All of these statutes, you submit, demonstrate that a county such as Sedgwick cannot exercise sufficient control over the expenditures of the district court to allow such expenditures to be contained within the limits imposed by the tax lid laws.

It would be helpful, initially, to consider the way in which the tax lid laws operate. The lid itself is imposed by K.S.A. 79-5003, which 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 [i.e. either 1969 or 1970]. All tax levies now or hereafter authorized by law to be made by

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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.)

The effect of the lid on individual levies is explained by K.S.A. 79-5004, which in part states:

"It is the intent of K.S.A. 79-5001 to 79-5016, inclusive, to prescribe a limitation upon the aggregate amount which may be levied with certain exceptions upon tangible property by each of the several taxing subdivisions of the state and not to prescribe a limitation upon the amount produced by each of the several levies imposed by such taxing subdivisions for its various tax supported funds. It shall be the duty of the governing body of each taxing subdivision to adjust legally authorized levies for separate funds or functions of the taxing subdivision within the aggregate limitation imposed under the provisions of this act."
(Emphasis added.)

Accordingly, unlike statutes such as K.S.A. 1980 Supp. 79-1946 and 79-1947, which establish individual fund levy limits in terms of mills, the tax lid has the effect of limiting the dollar amount which may be produced from the ad valorem taxation of tangible property within counties and cities. Additionally, as it is the total which is controlled, individual levies within that total, whether for general expenses or a specific county purpose, may rise and fall upon the determination of the county commission, subject to individual fund levy limits.

It further may be noted that, in the few years that the lid has been in effect, numerous exemptions have been carved out by the legislature. In addition to the original list of exemptions contained in K.S.A. 79-5011, several dozen enactments have, pursuant to K.S.A. 79-5003, specifically exempted various levies from the aggregate limitation imposed by the

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tax lid. As you note, an example of this is found at K.S.A. 1980 Supp. 20-356, which allows counties in which additional courts are established to issue no-fund warrants for the purpose of paying such additional costs for the first year of operation. A levy to pay such warrants is exempted from the tax lid, with the statute echoing the language of K.S.A. 79-5003, to wit:

"Such tax levies shall be in addition to all other tax levies authorized or limited by law and such tax levies shall be exempt from the limitations imposed under K.S.A. 79-5001 to 79-5016, inclusive."

The need for such express language to exempt a levy from the tax lid laws has been emphasized in a recent opinion of this office, Attorney General Opinion No. 79-206. There, two statutes were held not to be exempted from the provisions of K.S.A. 79-5001 et seq. After noting the numerous explicit exceptions which the legislature previously had made to the tax lid, the opinion concluded (at pg. 5-6) 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

"'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."

Turning now to the statutes which impose duties upon Sedgwick County with regard to the funding of the district court, we first note that the court's budget is paid from the county's

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general fund, with the primary statute in this respect being K.S.A. 1980 Supp. 20-348, which provides:

"Except for expenses required by law to be paid by the state, from and after January 10, 1977, the board of county commissioners of each county shall be responsible for all expenses incurred for the operation of the district court in the county."

This section was enacted as part of the act which accomplished the unification of the state judicial system (L. 1976, ch. 146, §41), as mandated by the voters' approval of a revised Article III of the Kansas Constitution in 1972. While the salaries of district court judges were henceforth to be paid by the state, along with the salaries of other enumerated personnel (K.S.A. 1980 Supp. 20-162), the county remains responsible for nonjudicial personnel costs of the district court. K.S.A. 1980 Supp. 20-362. However, as prior opinions of this office have recognized, in paying such costs, the county acts as an instrumentality of the state, not as a political subdivision thereof, and it is the state, not the county, which is the employer of the district court personnel. Attorney General Opinion Nos. 76-234, 78-359, 80-32.

The duty imposed by K.S.A. 1980 Supp. 20-348 is not, it should be emphasized, a new one. Well before judicial unification, K.S.A. 20-613a was enacted, and provided that:

"In every county in this state comprising a judicial district which has or shall hereafter have a population of more than 110,000, the board of county commissioners of such county shall provide suitable quarters for holding court for each division of the district court in said district and shall provide such jury and retiring rooms as the judges of said courts shall determine to be necessary and proper. Said county commissioners shall furnish for each division of the court a copy of the Kansas reports, session laws, general statutes, supplements and citators as the same may be published from time to time, and shall also furnish such books of records, blanks, stationery, supplies, furniture and equipment as in the judgment of the judge or judges shall be necessary for the proper conduct of the business of each division of the court."
(Emphasis added.)

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It is apparent from the above statute that, even before 1976, the county commission's power over the district court's budget was a limited one, and did not include the ability to veto requests for supplies or quarters needed by the district court judges for the proper operation of their court. In addition, while most of the other statutes contained in K.S.A. 20-601 et seq. (district courts in counties over 115,000) were repealed at the time of unification (L. 1976, ch. 146, §48), K.S.A. 20-613a remains in full force and effect.

However, as it relates to the financing of district courts, K.S.A. 20-613a must be read in pari materia with other statutes on the same subject, such as K.S.A. 1980 Supp. 20-349, even though it was not enacted at the same time. Clark v. Murray, 141 Kan. 533, 537 (1935), Flowers, Administratrix v. Marshall, Administrator, 208 Kan. 900, 904-905 (1972). This latter statute provides for the adoption of the district court's budget. That budget is prepared initially by the administrative judge. It then is submitted to the board of county commissioners, who have "final authority to determine and approve the budget for district court operations payable by their county." However, this power is subject to one express limitation:

"No board of county commissioners shall decrease such budget for district court operations to a level below the amount of the 1978 calendar year budget approved by the board of county commissioners less the amount of compensation and fringe benefits provided in such budget for judges and other personnel positions which are assumed by the state pursuant to this act." K.S.A. 1980 Supp. 20-349.

Thus, in approving the district court's budget, the commission must approve enough money to satisfy the statutory "floor." At the same time, enough money must be approved so that the court's needs under K.S.A. 20-613a are met. As noted in an earlier opinion of this office, Attorney General Opinion No. 77-180, if the amount required to fulfill the court's needs is higher than the statutory floor, the district court arguably possesses the power to mandate the appropriation of the larger amount. However, as the opinion notes (at pg. 4) this power is not to be exercised lightly or arbitrarily.

Further legislatively-imposed limits on the power of the county over the district court's budget are found at K.S.A. 1980 Supp. 38-554 and 38-821. The former regards public youth

residential facilities, and places such facilities under the supervision and control of the district court. While the court sets the salaries of staff persons, control of the annual budget rests with the county commission. Again, however, the county's power is limited, for once the budget is set, it is under the sole control of the administrative judge, and may not be altered thereafter by the commission. K.S.A. 1980 Supp. 38-321 likewise contains a provision which reduces the county's ability to control an expenditure of the district court, in that guardian ad litem fees in juvenile cases, in the court's discretion, may be taxed to the county and paid from the general fund.

The above statutes clearly place very definite restrictions on the ability of a county to exercise complete control over the expenditures of the district court. Some expenditures, such as personnel costs, are completely beyond the county's control, while others, such as the youth facility budget, are amenable to at least some control. Additionally, the entire budget, while subject to the "final approval" of the commission, may not be reduced below a prescribed amount, and even that figure, if insufficient to meet the court's needs, may be contrary to K.S.A. 20-613a. Given these restrictions, you inquire, how can Sedgwick County be expected to continue to fund its share of the district court's budget and yet still comply with the tax lid limits?

In our opinion, the answer to your query is supplied by an examination of several factors. First, it must be remembered that any Kansas county, including Sedgwick, exists only for public purposes connected with the administration of state government. Board of County Commissioners v. Lewis, 203 Kan. 188, 191 (1969). Put another way, a county is merely part of the governmental machinery employed in carrying on the affairs of the state. Harling v. Wyandotte County Comm'rs, 110 Kan. 542 (1922). While county home rule has expanded a county's power to act in local matters, in matters involving the courts a county is declared to have "no power" under K.S.A. 1980 Supp. 19-101a(a), Third. Conversely, a county may be obligated, as under K.S.A. 1980 Supp. 20-348 and 20-359, to pay certain expenses, simply because the legislature has imposed that liability on it.

It is beyond question that the effect of the above-cited statutes, when combined with the tax lid laws, has been to place Sedgwick County into a fiscal bind. However, simply because such is the case, we are not prepared to conclude that the

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county's share of the district court's expenses may be raised beyond the tax lid limitations. The procedure for exempting a levy from the tax lid is well-known, and, as noted earlier, has been used frequently in the years since the lid's imposition. This office has previously taken the position (Attorney General Opinion No. 79-206) that exemptions to the lid must be clearly worded, and will not be inferred in the absence of such language. To conclude otherwise would have the effect of repealing by implication a portion of the tax lid's effect, a result which has not been favored by courts in this state. City of Overland Park v. Nikias, 209 Kan. 643, 646, (1972), Wolff v. Rife, 140 Kan. 584, 587 (1934). Accordingly, if Sedgwick County desires relief from the pressure of increasing judicial expenses within a fixed levy ceiling, recourse may be had to the legislature, as has been done on numerous other occasions, with regard to the tax lid's operation.

However, as has previously been noted by opinions of this office, the tax lid is contained in an act (L. 1973, ch. 393) which is not uniform in its application to all counties. Attorney General Opinion No. 77-272. While the offending provision (contained therein at §29) does not appear in the statutes which establish the tax lid, this one non-uniformity is sufficient to render the entire act non-uniform. We reach this conclusion in view of the holding of City of Junction City v. Griffin, 227 Kan. 332, 335-36 (1980), which, while not involving a county, does apply in situations as here, where the extent of home rule powers is at issue. Accordingly, Sedgwick County may, if it desires, charter out from under the provisions of the tax lid itself, employing the procedures set forth at K.S.A. 19-101b, i.e., passage of a charter resolution, publication and, if necessary, an election following the filing of a protest petition. Of course, such action would have no effect on the county's obligation to fund its share of the district court costs, as this obligation is beyond the reach of home rule. K.S.A. 1980 Supp. 19-101a(a), Third.

In conclusion, the provisions of K.S.A. 79-5001 et seq. (the so-called "tax lid") have the effect of placing a ceiling on the aggregate amount which a county such as Sedgwick may raise through tax levies on tangible property. Levies may be excluded from the provisions of the tax lid either by being listed at K.S.A. 79-5001 or through the enactment of a statute specifically so stating, pursuant to K.S.A. 79-5003. If a county wishes to exclude from the tax lid that portion of its

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general fund levy used to support the district court (as mandated by various statutes), it may do so by seeking legislative action in either of the ways described above. Alternatively, as the tax lid was promulgated by an act which is not uniformly applicable to all counties, a county may, pursuant to K.S.A. 19-101b, exclude itself from the operation of the tax lid itself. In the absence of such measures, a county must observe the tax lid restrictions in paying those expenses of the district court which are imposed upon it by statute.

Very truly yours,



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