



STATE OF KANSAS

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July 17, 1981

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ATTORNEY GENERAL OPINION NO. 81-168

James L. Wisler
Linn County Attorney
Judicial Building
Mound City, Kansas 66056

Re: Taxation--Aggregate Tax Levy Limitations--
Exemption of County From Said Limitations

Synopsis: A county, through the exercise of its statutory home rule powers under K.S.A. 1980 Supp. 19-101a et seq., may exempt itself, by charter resolution, from the aggregate tax levy limitation prescribed in K.S.A. 79-5001 et seq. Accordingly, Section 1 of Linn County Charter Resolution No. 3 properly exempts that county from said limitations, to the extent of the total costs incurred by the county for law enforcement.

However, the county may not establish as a separate and distinct fund that portion of the county's general fund tax levy attributable to such law enforcement costs, as was attempted in Section 2 of said charter resolution. Thus, said section is invalid and void, as a matter of law, but may be severed from the remainder of the resolution, since the invalid section is not so interconnected with the valid sections that the severance thereof would contravene the intent of the board of county commissioners. (Attorney General Opinion No. 77-272 affirmed herein.) Cited herein: K.S.A. 1980 Supp. 19-101a, 19-241, 79-1946; K.S.A. 79-5001.

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Dear Mr. Wisler:

You ask us to review Linn County Charter Resolution No. 3, which was adopted by the Board of County Commissioners (Board) on April 27, 1981. Specifically, you inquire whether the Board, under the authority of K.S.A. 19-101a et seq., can exempt the county from the Aggregate Tax Levy Limitation Law, K.S.A. 79-5001 et seq., to the extent of the total costs incurred by the county for law enforcement, all as provided by said Charter Resolution No. 3. A copy of the charter resolution is attached hereto.

In Attorney General Opinion No. 77-272, a copy of which also is attached hereto, it was concluded that "[a] county may, in the exercise of its statutory home rule powers under K.S.A. 19-101a et seq., exempt itself by charter resolution from the aggregate levy limitations comprising the tax lid, found at K.S.A. 1976 Supp. [now in the bound statute book] 79-5001 et seq." Att'y Gen. Op. No. 77-272, Synopsis. We concur with the conclusion stated in that opinion. Thus, we are of the opinion that the Board of County Commissioners of Linn County is authorized to exempt the county from the aggregate tax levy limitation prescribed in K.S.A. 79-5001 et seq., and properly did so under the provisions of Section 1 of Charter Resolution No. 3. However, we believe section 2 of said resolution is invalid and void as a matter of law.

Section 2 of Linn County Charter Resolution No. 3 provides:

"SECTION 2: That the governing body of Linn County, Kansas, is hereby authorized and empowered to levy taxes in each year on each dollar of assessed tangible valuation of said county for county purposes in an amount necessary to meet the requirements of its adopted budget, and that portion of such levy to be used for law enforcement costs, as provided above, shall be established outside of the County General Fund for the purpose of funding said law enforcement costs and therefore shall be outside the Aggregate Tax Levy Limitation." (Emphasis added.)

While the Board possesses the authority to exempt the county from the provisions of the "tax lid law," K.S.A. 79-5001 et seq., the Board does not possess the authority to establish as a separate and distinct fund that portion of the county's general fund tax levy attributable to law enforcement costs. The authority for imposition of the county general fund tax levy is provided in K.S.A. 1980 Supp. 19-241. Said statute provides:

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"It shall be the duty of the board of county commissioners of each county in this state to levy in each year, in addition to the taxes for other purposes, a county tax sufficient to defray all county charges and expenses incurred during such year 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."

The Kansas Supreme Court has stated that the ordinary, usual and current expenses of the county are to be paid from, and included in, the county general fund. See, e.g., Smith v. Haney, 73 Kan. 506, 509 (1906). Thus, the costs of providing law enforcement must be paid from, and included in, the general fund.

In addition, it is to be noted that the provisions of K.S.A. 1980 Supp. 19-241 apply uniformly to all counties. Thus, under K.S.A. 1980 Supp. 19-101a, First, the county is precluded from exempting itself from the provisions of 19-241. For this reason, we believe Section 2 of Linn County Charter Resolution No. 3 is invalid and void as a matter of law.

The question thus arises as to the effect of the invalidity of Section 2 of the charter resolution. We find no decisions directly on point in regard to charter resolutions. However, the Kansas Supreme Court, in City of Beloit v. Lamborn, 182 Kan. 288 (1958), after finding that one section of a city ordinance conflicted with a state law, said: "The section, however, is severable from the other provisions of the ordinance, and its invalidity does not affect the validity of the other sections." Id. at 293. Other cases in which the court has considered severing invalid sections of local legislation from valid sections thereof include Community Antenna Television of Wichita, Inc. v. City of Wichita, 205 Kan. 537 (1970); Sunflower Tip Top Dairies Co. v. City of Russell, 188 Kan. 238 (1961); and Clearwater v. Bowman, 72 Kan. 92 (1905).

The test established by the Kansas Supreme Court regarding the severability of legislation is stated in State, ex rel., v. City of Overland Park, 215 Kan. 700 (1974), where it is said: "[W]here the void and the valid parts of a statute are so interconnected that they cannot be separated without doing violence to the legislative intent, the statute as a whole must fall. (Cites omitted.)" Id. at 711.

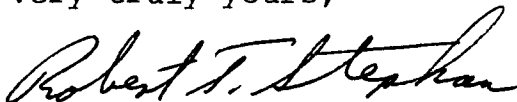
In regard to Linn County Charter Resolution No. 3, it appears the Board of County Commissioners intended to exempt, from the

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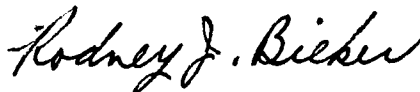
aggregate tax levy limitation, that portion of the county's general fund tax levy, which was levied to pay law enforcement costs of the county. Section 2 of the charter resolution apparently was enacted to facilitate implementation of Section 1. However, such implementation is unnecessary to achieve the purpose sought by the county and provided for in Section 1. Thus, it is our opinion that Section 2 of Linn County Charter Resolution No. 3 may be severed from the other sections of the resolution, as was done in regard to the invalid section in City of Beloit v. Lamborn, supra. In our judgment, such severance can be accomplished without doing violence to the intent of the Linn County Board of Commissioners. With the severance of Section 2, we believe Linn County Charter Resolution No. 3 is valid and exempts Linn County from the Aggregate Tax Levy Limitation Law, K.S.A. 79-5001 et seq., to the extent provided in Section 1 of said resolution.

In conclusion, however, we caution the county that, notwithstanding Charter Resolution No. 3, the general fund tax levy remains subject to the aggregate mill levy limitation prescribed in K.S.A. 1980 Supp. 79-1946. While the county also can exempt itself from the provisions of that statute, as it is not uniformly applicable to all counties, the county remains subject to those provisions until an appropriate charter resolution is enacted, exempting the county from said provisions.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm
Attachment