



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 10, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81-212

Mr. James R. Fetters
Smith County Attorney
205 South Main
Smith Center, Kansas 66967

Re: Townships and Township Officers -- Public Parks
and Cemeteries -- Joint Township Recreation
District Established by Interlocal Agreement

Synopsis: Three townships may enter into an interlocal agree-
ment for the creation of a recreation district.
Upon approval of the voters of each township, each
township may levy a tax for recreation purposes
not to exceed 2 mills and produce revenues of not
to exceed \$1,000 per township. Each township may
expend such revenues so collected for the opera-
tion of a joint recreation district. Cited herein:
K.S.A. 12-2901, 12-2903, K.S.A. 1980 Supp. 12-2904,
K.S.A. 80-939.

* * *

Dear Mr. Fetters:

You state that three townships wish to enter into an inter-
local agreement pursuant to K.S.A. 12-2901 et seq., the
Interlocal Cooperation Act, to form a joint recreation dis-
trict. The recreation district is to be funded by an annual
tax levied pursuant to K.S.A. 80-939. You ask whether the
townships may join together, hold a special election and levy
a tax of \$1,000 in each township or whether the \$1,000 limit
on a township tax levy for recreational purposes constitutes
the total amount the joint district may levy.

K.S.A. 12-2903(a) states in pertinent part thus:

"For purpose of this act: (a) The term 'pub-
lic agency' shall mean any county, township,
city, town" (Emphasis added.)

K.S.A. 1980 Supp. 12-2904 provides in part:

"Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state including but not limited to those functions relating to . . . park and recreational programs and facilities . . . may be exercised and enjoyed jointly with any other public agency of this state" (Emphasis added.)

Thus, the Interlocal Cooperation Act specifically contemplates joint recreational projects and specifically allows townships to participate in interlocal cooperation agreements. However, the Act does not grant any additional powers to public agencies; it merely allows those powers already held by a governmental entity to be exercised jointly with another governmental entity which also possesses that power. See 8th Biennial Report of Kansas Commission on Interstate Cooperation (1957), p. 117. In this instance, all parties are townships and possess identical powers regarding the establishment of recreation districts. The provisions for township recreational facilities are set forth in K.S.A. 80-939 which states:

"(a) Whenever the governing body of any township proposes to provide, establish and maintain recreational facilities and to levy an annual tax therefor, such proposition shall be submitted to the qualified electors of such township for approval at a regular or special election held for such purpose.

"(b) If a majority of the electors voting on the proposition are in favor thereof, the governing body of such township shall have the power to levy an annual tax upon all the taxable tangible property within such township for the purpose of establishing, providing and maintaining recreational facilities. Such tax levy shall be at a rate which, when multiplied by the total assessed tangible valuation of the township, will not result in producing more than one thousand dollars (\$1,000) in any one year, except that in no event shall such levy exceed two (2) mills." (Emphasis added.)

K.S.A. 80-939 particularly requires the majority of qualified electors of a township to approve the township board's proposal to provide recreational facilities. Until such time as that election is held and that approval obtained, the township

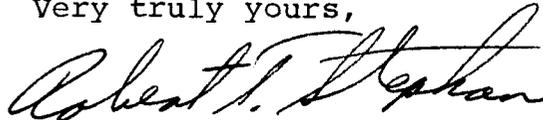
James R. Fetters
Page Three

board has no authority to levy the tax and establish such facilities. Although you do not inquire regarding the election and how the results will be tallied, we are constrained to advise that the voters of each township must approve the tax levy for recreation purposes. That is, the votes of all the townships in the proposed joint recreational system cannot be totaled to determine whether the tax has been approved. Each township must approve the recreation tax by a majority vote of its residents.

As noted above, K.S.A. 80-939 limits the recreation tax levy to the collection of \$1,000 in tax proceeds. The act also limits the levy to two (2) mills. We believe these limitations must be applied to each township individually. This means that, because of differences in the assessed valuation between the participating townships the townships are likely to either contribute different amounts [not to exceed \$1,000] to the recreation district or, if contributing identical amounts, then levy the tax at a different mill rate [not to exceed 2 mills]. But K.S.A. 80-939 permits any township to levy up to 2 mills producing an amount not to exceed \$1,000 for recreation purposes. This authority is not limited by the exercise of a joint venture. Hence, collectively, the townships may generate tax proceeds for the joint recreation district which total up to \$3,000, so long as the individual \$1,000 limitation per township and the 2 mill restriction on each township levy are honored.

Therefore, in our opinion three townships may enter into an interlocal agreement for the creation of a recreation district. Upon approval of the voters of each township, each township may levy a tax for recreation purposes not to exceed 2 mills and produce revenues of not to exceed \$1,000 per township. Each township may expend such revenues for the operation of a joint recreation district.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:hle