



STATE OF KANSAS

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February 8, 1982

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ATTORNEY GENERAL OPINION NO. 82- 29

Ann Gottberg
City Administrator
City of Lindsborg, Kansas
P. O. Box 70
Lindsborg, Kansas 67456

Re: Cities and Municipalities--County and City
Retailers' Sales Taxes--Procedure For Adoption

Synopsis: The formula for apportioning revenue from a county-wide retailers' sales tax, as prescribed by K.S.A. 1981 Supp. 12-192, may not be altered through the exercise of home rule powers by a city or county.

The question of imposing a countywide retailers' sales tax, and the question of imposing a city retailers' sales tax, may be included on the same ballot, provided the ballot meets the segregation requirements imposed by K.S.A. 1981 Supp. 10-120.

A city may not provide for the "automatic repeal" of a city retailers' sales tax upon the adoption of a countywide retailers' sales tax, since such a provision would be in obvious conflict with subsection (e) of K.S.A. 1981 Supp. 12-187.

Once an election is called to submit the proposition of imposing a city retailers' tax to the voters, and notice of such election is published pursuant to K.S.A. 1981 Supp. 10-120, the election must proceed pursuant to the provisions of K.S.A. 1981 Supp. 12-187(e), and a city may not withdraw the proposition and abort the election process. Cited herein: K.S.A. 1981 Supp. 10-120, 12-187, 12-188, 12-192, 12-194, 12-195, K.S.A. 19-101a, Kan. Const., Art. 12, §5.

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Dear Ms. Gottberg:

You request our opinion concerning the levy of a countywide and/or city retailers' sales tax under K.S.A. 1981 Supp. 12-187 et seq. Specifically, you pose the following questions:

- (1) Under what circumstances, if any, can the formula for apportioning money collected from a countywide retailers' sales tax be altered?
- (2) May the question of imposing a countywide retailers' sales tax, and the question of imposing a city retailers' sales tax, be submitted on the same ballot?
- (3) If both questions referred to in number 2, above, appear on the same ballot, "can the city's question be worded so that a repeal of the local [city] sales tax could be effected at the time a county sales tax gains the approval of the voters?"
- (4) If a city schedules an election (on the proposition of imposing a city retailers' sales tax) one week after an election is held on the proposition of imposing a countywide retailers' sales tax, may the city "call off" the election if the countywide retailers' sales tax is approved?

We will address these questions in the order set forth above.

- (1) Under what circumstances, if any, can the formula for apportioning money collected from a countywide retailers' sales tax be altered?

The formula for apportioning revenue from a countywide retailers' sales tax is prescribed by K.S.A. 1981 Supp. 12-192. Said statute is part of a 1978 act which provides for the imposition of city and county retailers' sales taxes, and which prohibits the imposition of other local excise taxes. See K.S.A. 1981 Supp. 12-187 to 12-195. The 1978 act establishes two classes of cities

"for the purpose of imposing limitations and prohibitions upon the levying of sales and excise taxes or taxes in the nature of an excise upon sales or transfers of personal or real property or the the use thereof, or the rendering or furnishing of services by cities as authorized and provided by article 12, section 5, of the constitution of the state of Kansas."
K.S.A. 1981 Supp. 12-188.

Since the legislature has established 2 valid classes of cities for the purpose limiting and prohibiting the levying of sales and excise taxes, the mandatory provisions of K.S.A. 1981 Supp. 12-192 may not, under Article 12, Section 5(b) of the Kansas Constitution, be altered through the exercise of a city's power of home rule. If a city were free to prescribe its own formula for determining its distributive share of a countywide tax, the 1978 act, as well as all limitations and prohibitions set forth therein, would be ineffective and unworkable.

Likewise, since the statutory home rule power of counties is subject to the limitations and prohibitions imposed under K.S.A. 1981 Supp. 12-187 to 12-195, it is not within a county's power of home rule to modify the apportionment formula set forth in K.S.A. 1981 Supp. 12-192. See K.S.A. 19-101a(a), eighth.

(2) May the question of imposing a countywide retailers' sales tax, and the question of imposing a city retailers' sales tax, be submitted on the same ballot?

K.S.A. 1981 Supp. 12-187(e) provides, in part, that "[a]ny class B city or county proposing to adopt a retailers' sales tax shall give notice of its intention to submit such proposition for approval by the electors in the manner required by K.S.A. 1981 Supp. 10-120." K.S.A. 1981 Supp. 10-120, in addition to prescribing requirements for election notices, provides, in part, as follows:

"If there is more than one proposition or question to be voted on, the different propositions or questions shall be separately numbered and printed, and be separated by a broad solid line 1/8th inch wide or by double lines approximately 1/8th inch apart."

In our judgment, the question of imposing a countywide retailers' sales tax, and the question of imposing a city retailers' sales tax, may be included on the same ballot, provided that the ballot meets the above-quoted segregation requirements.

(3) If both questions referred to in number 2, above, appear on the same ballot, "can the city's question be worded so that a repeal of the local [city] sales tax could be effected at the time a county sales tax gains the approval of the voters?"

K.S.A. 1981 Supp. 12-187(e) provides, in part, as follows:

"If a majority of the electors voting thereon at such election shall approve the levying of such tax, the governing body of any such city or county

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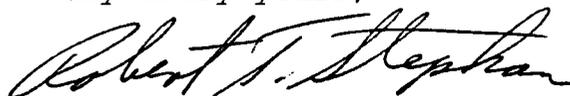
shall provide by ordinance or resolution, as the case may be, for the levy of the tax. Any repeal of such tax or any reduction or increase in the rate thereof, within the limits prescribed in K.S.A. 1978 Supp. 12-189, and amendments thereto, shall be accomplished in the manner provided herein for the adoption and approval of such tax." (Emphasis added.)

As is readily apparent from the underscored portion of the above-quoted statutory excerpt, the governing body of a city must provide for the levy of a city retailers' sales tax upon approval of the tax by the electors of the city. The statute also prescribes that any repeal of the tax must be accomplished in the manner provided for adoption and approval of the tax, i.e. an election called to submit such proposition to the qualified electors. In our judgment, a city may not provide for the "automatic repeal" of the tax upon the happening of a certain event, such as the adoption of a countywide retailers' sales tax, since such a provision would be in obvious conflict with subsection (e) of K.S.A. 1981 Supp. 12-187.

(4) If a city schedules an election (on the proposition of imposing a city retailers' sales tax) one week after an election is held on the proposition of imposing a countywide retailers' sale tax, may the city "call off" the election if the countywide retailers' sales tax is approved?

Once an election is called to submit the proposition of imposing a city retailers' sales tax to the voters, and notice of such election is published pursuant to K.S.A. 1981 Supp. 10-120, the election must proceed pursuant to the provisions of K.S.A. 1981 Supp. 12-187(e). We are unaware of any procedure whereby the city could withdraw the proposition and abort the election process.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm