



STATE OF KANSAS

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June 23, 1982

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ATTORNEY GENERAL OPINION NO. 82- 136

James R. Cobler, Director  
Division of Accounts and Reports  
Department of Administration  
First Floor, State Office Building  
Topeka, Kansas

Re: Cities and Municipalities--Miscellaneous Provisions--  
Employee Benefits Contribution Fund and Tax Levy

Synopsis: The board of directors of a library established and maintained under the provisions of K.S.A. 1981 Supp. 12-1220 is not authorized, under subsection (c) of K.S.A. 1981 Supp. 12-16,102, to levy a tax for an employee benefits contribution fund.

However, a city or school district that is authorized or required by law to levy taxes for a recreation commission is specifically authorized by K.S.A. 1981 Supp. 12-1920 to create a recreation commission employee benefits contribution fund and levy a tax, annually, to provide moneys for said fund. Cited herein: K.S.A. 1981 Supp. 12-1220, 12-16,102; K.S.A. 12-1901; K.S.A. 1981 Supp. 12-1920.

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Dear Mr. Cobler:

You seek our opinion whether the board of directors of a library, organized and maintained under the provisions of K.S.A. 1981 Supp. 12-1220, or a recreation commission, which operates a recreation system established in accordance with K.S.A. 12-1901 et seq., has the authority, under K.S.A. 1981 Supp. 12-16,102, to levy a tax for the purpose of creating and maintaining an employee benefits contribution fund.

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Your inquiry apparently is prompted by the definition of "taxing subdivision" prescribed in K.S.A. 1981 Supp. 12-16,102(a), where said term is defined to mean "any city, county, township, community junior college district or other political subdivision of the state of Kansas, except a school district, having authority to levy taxes on tangible property."

It, indeed, is difficult, if not impossible, to classify a library or a recreation system as a taxing subdivision or a political subdivision. Fortunately, such a classification need not be attempted in regard to a recreation system, since K.S.A. 1981 Supp. 12-1920 specifically authorizes "[a]ny city or school district [which is] authorized or required by law to levy taxes for a recreation commission . . . [to] create and establish a recreation commission employee benefits contribution fund," and levy an annual tax to provide moneys for said fund. Thus, recreation systems need not come within the definition of "taxing subdivision" prescribed in K.S.A. 1981 Supp. 12-16,102(a), in order for an employee benefits contribution fund to be established and a tax imposed in regard thereto.

Unfortunately, we find no other statute which authorizes the establishment of a "library employee benefits contribution fund." Hence, such a fund can be established under K.S.A. 1981 Supp. 12-16,102, only if a library is a "taxing subdivision," as defined in subsection (a) of that statute.

While we think it could be argued that the legislature intended to authorize the establishment of an employee benefits contribution fund by any public entity that is an employer and has the authority to levy or require the levying of property taxes, we are constrained to conclude the legislature did not use language in K.S.A. 1981 Supp. 12-16,102 sufficient to express that intent.

The enactment of K.S.A. 1981 Supp. 12-1920, in regard to recreation systems, supports the above conclusion. It apparently was brought to the attention of the legislature that such a system could not reasonably be classified as a "taxing subdivision," as that term is defined in K.S.A. 1981 Supp. 12-16,102(a), but instead of amending that statute, the legislature enacted K.S.A. 1981 Supp. 12-1920. However, no similar statute was enacted for libraries.

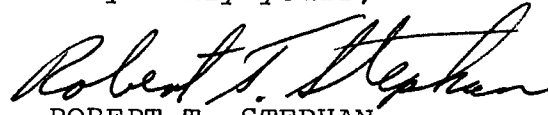
In our judgment, a library, established and maintained in accordance with the provisions of K.S.A. 1981 Supp. 12-1220, cannot reasonably be classified as a "taxing subdivision," as that term is defined in 12-16,102(a). Such a library, in no sense, is a subdivision of any kind. Thus, we are constrained to conclude that a library, established and maintained in accordance with the

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provisions of K.S.A. 1981 Supp. 12-1220, is not a "taxing subdivision," as said term is defined in K.S.A. 1981 Supp. 12-16,102(a). Consequently, that statute is inapplicable to such a library and its board of directors, and no tax may be levied under said statute by the board of directors of such a library.

Thus, in summary, it is our opinion that the board of directors of a library, established and maintained under the provisions of K.S.A. 1981 Supp. 12-1220, is not authorized, under subsection (c) of K.S.A. 1981 Supp. 12-16,102, to levy a tax for an employee benefits contribution fund. However, a city or school district that is authorized or required by law to levy taxes for a recreation commission is specifically authorized by K.S.A. 1981 Supp. 12-1920 to create a recreation commission employee benefits contribution fund and levy a tax, annually, to provide moneys for said fund.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Rodney J. Bieker  
Assistant Attorney General

RTS:BJS:RJB:jm