



STATE OF KANSAS

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July 12, 1982

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ATTORNEY GENERAL OPINION NO. 82-154

Mr. Rod Ludwig
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Re: Taxation--Aggregate Tax Levy Limitation--
Exemption of County from Said Limitation

Synopsis: The Board of County Commissioners of Mitchell County possessed the authority to exempt the county from the provisions of K.S.A. 79-5001 to 79-5016, inclusive, to the extent of the costs to be incurred by the county in the operation of the sheriff's department in fiscal year 1983 and each year thereafter, and to prescribe that, for the purpose of determining the county's compliance with the limitation prescribed in K.S.A. 79-5003, those costs are not to be included in determining the aggregate amount of taxes levied by the county in said years. Attorney General Opinion Nos. 81-168 and 77-272 affirmed herein. Cited herein: K.S.A. 19-101a (as amended by L. 1982, ch. 115, §1), 79-5002, 79-5003, 79-5004, 79-5006, 79-5007, 79-5008, 79-5009, 79-5011, 79-5016.

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Dear Mr. Ludwig:

You ask us to review a charter resolution adopted by the Board of County Commissioners of Mitchell County whereby said Board exempted the county from the provisions of K.S.A. 79-5001 to 79-5016, inclusive, commonly known as the "Tax Lid Law," to the extent of the costs incurred by the county in the operation of

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the sheriff's department. You ask whether the county has the authority to exempt these costs from the calculation of the county's aggregate tax levy limitation, and whether the charter resolution is sufficient to accomplish the intended result of allowing the county to impose an aggregate amount of ad valorem taxes in excess of the aggregate amount of such taxes it would have been authorized to levy under the "tax lid."

The matter of a city or county exempting itself, by charter ordinance or charter resolution, from the aggregate tax levy limitation prescribed in K.S.A. 79-5001 et seq. has been the subject of several opinions issued by this office. In addition, in recent months, the Municipal Accounting Section of the Division of Accounts and Reports of the Department of Administration has made a number of inquiries concerning this subject. Thus, we shall address this matter in some detail.

The Mitchell County Charter Resolution submitted by you contains only four sections. The third and fourth sections relate to publication of the charter resolution and the time at which the same is to become effective. These sections are in compliance with the requirements of K.S.A. 19-101b, and are not pertinent to your inquiry.

The remainder of the Charter Resolution prescribes as follows:

CHARTER RESOLUTION

"A CHARTER RESOLUTION exempting the Board of County Commissioners of Mitchell County from the provisions of K.S.A. 79-5001 through 79-5016, and any amendments thereto, relating to Aggregate Tax Levy Limitations to remove the total costs incurred by the County in the operation of the Sheriff's Department.

"BE IT RESOLVED by the Board of County Commissioners of Mitchell County, Kansas:

"Section 1. That Mitchell County, Kansas, under authority of K.S.A. 19-101a et seq., and any amendments thereto (County Home Rule), hereby elects to exempt itself from and make inapplicable to it, K.S.A. 79-5001 through 79-5016, and any amendments thereto, to the extent of the total cost incurred by the County in the operation of the Sheriff's Department. K.S.A. 79-5001 through 79-5016, and any amendments thereto, are applicable to Mitchell County, Kansas, but are not uniformly applicable to all Counties.

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"Section 2. That the Governing Body of Mitchell 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 operation of the Sheriff's Department shall be outside of the Aggregate Tax Levy Limitation."

In order to analyze the intent and effect of the above-quoted provisions, we believe it is necessary to understand the purpose of the Tax Lid Law and its application to Mitchell County, prior to the adoption of these provisions.

The intent and purpose of K.S.A. 79-5001 to K.S.A. 79-5016, inclusive, is stated by the legislature in K.S.A. 79-5004. This statute, in part, states:

"It is the intent of K.S.A. 75-5001 to 79-5016, inclusive, to prescribe a limitation upon the aggregate amount which may be levied with certain exceptions upon tangible property by each . . . [city or county] 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 [sic] various tax supported funds." (Emphasis added.)

In the same statute, the legislature commands:

"It shall be the duty of the governing body of each . . . [city or county] to adjust legally authorized levies for separate funds or functions of the . . . [city or county] within the aggregate limitation imposed under the provisions of this act."

From these provisions, we think it is absolutely clear that the purpose of the Tax Lid Law is to fix a maximum dollar amount which may be raised by each city or county in the state, through the imposition of property taxes upon tangible property.

The maximum dollar amount a city or county can raise through property tax impositions under the provisions of the Tax Lid Law is determined by the amount of "taxes levied for the base year" by the city or county. Under the Tax Lid Law, "base year" means "either the year 1969 or 1970," whichever is designated the base

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year by the city or county. K.S.A. 79-5002(a). The phrase "taxes levied for the base year" means "taxes, other than special assessments and . . . levies specified in K.S.A. 79-5011, which were levied in the year next preceding the base year and which became due on November 1 of such preceding year for the use of and expenditure by [the] taxing subdivision during the base year." K.S.A. 79-5002(b).

The limitation prescribed under the Tax Lid Law is stated in K.S.A. 79-5003, thusly:

"Except as otherwise hereinafter provided, no . . . [city or county] 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 . . . [the city or county] for the base year."

This statute further provides:

"All tax levies now or hereafter authorized by law to be made by . . . [cities and counties], 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."

Thus, except for certain adjustments provided in various other sections of the Tax Lid Law and except for levies that are specifically exempted from the provisions of K.S.A. 79-5001 to 79-5016, inclusive, no city or county can certify to the county clerk in any year an amount of property taxes in excess of the amount of property taxes levied by the city or county for the base year. For example, if a city designated 1970 as its base year, and the city, in 1969 levied, in the aggregate, \$100,000 in property taxes which were subject to the limitation prescribed under the Tax Lid Law, and which were to be expended by the city in 1970, then the city could not, in any year, certify to the county clerk more than \$100,000 in property taxes, which are subject to the limitation prescribed under the Tax Lid Law, except for adjustments made to that amount under K.S.A. 79-5006, 79-5007, 79-5008 and 79-5009.

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Thus, prior to the adoption of the Mitchell County Charter Resolution about which you inquire, said county had designated a base year, the amount of taxes levied for the base year of the county had been determined, and the procedure for calculating the maximum amount of taxes that could be levied by the county for any year was fixed by the provisions of K.S.A. 79-5001 et seq.

Whether the base year designated by Mitchell County was 1969 or 1970, the amount of taxes levied for the base year of the county included a certain sum of money to pay the costs to be incurred by the county in the operation of the Mitchell County Sheriff's Department. These costs were part of the ordinary, usual, and reoccurring expenses of the county and, thus, were included in Mitchell County's general fund tax levy for the base year. Therefore, said costs were included in determining the aggregate tax levy limitation of Mitchell County, under the provisions of K.S.A. 79-5001 to 79-5016, inclusive, and these costs would have continued to have been included in determining the county's total amount of taxes levied for each fiscal year, had the county not adopted the charter resolution now under review, since said costs necessarily are part of the county general fund.

With these facts in mind, we think the result sought by the Mitchell County Board of Commissioners through the adoption of this charter resolution is crystal clear. The result was to be that, in determining the total amount of property taxes levied by the county for expenditure in 1983 and each year thereafter, the sum of money to be expended by the county for operation of its sheriff's department was not to be considered. In our judgment, the provisions of the charter resolution adequately express this intent and are sufficient to accomplish the intended result.

The interpretation of this charter resolution, like the interpretation of any local ordinance or resolution, must be made in accordance with the rules of construction that apply in regard to a state statute [see Phillips v. Vieux, 210 Kan. 612, 617 (1972) and Desser v. City of Wichita, 96 Kan. 820, 821 (1915)], and "[t]he fundamental rule of statutory construction to which all other rules are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statute." In re Adoption of Trent, 229 Kan. 224, Syl. ¶1 (1981). In addition, in determining legislative intent, the court may properly look to the purpose to be accomplished, and the necessity and effect of the statute. See State ex rel. Stephan v. Lane, 228 Kan. 379, Syl. ¶11 (1980) and the case cited therein at 390. Moreover, there is a presumption the legislature did not intend to do a useless and senseless thing through the enactment of a statute. See Herd v. Chambers, 158 Kan. 614 (1944).

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In this case, the legislature body, i.e., the Board of County Commissioners of Mitchell County, has enacted that the county be exempt from K.S.A. 79-5001 to 79-5016 "to the extent of the total costs incurred by the County in the operation of the Sheriff's Department." Mitchell County Charter Resolution, Section 1. We believe the intent of the governing body was that the amount of taxes levied by the county for 1983 and each year thereafter, for the purpose of operating the county sheriff's department, although necessarily included as part of the county's general fund tax levy, was not to be included in determining the aggregate amount of taxes levied by the county in any such year. Thus, the amount of money to be used for this purpose, like the amount of money to be used for any purpose specified in K.S.A. 79-5011, is not to be included in determining the aggregate amount of property taxes levied by Mitchell County, for the purpose of determining the county's compliance with the limitation prescribed in K.S.A. 79-5003.

The question remains, however, whether the Board of County Commissioners possessed the authority to adopt the provisions of this charter resolution.

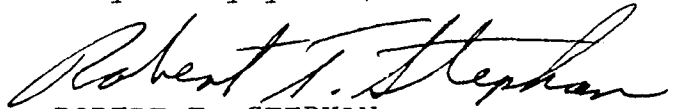
Under the provisions of K.S.A. 19-101a (as amended by L. 1982, ch. 115, §1), counties are "empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate," subject to numerous limitations, restrictions and prohibitions prescribed in this statute. The only limitation in K.S.A. 19-101a, as amended that might prohibit Mitchell County from adopting the provisions of the charter resolution here under review is the first limitation prescribed in the statute. It states: "[C]ounties shall be subject to all acts of the legislature which apply uniformly to all counties." K.S.A. 19-101a, First.

On August 17, 1977, this office issued Attorney General Opinion No. 77-272, in which it was concluded that the act in which the various sections now found at K.S.A. 79-5001 to 79-5017, inclusive, were enacted, was an act of the legislature which did not apply uniformly to all counties. Thus, the limitation prescribed in K.S.A. 19-101a, First, did not prohibit a county from exempting itself from the provisions of those statutes.

In Attorney General Opinion No. 81-168, we concurred with the conclusion stated in the prior opinion. We again do so and conclude that a county, through the exercise of its county home rule powers, may exempt itself from the provisions of K.S.A. 79-5001 to 79-5016, inclusive, or any part thereof. Consequently, we are of the opinion the Board of County Commissioners

of Mitchell County possessed the authority to exempt the county from the provisions of K.S.A. 79-5001 to 79-5016, inclusive, to the extent of the costs to be incurred by the county in the operation of the sheriff's department in fiscal year 1983 and each year thereafter, and to prescribe that, for the purpose of determining the county's compliance with the limitation prescribed in K.S.A. 79-5003, those costs, are not to be included in determining the aggregate amount of taxes levied by the county for any such year.

Very truly yours,



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