



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 214

The Honorable James L. Francisco
State Senator, Twenty-Sixth District
604 North First Street
Mulvane, Kansas 66612

Re: Taxation -- Aggregate Tax Levy Limitation --
Property Tax Appraisal Costs Excluded from Limita-
tion

Synopsis: K.S.A. 19-436 prescribes that the costs incurred by each county in funding the county appraiser's office shall be exempt from the aggregate tax levy limitation of the county, unless a petition requesting a vote on the issue is timely filed with the county election officer. Moreover, this statute requires the publication, annually, of a notice prescribing that such costs shall be exempt from said limitation, unless a petition is filed. Therefore, the annual publication of such a notice is not a matter of discretion for a board of county commissioners. It is a requirement of state law. Cited herein: K.S.A. 19-436.

* * *

Dear Senator Francisco:

You have submitted a letter to our office in which you ask a number of questions concerning county government in Sedgwick County. While some of your questions are related, others are not. Therefore, we have determined to address your questions in separate opinions. This opinion concerns your inquiry about the aggregate tax levy limitation and the costs incurred by the county in appraising property for purposes of property taxation.

You explain that a number of county expenditures which, in your judgment, should be within the aggregate tax levy limitation, are exempted, annually, from the aggregate tax levy limitation, "most notably" the costs incurred by the county appraiser's office. In regard to these costs, you inquire:

"What is required to force a vote to bring this back under the Tax Lid? Timing? Petition requirements? Is there any way to keep the County Commissioners from bringing these expenditures out without going through a petition gathering process each time?"

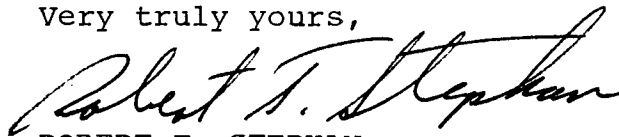
We call your attention to K.S.A. 19-436, which controls the subject matter of your inquiry. We note that your objection to this law was voiced in 1974 when you voted "nay" to 1974 House Bill No. 1657. However, the bill was passed and signed into law. (L. 1974, ch. 112). This statute, in relevant part, provides:

"The board of county commissioners of each county shall each year determine the total cost to be incurred by the county in complying with the requirements of this act and shall itemize and identify the same in the budget of the county. The board of county commissioners of the county shall publish a notice once each week for two consecutive weeks in the official county newspaper stating that all taxes levied to pay such costs . . . shall be exempt from the aggregate tax levy limitation of the county and if within sixty (60) days after the last publication thereof, a petition signed by electors of the county equal in number to not less than five percent (5%) of the total qualified electors of the county is filed in the office of the county election officer requesting an election thereon, such costs shall be within the aggregate tax levy limitation of the county unless a proposition to exclude the same from such limitation is submitted to and approved by a majority of the electors of the county voting at an election called and held thereon. If within such period no sufficient protest is filed or if the electors approve such proposition at an election called and held thereon that portion of the tax levies of such county which is levied for the purpose of paying costs incurred by the county in complying with the provisions of this act . . . shall not be included in computing the aggregate tax levies of the county

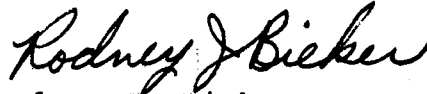
and is exempt from the limitations imposed under the provisions of K.S.A. 79-5001 to 79-5016, inclusive. All such elections shall be called and held in the manner provided by K.S.A. 1979 Supp. 10-120." (Emphasis added.)

It is clear that this statute imposes duties upon the board of county commissioners of each county, which duties must be performed each year. It is equally clear that this statute provides that the costs incurred by the county in funding the county appraiser's office "shall be exempt" from the aggregate tax levy limitation, unless a petition is timely filed, requesting an election on the issue. In addition, the annual publication of a notice prescribing that the particular costs about which you voice concern shall be exempt from the aggregate tax levy limitation is not a matter of discretion for a board of county commissioners. Such action is a requirement of state law. Moreover, this statute prescribes the number of signatures required on any such petition, the officer with whom the petition is to be filed, the time period within which the petition must be filed, and the manner in which the election shall be called and held. Thus, the provisions of K.S.A. 19-436 furnish the answers to your inquiries. If the provisions of this statute do not reflect the policy desired by the legislature, then, of course, the legislature may amend the statute.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rodney J. Bieker
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