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ATTORNEY GENERAL OPINION NO. 83- 24

James R. Cobler
Director of Accounts and Reports
First Floor, State Office Building
Topeka, Kansas 66612

Re: Taxation -- Local Ad Valorem Tax Reduction Fund --
Distribution to Political Subdivisions

Synopsis: In order for a political subdivision to be entitled to receive its proportionate share of Local Ad Valorem Tax Reduction Fund (LAVTRF) moneys pursuant to K.S.A. 1982 Supp. 79-2961(b), it must certify a tax levy for each fund which is to receive a distribution of LAVTRF moneys, and the amount produced by the levy certified for each such fund must be equal to or greater than the amount of LAVTRF moneys distributed to such fund. In addition, where there is a maximum levy rate limitation for any such fund, the amount produced by the levy certified for such fund must be less than the amount which the maximum levy for the fund would produce. However, LAVTRF moneys may be applied to tax levy funds of general application for which there are no maximum levy rate limitations. Cited herein: K.S.A. 79-1962, K.S.A. 1982 Supp. 79-2961.

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Dear Mr. Cobler:

You have asked for clarification of certain provisions of the statutes providing for the distribution of moneys in the Local Ad Valorem Tax Reduction Fund (LAVTRF) to local units of government. Your questions primarily concern the provisions of K.S.A. 1982 Supp. 79-2961(b), which states:

"No political subdivision shall be entitled to participate in the distribution of any money appropriated to carry out K.S.A. 79-2960, and this section, unless and until such political subdivision has adopted and certified a budget for the ensuing year which shows as a separate item the amount of the distribution to one or more tax levy funds of general application within such subdivision except bond and interest funds and has certified a tax levy for each such fund that will produce a sum of money less than the amount which a maximum levy would produce for each such fund, in an amount equal to or in excess of the amount of such distribution. The budget of each political subdivision also shall show that the aggregate levies made by such tangible property tax-levying political subdivisions will produce a sum less than the amount which the aggregate levy would produce in an amount equal to or in excess of the aggregate amount of the budget items of such distribution shown in the aggregate levy." (Emphasis added.)

In your judgment, the foregoing provisions prescribe "three conditions to be met before a county treasurer can distribute the LAVTR to a fund:

- "1) a tax levy for the fund must be certified;
- "2) the levy must be less than the amount which a maximum levy would produce; and
- "3) the amount of the ad valorem tax must equal or be greater than the amount of the LAVTR used in the fund."

Based on these premises, you question whether the current practice of a number of townships satisfies the requirements of K.S.A. 79-2961(b). You note that

"many townships are placing the county treasurer's estimate of LAVTR entirely in their general fund and levying no taxes for the general fund. The general fund's resources consisting of intangible tax and LAVTR are then budgeted as a transfer to the road fund; this is authorized by K.S.A. 80-1406(b). The road fund levy is then set at the maximum tax rate."

You suggest that the above-described procedure avoids the reduction of the road fund taxes by the amount of the LAVTR, and

you indicate your belief that this is improper and request our opinion.

For the most part, we agree that the provisions of K.S.A. 1982 Supp. 79-2961(b) require that, in order for a political subdivision to be entitled to receive its proportionate share of LAVTRF moneys: (1) it must certify a tax levy for each fund which is to receive a distribution of LAVTRF moneys; and (2) the amount produced by the certified levy for each such fund must be equal to or greater than the amount of LAVTRF moneys distributed to such fund. We also agree that the amount produced by each of the certified levies must be less than the amount which the maximum levy for the fund would produce, but such requirement should not be read as limiting the distribution of LAVTRF moneys only to funds which have maximum levy limits. With this caveat (which is not pertinent to your first question, since K.S.A. 79-1962 establishes a maximum levy limit on a township's general fund), we concur in your analysis of the relevant statutory requirements.

As a consequence, we also agree that the above-described procedure you indicate is being utilized by many townships does not comply with the mandates of K.S.A. 1982 Supp. 79-2961(b). By a township's failure to certify a levy for its general fund, where such fund is budgeted to receive all of the township's share of LAVTRF moneys, the township does not comply with any of the statutory requirements establishing eligibility for receipt of LAVTRF moneys. Not only has the township failed to certify a levy, but as an obvious consequence, the township has failed to satisfy the other requirements pertaining to the amount to be produced by such levy.

You also have inquired as to the proper application of LAVTRF moneys to other political subdivisions, such as cities and counties. You suggest that it is improper for LAVTRF moneys to be distributed to a fund of a political subdivision which has no tax levy rate limitations. Your position is summarized by the following syllogism:

- "1. The purpose of LAVTR is to reduce ad valorem tax levies.
- "2. It cannot be demonstrated that LAVTR reduces ad valorem tax levies in funds that have no levy rate limitations.
- "3. Therefore, LAVTR cannot be used in funds where there are no levy rate limitations."

As we suggested in responding to your first question, we cannot agree with this proposition. In our judgment, K.S.A. 1982 Supp. 79-2961(b) does not preclude the application of

LAVTRF moneys to a political subdivision's funds which have no maximum levy rate limitations. Our conclusion is predicated on the 1974 amendment to this statute and the analysis of this amendment in the 1979 Shawnee County District Court decision in Board of County Commissioners, Sedgwick County, Kansas v. James Cobler, et al., (Case No. 79-CV-944, decided August 16, 1979).

In that decision, Judge Terry Bullock recounted the 1974 amendment of 79-2961(b), as follows:

"Prior to 1974, K.S.A. 79-2921(b) [sic] required that LAVTRF moneys be apportioned to every tax fund of the taxing subdivision, except the bond and interest fund. In 1974 the legislature amended K.S.A. 79-2961(b) to permit taxing subdivisions to place LAVTRF funds in one or more levy funds of general application, without regard to whether the fund was exempt from the provisions of the tax lid law. (L. 1974, Ch. 436, Sec. 3). Since numerous funds are exempt from the provisions of the tax lid law (See e.g. K.S.A. 79-5011), this amendment made it possible for cities and counties to entirely avoid application of the direct tax reduction aspects of the LAVTRF law by placing LAVTRF moneys in those funds which are exempt from the tax lid."

Subsequently, Judge Bullock noted that, since 1970, the provisions of 79-2961(b) have not been regarded by cities and counties as requiring an actual reduction in property taxes by the amount of LAVTRF receipts (Id. at 4,5), and at page 7 of his memorandum decision, he discussed the legal effect of the 1974 amendment as follows:

"[I]f the legislature desired to make clear its intention that LAVTRF monies should be used to effect an actual reduction in property taxes by the amount of the LAVTRF distribution, the opportunity to do so was also clearly present in 1974. As previously noted, K.S.A. 79-2961(b) was amended in 1974 to provide that LAVTRF monies could be used by a taxing subdivision to apply to one or more tax levy funds of general application within the subdivision. Before that amendment, the statute required that LAVTRF monies be apportioned to every tax fund of the subdivision, except the bond and interest fund. By virtue of that amendment, the legislature has expressly provided that LAVTRF

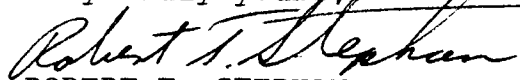
monies be applied to a tax levy fund or funds which are exempt from aggregate tax levy limitations imposed by the 'tax lid,' e.g., funds for employers' contributions for the Kansas Public Employees Retirement System and for social security. (See, K.S.A. 1978 Supp. 74-4920 and K.S.A. 1978 Supp. 40-2305.) Additionally, by virtue of this amendment, and with the elimination of general fund mill levy limitations (see L. 1975, ch. 494), LAVTRF monies may be applied more flexibly to those funds for which there are no mill levy limitations.

"Thus, if it had been the intent of the legislature to require cities and counties to use LAVTR fund monies to effect an actual reduction of property taxes, the legislature could have provided for application of those monies solely to those tax levy funds which are subject to the aggregate levy limitation imposed by the 'tax lid' and to those funds for which there still exist mill levy limitations. The legislature has seen fit not to impose such limitations."

It is clear from the foregoing that Judge Bullock has determined that LAVTRF moneys may be applied to a political subdivision's funds for which there are no maximum levy rate limitations.

In conclusion, therefore, it is our opinion that, in order for a political subdivision to be entitled to receive its proportionate share of Local Ad Valorem Tax Reduction Fund (LAVTRF) moneys pursuant to K.S.A. 1982 Supp. 79-2961(b), it must certify a tax levy for each fund which is to receive a distribution of LAVTRF moneys, and the amount produced by the levy certified for each such fund must be equal to or greater than the amount of LAVTRF moneys distributed to such fund. In addition, where there is a maximum levy rate limitation for any such fund, the amount produced by the levy certified for such fund must be less than the amount which the maximum levy for the fund would produce. However, LAVTRF moneys may be applied to tax levy funds of general application for which there are no maximum levy rate limitations.

Very truly yours,



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ATTORNEY GENERAL OF KANSAS



W. Robert Alderson
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