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ATTORNEY GENERAL OPINION NO. 84- 55

The Honorable Norman E. Justice
Representative, Thirty-Fourth District
506 Washington Blvd.
Kansas City, Kansas 66101

Re: Cities and Municipalities--Miscellaneous Provisions--
City and County Service Programs for the Elderly

Synopsis: Pursuant to K.S.A. 12-1680, Kansas cities or counties may levy a tax to support service programs for the elderly. Within the limitations of the statute, the board of county commissioners or the governing body of a city may allocate the funds in any manner which they deem appropriate. Cited herein: K.S.A. 12-1680; 19-2678.

* * *

Dear Representative Justice:

As state representative for the thirty-fourth district you have requested an opinion concerning the use of money raised by a Wyandotte County mill levy which is designated to fund service programs for the elderly. Your specific question concerns the county's ability to use such funds to administer its own program for the elderly when an agency, administered by the City of Kansas City, Kansas, currently exists to provide such service programs in the area.

To fully respond to your request, it is necessary to look into the background of the issues you raise. We are informed that the mill levy in question was approved by Wyandotte county voters in August of 1982 pursuant to K.S.A. 12-1680. That statute provides in relevant parts:

"Whenever a petition containing the signatures of not less than 5% of the registered voters of any city or county is filed with the appropriate county election officer requesting an election on the question of whether a tax levy of not more than one mill . . . shall be made on all of the taxable tangible property in the city or county for the purpose of creating or continuing a service program for the elderly operated by municipalities as defined in K.S.A. 10-101 or nonprofit organizations, such proposition shall be submitted to the voters of the city or county at a question submitted election held in accordance with the provisions of K.S.A. 10-120. The proposition submitted shall be in the following form: 'An annual tax of _____ (a specified amount or not to exceed a specified amount) mill shall be levied in _____ (city or county) to fund a service program for the elderly.' The board of county commissioners of any county or the governing body of any city on its own motion may provide by resolution or ordinance for an annual tax levy of not more than one mill, . . . for the purpose stated in this section, and such proposition shall be submitted to the voters of the county or city for approval or rejection without petition in the manner provided in this section, and the proposition shall be stated in the same form as if in response to a petition." (Emphasis added.)

A proposal to make such a levy was submitted to Wyandotte county voters upon the motion of the board of county commissioners. At the time the levy was approved, the Wyandotte/Leavenworth Area Agency on Aging was the agency designated by the Kansas Department on Aging to administer funds (state, federal and local) for aging programs in Wyandotte County. Resolution No. 1807 of the Wyandotte county commissioners, dated July 1, 1982, takes this fact into account when it states:

"BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS That they levy a tax of one mill upon taxable, tangible property in Wyandotte County for the purpose of creating or continuing a service program for the elderly, presently in operation under the title Wyandotte/Leavenworth Area Agency on Aging." (Emphasis added.)

The specific question submitted to the voters was that required by K.S.A. 12-2680, and was in essence: Shall an annual tax of

one mill be levied in Wyandotte county to fund a service program for the elderly? As noted above, voters approved the levy with its stated general purpose in the August, 1982 primary election. We have learned that the funds generated by the levy during its first year were used to assist the programs of the Wyandotte/Leavenworth Area Agency on Aging. In April of 1983 the board of county commissioners established a senior citizen mill levy advisory board to act as a liaison between the county and the Area Agency and to monitor and plan for the use of county mill levy funds.

In June of 1983, the county, through the board of county commissioners, submitted an application to the Kansas Department on Aging asking that the county, rather than the city of Kansas City, be designated as the entity to sponsor the Area Agency on Aging. The application of the county for area agency designation is still pending before the Kansas Department on Aging.

Your specific question apparently concerns the authority of the county to set up its own board to plan for the administration of county mill levy moneys for service programs for the elderly. You state that it is your belief the voters approved the county levy on the condition that all such funds would be channelled into the existing Area Agency.

It is of course impossible for us to ascertain what the specific intentions of Wyandotte County voters were when they approved the mill levy in 1982. We do know, however, that the levy was authorized and approved in the general language provided by K.S.A. 12-1680, that is, shall an annual tax be levied to "fund a service program for the elderly." We find no indication that the funds in question are being used by Wyandotte County for any other purpose.

Once a levy is approved by the voters pursuant to K.S.A. 12-1680 the entity levying the tax (either the city or county) may use the funds to create or continue a service program for the elderly. Such a service program may be operated by any municipality, as that term is defined in K.S.A. 10-101, which includes counties and cities, or by a nonprofit organization. Thus, a county which levies such a tax is not obligated to use the funds to supplement an existing program which is operated by another entity. The county may choose this option or it may create a service program administered by the county. A Board of County Commissioners is authorized by K.S.A. 19-2678 to:

". . . to establish and maintain recreational, community service and social programs for the aging which may include but not be limited to nutrition and transportation programs and may pay the cost thereof

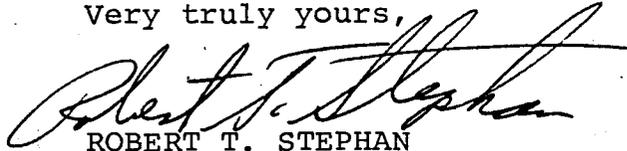
out of the general fund or any other fund of the county which may [be] legally used for such purposes."

Money raised by a mill levy under K.S.A. 12-1680 clearly qualifies as a fund of the county which may legally be used for such purposes.

The county may, of course, choose to make a grant of funds raised by such a levy to another entity to administer service programs for the elderly in the county. In such a case the county has the general authority to retain control of the use and administration of such funds in order to insure the proper expenditure of the money for the purposes authorized by K.S.A. 12-1680. For another example where this discretion was discussed, see Attorney General Opinion No. 77-190.

In our opinion, the only limitation on the expenditure of funds generated by a county-wide levy pursuant to K.S.A. 12-1680 is that the county use the money to "fund service programs for the elderly." In so doing the county has a number of choices as to how to best administer such funds. The county is not required by the terms of K.S.A. 12-1680, nor by any other statute, to use such funds to supplement an existing aging agency, if one is present. If, however, the county chooses to fund an existing agency, it is not required by statute to make grants without retaining some administrative control over the use of the funds. All of these matters have been left by the legislature to be worked out on the local level, in the manner most advantageous to each particular locale.

Very truly yours,



ROBERT T. STEPHAN
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Mary F. Carson
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