



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85- 102

Philip S. Harness  
Johnson County Counselor  
110 South Cherry, Suite 8  
Olathe, Kansas 66061

Re: Counties and County Officers -- Mental Health  
Centers -- Tax Levy; Buildings and Facilities

Synopsis: K.S.A. 19-4004 authorizes a county to levy an annual tax, which may not exceed the limitations prescribed by K.S.A. 79-1947, for the purpose of acquiring and equipping facilities for community mental health programs and/or mental retardation services. K.S.A. 79-1947 provides that the levy for buildings and facilities authorized by K.S.A. 19-4004 shall be limited to .25 mills. Thus, the maximum authorized levy is .25 mills, and the fact that the county maintains separate mental health and mental retardation programs does not permit the county to make separate levies for the buildings and facilities used by each program. Cited herein: K.S.A. 19-4004; 79-1947.

\* \* \*

Dear Mr. Harness:

As Johnson County Counselor you have requested our opinion on the interpretation of K.S.A. 19-4004 and K.S.A. 79-1947 as they relate to the amount the county may levy for: (1) buildings and facilities for mental retardation services; and (2) buildings and facilities for mental health centers.

You inform us that Johnson County has established both a mental health center board and a mental retardation services

board pursuant to K.S.A. 19-4001 et seq. K.S.A. 19-4004 authorizes the county to levy an annual tax, limited by K.S.A. 79-1947, for mental health services, and an annual tax, also limited by K.S.A. 79-1947, for mental retardation services in the county. The statute further provides:

"In addition thereto, to provide for the purchase of or the construction of facilities for the community mental health center, and/or facility for the mentally retarded, the board or boards of county commissioners may, upon petition of the governing board, levy an annual tax on all taxable tangible property in their county, which tax shall not exceed the limitation prescribed by K.S.A. 1979 Supp. 79-1947, and to issue and sell general obligation bonds of such county, for the purpose of creating and providing a special fund to be used in acquiring a site for, and the building, equipping, repairing, remodeling and furnishing of a community mental health center, and/or facilities for the mentally retarded, or for any one or more of such purposes."  
(Emphasis added.)

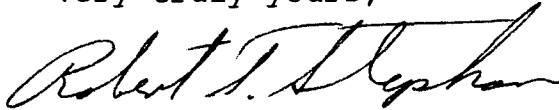
K.S.A. 79-1947 provides in parts relevant here that the authority of the board of county commissioners to fix a rate of levy annually for buildings and facilities authorized by K.S.A. 19-4004 is limited to .25 mill. The other levies authorized by K.S.A. 19-4004, those for mental health services and mental retardation services, are limited by K.S.A. 79-1947 to 1.00 mill each. You ask whether Johnson County may, pursuant to these statutes, make a .25 mill levy for buildings and facilities for mental retardation services and a separate .25 mill levy for buildings and facilities for mental health services, for a total of a .50 mill levy.

It is our opinion that the county may not levy more than .25 mills for buildings and facilities authorized by 19-4004. As noted above, that statute and K.S.A. 79-1947 authorize a .25 mill levy for buildings and facilities for "a community mental health center, and/or facilities for the mentally retarded." It is clear from this statutory language that the maximum authorized levy under K.S.A. 19-4004 for buildings and facilities is .25 mills for either one or both programs. The fact that the county has established both a mental health

program and a mental retardation program does not expand its authority to levy for buildings and facilities for such programs beyond the .25 mill limitation. That levy is designed to provide for buildings and facilities for both programs if both exist. The use of the combined conjunctive "and/or" makes this intent quite clear. Thus, K.S.A. 79-1947 limits the levy authority to .25 mills for the buildings and facilities authorized by K.S.A. 19-4004, which authorizes buildings and facilities for both mental health programs and mental retardation programs.

We therefore find ourselves in agreement with your conclusion that, in the absence of a home rule charter resolution exempting the county from the limitations of K.S.A. 79-1947, the county is limited to a maximum levy of .25 mills for buildings and facilities for mental health services and mental retardation services. The county may not make separate levies of .25 mills for the buildings and facilities of each program.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Mary F. Carson  
Assistant Attorney General