



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 37

The Honorable Edward F. Reilly
State Senator, Third District
Capitol; 255-E
Topeka, Kansas 66612

Re: Counties and County Officers -- Economic
Development Programs -- Allocation of Mill Levy
Revenues

Synopsis: The Leavenworth County Board of Commissioners has authority under K.S.A. 19-4101 et seq. to budget and expend mill levy revenues for programs related to economic development. Under K.S.A. 12-3402, the Leavenworth County Port Authority is an agency created for the purpose of promoting economic development. Thus, the board of commissioners is authorized to provide funding to the port authority under K.S.A. 19-4102, even though the electorate previously voted down a mill levy under K.S.A. 12-3402(b) for the same purpose. However, any expenditure of public funds must have a demonstrable relationship to a program of economic development and must be for a public purpose. Cited herein: K.S.A. 12-3402; 19-4101; 19-4102; 19-4103.

* * *

Dear Senator Reilly:

As Senator from the Third District, you request our opinion concerning the authority of the Board of County Commissioners of Leavenworth County to budget mill levy revenues for the benefit of the Leavenworth County Port Authority. You inform

us that in 1972 the voters rejected a proposition to levy a tax of up to 2 mills for the purpose of funding the port authority. In light of the requirements of K.S.A. 12-3402 and the results of the 1972 election, you request our opinion on the authority of the board of county commissioners to expend revenues derived from a levy under K.S.A. 19-4102 for the same purpose.

In order to respond to your question, we must first examine the statutes which pertain to the port authority and to economic development programs. K.S.A. 12-3402(a) states:

"It is the purpose of this act to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of intrastate and interstate commerce within the state" (Emphasis added.)

This language clearly indicates the legislature's intention that the Leavenworth County Port Authority is an agency created for the purpose of promoting economic development in Leavenworth County. K.S.A. 12-3402(b) states that any county creating a port authority shall submit the question of whether an annual tax levy may be made on the assessed taxable tangible property of the county, and the amount thereof, to the electors of the county creating the authority. Further, the statute provides:

". . . if a majority of those voting on the question vote in favor of such tax levy, the same may be made for such purpose and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774 and amendments thereto by cities located in the county, and otherwise such tax levy shall not be made. . . ." (Emphasis added.)

Thus, it appears that the board of county commissioners would have no power to budget funds for the port authority if the tax levy were not first approved by a majority of those voting on the question.

However, we believe the legislature has provided an alternative method by which the board of county commissioners

is empowered to use tax revenues for the port authority. This authority is given by K.S.A. 19-4101 et seq., an act which pertains to economic development programs in Kansas. An initial requirement for the application of these statutes is that any moneys so raised must be spent for programs related to economic development. As the Leavenworth County Port Authority has been determined to be an agency created for the purpose of promoting commerce, industry and prosperity, i.e. economic development, in our opinion the board of commissioners is free to use this statutory alternative to employ tax revenues for the port authority.

K.S.A. 19-4102 deals with the financing of economic development programs, and states in relevant part:

"The board of county commissioners of any such county may, by resolution, provide for the establishment of a countywide economic development program and may provide for the financing thereof from its general operating fund, or may levy a tax annually upon all the taxable tangible property of the county in an amount not exceeding the limitation prescribed by K.S.A. 1979 Supp. 79-1947, for the purpose of creating a fund therefor and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 1979 Supp. 12-1774, and amendments thereto, by cities located in the county. The tax levy herein authorized shall be in addition to all other levies authorized or limited by law and shall not be subject to or within aggregate tax levy limits prescribed by article 19 of chapter 79 of the Kansas Statutes Annotated. . . ."

(Emphasis added.)

It is of particular import to note that the mill levy authorized by this statute shall be in addition to all other levies authorized or limited by law. The levy in question in Leavenworth County was made under K.S.A. 19-4102, and is by law in addition to that authorized by K.S.A. 12-3402(b). Thus, we conclude that the Leavenworth County Board of Commissioners is authorized to provide funding to the port authority under K.S.A. 19-4102, even though the electorate previously voted down a levy for the same purpose under K.S.A. 12-3402(b).

Once it has been determined that the board of commissioners is authorized to budget these revenues, it is necessary to analyze any constraints which the law has placed on the use of such funds. K.S.A. 19-4103 outlines how moneys raised pursuant to K.S.A. 19-4102 may be utilized. The statute provides that any county which establishes an economic development program under its terms:

" . . . may utilize the funds . . . to conduct studies and prepare comprehensive plans for its future economic growth and development; to inventory the services, facilities and resources of the entire county; to promote, stimulate, and encourage the growth and development of the agriculture, commerce and industry of the county as a whole, in order to achieve maximum utilization of its human, economic and natural resources and tourist attractions; and to otherwise promote the general economic welfare and prosperity of the area." (Emphasis added.)

These rather broad confines are the only limits on the utilization of the funds authorized by K.S.A. 19-4102. As Attorney General Opinion No. 82-229 concluded:

"K.S.A. 19-4103 authorizes expenditure of county moneys for programs related to economic development. The only constraints in this regard are that such expenditures have a demonstrable relation to programs of economic development and that they satisfy the public purpose doctrine."

Accordingly, Leavenworth County may budget tax revenues for the port authority, as long as such activity has a demonstrable relationship to a program of economic development. This requirement is clearly met, as K.S.A. 12-3402(a) states that port authorities are specifically formed for the purpose of promoting, stimulating and developing the general welfare, economic development and prosperity of the state of Kansas.

A second requirement which must be met prior to the expenditure of county moneys for programs related to economic development is the existence of a public purpose. This

requirement was discussed at length in Attorney General Opinion No. 82-229 (copy enclosed), and more recently in Opinion No. 85-52. As stated in the more recent of these opinions:

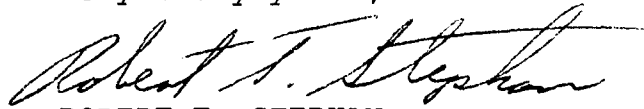
"The public purpose doctrine . . . requires a unit of local government, in exercising the powers conferred upon it, to spend funds only for a public purpose. Thus, the funds raised pursuant to K.S.A. 19-4102 may not be expended by a governmental entity to make a gift or loan to benefit a solely private entity or cause. By the enactment of K.S.A. 19-4101 et seq., however, the Kansas legislature has made a policy determination that government-financed programs to encourage economic development serve a valid public purpose. This should not be construed as a blanket authorization of every expenditure which may be made under the guise of 'economic development,' and the question of whether a specific expenditure serves a public purpose must be determined in light of the specific circumstances. However, in view of the general authority the legislature has granted to counties regarding the promotion of economic and industrial development, it is our opinion that most expenditures for the development of a county industrial park would serve the purposes required by K.S.A. 19-4103 and the public purpose doctrine."

We affirm this result, and conclude that the budgeting of tax revenues for the Leavenworth County Port Authority would both serve the purpose required by K.S.A. 19-4103 and meet the public purpose doctrine.

In conclusion, the Leavenworth County Board of Commissioners has authority under K.S.A. 19-4101 et seq. to budget and expend mill levy revenues for programs related to economic development. Under K.S.A. 12-3402, the Leavenworth County Port Authority is an agency created for the purpose of promoting economic development. Thus, the board of commissioners is authorized to provide funding to the port authority under K.S.A. 19-4102, even though the electorate

previously voted down a mill levy under K.S.A. 12-3402(b) for the same purpose. However, any expenditure of public funds must have a demonstrable relationship to a program of economic development and must be for a public purpose.

Very truly yours,



ROBERT T. STEPHAN
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Barbara P. Allen
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