



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 104

Sally Davis Pokorny  
Montgomery County Attorney  
Montgomery County Courthouse  
Independence, Kansas 67301

Re: Taxation--Miscellaneous Provisions--Creation of  
Indebtedness in Excess of Budget

Synopsis: The Kansas budget law provides in part that any indebtedness incurred by a governing body or any other officer or officers of such taxing subdivision or municipality in excess of the amount budgeted shall be void as against such taxing subdivision or municipality. In our opinion the term void in this context means null or of no effect. Prosecutorial discretion may be used in determining whether such a penalty should be sought in view of the purposes to be accomplished by the budget law. Cited herein: K.S.A. 10-1113; K.S.A. 1985 Supp. 77-201; K.S.A. 79-2935.

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Dear Ms. Pokorny:

As the Montgomery County Attorney, you have requested our opinion regarding the meaning of the word "void," as it is used in the budget law in K.S.A. 79-2935. Your request is made on behalf of a citizen who has raised concerns over alleged violations of the Kansas Budget Law by Independence Community College. This matter has been brought to the attention of the Municipal Accounting Division of the Department of Administration and the State Department of

Education. It was the opinion of the former agency that the problems for the 1984 fiscal year resulted from severe underestimations of certain funds in the budget process. Due to the poor estimates the college apparently found it necessary to transfer funds from its general fund to make up for the deficiencies in other funds. The Municipal Accounting division was of the opinion that there was no misuse of public money involved; moreover, the college has pursued corrective measures to avoid similar difficulties in the future.

Turning now to your question regarding the interpretation of the penalty provisions of K.S.A. 79-2935 we note that the rules of statutory construction mandate that "[w]ords and phrases shall be construed according to the context . . . of the language. . . ." K.S.A. 1985 Supp. 77-201. It is, therefore, simply untenable for us to provide you with a definition of "void" without first examining the statute itself.

K.S.A. 79-2935 provides, in part:

"It shall be unlawful for the governing body of any taxing subdivision or municipality in any budget year to create an indebtedness in any manner or in any fund after the total indebtedness created against such fund shall equal the total amount of the adopted budget of expenditures for such fund for that budget year. Any indebtedness incurred by the governing body or any officer or officers of such taxing subdivision or municipality in excess of said amount shall be void as against such taxing subdivision or municipality." (Emphasis added.)

This law was enacted during the same legislative session as the cash-basis law and, therefore, the two laws must be construed together. Shouse v. Cherokee County Comm'rs, 151 Kan. 458, 462, (1940). The cash-basis law provides, in part, that, unless otherwise provided, it is unlawful for any member of a governing body of a municipality to knowingly vote for any motion creating an indebtedness in excess of the amount of funds actually on hand in the treasury, or to knowingly vote to pay such indebtedness. K.S.A. 10-1113.

At the time of these enactments, many taxing subdivisions had outstanding obligations, which they had incurred during previous years to such a large and varied extent that the governing bodies of these subdivisions no longer were aware of their true financial condition. Gulick, Revised Budget Law

of 1941, 14 J.B.K. 100 (1945). To meet this indebtedness, the governing bodies would levy additional taxes on the people. See Shouse, 151 Kan. 458; Gridley High School Dist. v. Woodson County Comm'rs, 155 Kan. 407, (1942). The cash-basis and budget laws were designed to lift this burden from the taxpayers by providing a systematic, intelligent, and economical administration of the affairs of municipalities so as to avoid waste and extravagance, and yet to permit such units of government to function efficiently. State, ex rel. v. Republic County Commissioner, 148 Kan. 376, 383, (1938). In fact, in 1939, the Legislative Committee on Assessment and Taxation liberalized the then-existing budget law, recognizing that such a law, if applied too strictly, could severely inhibit the efficient management of government. Gulick at 101. It would thus seem to be contrary to the legislature's intent to demand a reading of the budget law which would only serve to oppressively burden the taxpayers and their governing bodies.

Assuming for the sake of discussion that Independence Community College did violate the budget law, K.S.A. 79-2935 provides that any indebtedness incurred in excess of the budgeted amount shall be void as against the municipality or taxing subdivision. We are of the opinion that, in this context, the term "void" should be given its ordinary meaning, and be read to mean "to nullify or to cause to be of no effect." See Shouse, 151 Kan. at 466; Gridley High School Dist., 155 Kan. at 407. However, it is our opinion that the imposition of this penalty in this case would seriously contravene the intent of the budget law and that the prosecution of Independence Community College would not serve the best interests of the community as a whole. See State, ex rel. Miller v. Richardson, 229 Kan. 234 (1981) (giving a prosecuting attorney the discretion to refrain from prosecuting whenever he believes that a prosecution would not serve the best interests of the state).


According to the Municipal Accounting Division of the Department of Administration, the governing body of Independence Community College was not guilty of wasteful or extravagant spending; they simply erred in estimating their budget. While such errors in budget estimations should not be ignored, we are satisfied that Independence Community College is taking positive measures to ensure that such miscalculations do not continue to occur. Presently, the governing body of Independence Community College is working with the State of Kansas Department of Administration, Division of Accounts and Reports, to improve their management

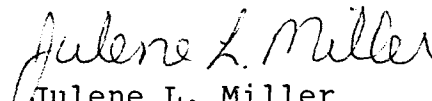
and internal controls systems. In our opinion the budget and cash basis laws have served the purpose for which they were enacted. The Community College is working to avoid similar problems in the future and it does not appear that any public funds were misused or appropriated to a non-public purpose.

Clearly, where Independence Community College had sufficient money in its treasury to compensate for the budget errors and did not need to levy an additional tax to meet its indebtedness, the voiding of such obligations would be unfair and absurd. It is well-settled that a statute should never be given construction that leads to uncertainty, injustice or confusion, or that leads to an absurd result. State v. Roudybush, 235 Kan. 834, (1984).

In conclusion, The Kansas budget law provides in part that any indebtedness incurred by a governing body or any other officer or officers of such taxing subdivision or municipality in excess of the amount budgeted shall be void as against such taxing subdivision or municipality. In our opinion the term void in this context means null or of no effect. Prosecutorial discretion may be used in determining whether such a penalty should be sought in view of the purposes to be accomplished by the budget law.

Very truly yours,

  
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RTS:JLM:jm