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September 2, 1986

ATTORNEY GENERAL OPINION NO. 86- 127

Steven L. Boyce
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P.O. Box 452
Burlington, Kansas 66839

Re: Cities and Municipalities--Public Recreation and
Playgrounds -- Certification of Budget After
Statutory Deadline Date

Taxation -- Levy of Taxes -- Time for Certification
of School Levies

Synopsis: K.S.A. 1985 Supp. 12-1908(b) provides that a school district may levy a tax to meet the needs of its recreation commission, not to exceed one mill, which is in addition to the one mill authorized by K.S.A. 12-1904 and amendments thereto. K.S.A. 1985 Supp. 12-1908(e), however, imposes the limitation that before a tax levying authority makes such additional levy, the school district shall adopt a resolution authorizing the making of the levy. Once the resolution is published, the tax levy may be made without an election unless a petition in opposition thereto is filed in accordance with the statute.

If a valid petition is filed in opposition to the proposed tax levy increase, the county clerk may not certify the school district budget with the mill increase figured in unless and until a majority of all electors voting have approved the proposed mill levy increase at a regular or special election. A special election may be called after

the August 25 certification deadline to determine the voters' will, as this deadline is merely directory, not mandatory. As soon as the election results are determined, the school district shall submit its proposed budget, either with or without the mill increase figured in, to the county clerk for certification. Cited herein: K.S.A. 12-1904, as amended by L. 1986, ch. 80, §2; K.S.A. 1985 Supp. 12-1908, as amended by L. 1986, ch. 80, §4; K.S.A. 79-1801; 79-2930.

* * *

Dear Mr. Boyce:

As Coffey County Attorney, you request our opinion regarding the county clerk's authority to conditionally certify a school district's budget, pending the outcome of a special election to be held after the August 25 budget certification date. You inform us that on June 16, 1986, the board of education of Unified School District No. 244 passed a resolution authorizing an additional one mill levy for its recreation commission pursuant to K.S.A. 1985 Supp. 12-1908(b), and published the resolution in the official school newspaper on June 18 and June 25. Further, you state that a valid petition in opposition to the mill levy increase was filed by the recreation commission, pursuant to K.S.A. 1985 Supp. 12-1908, as amended by L. 1986, ch. 80, §4.

Given the facts set forth above, you ask our opinion as to whether the county clerk may exercise his or her discretion in certifying a budget, and inquire as to the importance of strict adherence to the statutory budget deadline date.

Chapter 12, article 19 of the Kansas statutes deals with public recreation and playgrounds. Under K.S.A. 1985 Supp. 12-1908(b), if a school district's recreation commission determines that its budget should be increased to adequately meet the needs of the school district, such recreation commission may submit a proposed program with the budget for carrying out the same to the levying authority, which may levy a tax sufficient to raise the amount required, but no greater than one mill. The subsection goes on to provide:

"Such levy may be made annually in an amount not to exceed the amount set forth in the resolution authorizing the same and shall be in addition to the one mill

authorized by K.S.A. 12-1904, and amendments thereto."

K.S.A. 1985 Supp. 12-1908(e) specifically states that before any such additional levy may be made, it must be authorized by a resolution adopted by the levying authority, and such resolution shall be published once each week for two consecutive weeks in the appropriate newspaper. The subsection then states:

"After publication, the additional tax levy may be made without an election unless a petition in opposition thereto is filed . . . within 60 days after the last publication of the resolution. If a valid petition is signed, no levy shall be made in excess of that being made prior to the adoption of the resolution unless and until the proposition has been submitted to and approved by a majority of the electors voting thereon at the next regular city or school district election, whichever is appropriate, or at a special election called for the purpose."
(Emphasis added.)

K.S.A. 79-2930 deals with the submission of adopted budgets to the county clerk, and states at subsection (a):

"Two copies of the budget certificate giving the amount of ad valorem tax to be levied and the total amount of the adopted budget of expenditures by fund, along with itemized budget forms for each and every fund and proof of publication of the notice of budget hearing containing the budget summary shall be presented to the county clerk within the time prescribed by K.S.A. 79-1801 as amended." (Emphasis added.)

K.S.A. 79-1801 provides:

"Each year the governing body of any city, the trustees of any township, the board of education of any school district

and the governing bodies of all other taxing subdivisions shall certify, on or before August 25, to the proper county clerk the amount of ad valorem tax to be levied." (Emphasis added.)

By statute, the board of education of any school district is required to present to the proper county clerk by August 25 of each year the amount of ad valorem tax to be levied by the taxing authority. Accordingly, barring a protest petition, U.S.D. No. 244 would have been statutorily required to submit its annual budget to the Coffey County Clerk for certification by August 25. However, in the present situation a problem with certification arose, in that a valid petition in opposition to the mill levy increase for the recreation commission was filed in accordance with K.S.A. 1985 Supp. 12-1908(e). Therefore, the county clerk cannot certify the school district budget with the mill increase figured in "unless and until the proposition has been submitted to and approved by a majority of the electors voting thereon" K.S.A. 1985 Supp. 12-1908(e).

It is a well settled rule of statutory construction that "ordinary words are to be given their ordinary meaning and courts are not justified in disregarding the clear intent of the statute appearing from plain and unambiguous language." State v. Haug, 237 Kan. 390 (1985). Accordingly, it is our opinion that the mill levy increase must be approved by a majority of the voters before the county clerk can certify the increase.

Our research has revealed no statutes or case law which allow a county clerk to conditionally certify a budget pending the outcome of a special election to be held at a later date. In our judgment, however, such conditional certification is not necessary in order for the proposed mill levy increase to be included in the school district budget. While K.S.A. 79-2930 and 79-1801 direct that proposed budgets shall be certified to the county clerk on or before August 25, the Kansas Supreme Court has held this date to be directory, not mandatory. School Board v. Rupp, 152 Kan. 636, 641 (1940). A directory statute is one the provisions of which are a matter of form only, are not material, do not affect any substantial right and do not relate to the essence of the thing to be done, so that compliance is a matter of convenience rather than substance. 1 Am.Jur.2d Adm. L. §46 (1962). Therefore, we feel it is not essential that the electors vote on the proposed mill levy increase before August 25.

Accordingly, a proposition concerning the increase should be submitted to the electors either at the next regular school district election or at a special election called for that purpose to determine the will of the voters. K.S.A. 1985 Supp. 12-1908, as amended by L. 1986, ch. 80, §4. If a majority of the electors voting thereon approve the increase, the county clerk should properly certify the school district budget with the mill increase figured in.

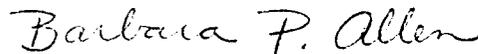
In conclusion, K.S.A. 1985 Supp. 12-1908(b) provides that a school district may levy a tax to meet the needs of its recreation commission, not to exceed one mill, which is in addition to the one mill authorized by K.S.A. 12-1904 and amendments thereto. K.S.A. 1985 Supp. 12-1908(e), however, imposes the limitation that before a tax levying authority makes such additional levy, the school district shall adopt a resolution authorizing the making of the levy. Once the resolution is published, the tax levy may be made without an election unless a petition in opposition thereto is filed in accordance with the statute.

If a valid petition is filed in opposition to a proposed tax levy increase, the county clerk may not certify the school district budget with the mill increase figured in unless and until a majority of all electors voting have approved the proposed mill levy increase at a regular or special election. A special election may be called after the August 25 certification deadline to determine the voters' will, as this deadline is merely directory, not mandatory. As soon as the election results are determined, the school district shall submit its budget, either with or without the mill increase figured in, to the county clerk for certification.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Barbara P. Allen
Assistant Attorney General