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ATTORNEY GENERAL OPINION NO. 86- 140

Robert G. Frey
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Liberal, Kansas 67901

Re: Cities and Municipalities -- Public Recreation and
Playgrounds -- Taxes Levied Pursuant to
Establishment of Employee Benefits Contribution Fund

Schools -- Capital Outlay Levy, Fund and Bonds --
Establishment and Maintenance of Capital Outlay Fund

Synopsis: K.S.A. 12-1904, as amended, authorizes a school district to establish, maintain and conduct a supervised recreation system and to levy an annual tax not to exceed one mill for such recreation system. Under K.S.A. 1985 Supp. 12-1908, as amended, if the recreation commission determines that its budget should be increased to adequately meet the needs of the school district, the school board may levy an additional 1 mill for this purpose. Furthermore, if a taxing subdivision creates and establishes an employee benefits contribution fund under K.S.A. 1985 Supp. 12-16,102, the governing body of the taxing subdivision may levy an annual tax upon all taxable tangible property within the taxing subdivision in an amount determined by the governing body to be necessary for the purposes for which such employee benefits contribution fund was created. This levy is in addition to the 2 mill levy limit imposed by K.S.A. 12-1904 and K.S.A. 1985 Supp. 12-1908.

Under K.S.A. 72-8801 et seq., a recreation commission is authorized, through the school board, to maintain a capital outlay fund as long as the school board adheres to the statutory guidelines for such a fund set forth in the aforementioned statutes. Cited herein: K.S.A. 1985 Supp. 12-16,102; 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. 72-8801; 72-8803; 72-8804; 74-4920, as amended by L. 1986, ch. 294, §5.

* * *

Dear Mr. Frey:

As county counselor for Haskell county, you inquire as to whether K.S.A. 1985 Supp. 12-16,102 authorizes the governing body of the school district to levy more than the 2 mills authorized by K.S.A. 12-1904 and K.S.A. 1985 Supp. 12-1908 (both as amended by L. 1986, ch. 80, §§2 and 4), pursuant to the establishment of an employee benefits contribution fund. Additionally, you ask whether a recreation commission, established pursuant to K.S.A. 12-1904, is authorized to set up and maintain a capital outlay fund within its budget. We will address your questions respectively and separately.

Chapter 12, Article 19 deals with public recreation and playgrounds. K.S.A. 12-1904, as amended, provides in part:

"Except as otherwise provided in subsection (b) of K.S.A. 12-1908, and amendments thereto, whenever a petition signed by at least 5% of the qualified and registered voters of the city or school district shall be filed with the clerk thereof, requesting the governing body of the city or school district to provide, establish, maintain and conduct a supervised recreation system and to levy an annual tax not to exceed 1 mill for such recreation system . . . it shall be the duty of the governing body of the city or school district to cause such question to be submitted to the qualified voters" (Emphasis added.)

K.S.A. 1985 Supp. 12-1908(b) goes on to provide:

"After any city or school district or both, acting jointly, has begun to operate a supervised recreation system, if the recreation commission of a particular school district . . . determines that the budget should be increased to adequately meet the needs of the city or 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 by the expanded budget . . . for the financing of redevelopment projects upon property located within the city or school district, but not to exceed 1 mill."
(Emphasis added.)

These statutes, considered together, allow the governing body of a school district to levy an annual tax not to exceed 2 mills for the benefit of its recreation system.

You inform us that a recreation commission has been created in Haskell county under the authority established in K.S.A. 12-1904. The recreation commission is set up under the school board and has qualified for the additional 1 mill authorized by K.S.A. 1985 Supp. 12-1908(b). Further, you state that the recreation commission has asked the school board to authorize the creation and establishment of an employee benefits contribution fund, and that the recreation commission maintains that the mill levy for the employee benefits contribution fund would be in addition to the 2 mill levy limit set by K.S.A. 12-1904 and K.S.A. 1985 Supp. 12-1908.

The establishment of employee benefits contribution funds is authorized by K.S.A. 1985, Supp. 12-16,102, which provides at subsection (b):

"Any taxing subdivision may create and establish employee benefits contributions funds for (1) the taxing subdivision or (2) any political subdivision for which a tax is levied by such taxing subdivision for the purpose of paying the employer's share of any employee benefits, exclusive of any salaries, wages or other direct payments to such employees, as may be

prescribed in the ordinance or resolution of the governing body creating such funds."

We note also the language in subsection (a):

"A school district shall be considered a taxing subdivision only for the purpose of making a levy for a recreation commission." (Emphasis added.)

Therefore, under K.S.A. 1985 Supp. 12-16,102, a school district is only a taxing subdivision for the purpose of making a levy for a recreation commission.

Your first question is directly concerned with K.S.A. 1985 Supp. 12-16,102, subsection (c), which states in part:

"The governing body of any taxing subdivision having established employee benefits funds under subsection (b) is hereby authorized to levy an annual tax upon all taxable tangible property within the taxing subdivision in an amount determined by the governing body to be necessary for the purposes for which such funds were created"

Specifically, you ask whether the tax levy authorized by K.S.A. 1985 Supp. 12-16,102(c) is in addition to the 2 mill limit imposed by K.S.A. 12-1904 and K.S.A. 1985 Supp. 12-1908.

It is a cardinal rule of statutory construction that all parts of a legislative act must be read in pari materia. Matter of Guardianship and Conservatorship of Stremel, 233 Kan. 136 (1983). Where a statute is plain and unambiguous, courts must give effect to the intention of the legislature as expressed. Johnston v. Tony's Pizza Service, 232 Kan. 848 (1983). However, if the language of the statute is ambiguous, courts may properly look to extrinsic evidence for aid in construction. State v. Bagemehl, 213 Kan. 210 (1973). It is our opinion that, in construing the applicable statutes in pari materia, there is sufficient ambiguity as to whether the levy authorized by K.S.A. 1985 Supp. 12-16,102(c) is in addition to the 2 mill limit imposed by K.S.A. 12-1904 and K.S.A. 1985 Supp. 12-1908, or alternatively is included within that limit, as to warrant the application of the rules of statutory construction. Therefore, we have

looked to extrinsic evidence of the legislature's intent for aid in construction.

In determining legislative intent, courts are not limited to mere consideration of the language employed but may properly look into the historical background of the enactment, the circumstances attending its passage, the purpose to be accomplished and the effect the statute may have under the various construction suggested. Director of Taxation, Dept. of Revenue v. Kansas Krude Oil Reclaiming Co., 236 Kan. 450 (1984). Courts may also take into consideration other statutory enactments on the same subject which may shed light on legislative intent. State v. Roudybush, 235 Kan. 834 (1984).

Prior to 1978, counties and cities maintained anywhere from four to eight separate funds from which employee benefits would be paid. In 1978, the Kansas legislature enacted what is now known as K.S.A. 1985 Supp. 12-16,102 for the purpose of simplifying the employee benefits contribution programs. This statute permits governing bodies of taxing subdivisions to levy a single employee benefits fund, as opposed to multiple funds, from which employer costs would be paid.

In our judgment, the enactment of K.S.A. 1985 Supp. 12-16,102 would be without purpose, if we were to construe legislative intent to be that the financing of employee benefits contribution funds should come from previously authorized mill levies. Such an interpretation would provide little incentive for any taxing subdivision to opt out of its multiple fund arrangement since, under KPERS, for example, the taxes levied for this fund are in addition to all other taxes authorized or limited by law. K.S.A. 74-4920(4), as amended by L. 1986, ch. 294, §5. We find no logical reason why the governing body of a taxing subdivision would elect to "simplify" its employee benefits program, when such simplification would only serve to divert funds from other deserving programs and projects.

Additionally, we note that K.S.A. 1985 Supp. 12-16,102 was enacted independently of K.S.A. 12-1904 and K.S.A. 1985 Supp. 12-1908, and that these statutes have never been amended during the same legislative session. This information gives rise to the presumption that the legislature, by enacting K.S.A. 1985 Supp. 12-16,102, intended to create a new tax levy for the purpose of financing employee benefits contribution funds. Therefore, in our judgment this levy should not be

subject to the limitations imposed by K.S.A. 12-1904 and K.S.A. 1985 Supp. 12-1908.

Accordingly, it is our opinion that the levy authorized by K.S.A. 1985 Supp. 12-16,102 is in addition to those levies authorized by K.S.A. 12-1904 and K.S.A. 1985 Supp. 12-1908. To interpret this statute otherwise would surely result in a construction that leads to uncertainty, injustice and confusion, and such a construction is not favored in the law. Lakeside Village Imp. Dist. v. Jefferson County, 237 Kan. 106 (1985).

You next inquire as to whether the recreation commission in Haskell county has the budget authority to set up and maintain a capital outlay fund. In order to answer your question, it is necessary to examine the statutes relating to capital outlay levy, fund and bonds. Initially, we note that the levying authority for the Haskell county recreation system is the governing body of the school district.

K.S.A. 72-8801 provides in part:

"The board of education of any school district may make an annual tax levy for a period of not to exceed five years in an amount not to exceed four mills upon the assessed taxable tangible property in the school district for the purposes specified in this act and for the purpose of paying a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the school district. No levy shall be made under this act until a resolution is adopted by the board of education in the following form:"
(Emphasis added.)

K.S.A. 72-8803 provides in part:

"There is hereby established in every school district of the state a fund which shall be called the capital outlay fund, which fund shall consist of all moneys deposited therein in accordance with law."

K.S.A. 72-8804 provides in part:

"Any moneys in the capital outlay fund of any school district . . . may be used for the purpose of the acquisition, construction, reconstruction, repair, remodeling, additions to, furnishing and equipping of buildings necessary for school district purposes,"

K.S.A. 72-8801 authorizes the board of education of any school district to make an annual tax levy (subject to specific limitations), for the financing of redevelopment projects upon property located within the school district. Further, K.S.A. 72-8803 automatically establishes a capital outlay fund in every school district of the state, and requires that proceeds from any tax levied by authority of K.S.A. 72-8801 be deposited in the capital outlay fund of the school district making such levy. Finally, K.S.A. 72-8804 allows moneys in the capital outlay fund of any school district to be used only for specifically delineated purposes.

In light of these statutes, it is our opinion that a recreation commission is authorized, through the school board, to maintain a capital outlay fund, as long as the school board adheres to the statutory guidelines for such a fund set forth in the aforementioned statutes. We note also in this regard that no levy shall be made under the capital outlay act until a resolution is adopted by the board of education in the form specified by K.S.A. 72-8801.

In conclusion, K.S.A. 12-1904, as amended, authorizes a school district to establish, maintain and conduct a supervised recreation system and to levy an annual tax not to exceed one mill for such recreation system. Under K.S.A. 1985 Supp. 12-1908, as amended, if the recreation commission determines that its budget should be increased to adequately meet the needs of the school district, the school board may levy an additional 1 mill for this purpose. Furthermore, if a taxing subdivision creates and establishes an employee benefits contribution fund under K.S.A. 1985 Supp. 12-16,102, the governing body of the taxing subdivision may levy an annual tax upon all taxable tangible property within the taxing subdivision in an amount determined by the governing body to be necessary for the purposes for which employee benefits contribution such fund was created. This levy is in addition to the 2 mill levy limit imposed by K.S.A. 12-1904 and K.S.A. 1985 Supp. 12-1908.

Under K.S.A. 72-8801 et seq., a recreation commission is authorized, through the school board, to maintain a capital outlay fund as long as the school board adheres to the statutory guidelines for such a fund as set forth in the aforementioned statutes.

Very truly yours,

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