



STATE OF KANSAS

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September 9, 1987

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ATTORNEY GENERAL OPINION NO. 87-133

Philip C. Lacey
City Attorney
400 East Kansas Avenue
P.O. Box 1008
McPherson, Kansas 67460-1008

Re: Cities and Municipalities--Public Recreation and
Playgrounds--Recreation Commission; Certification
of Budget; Tax Levys

Synopsis: A joint (city-school district) district
recreation system established under the provisions
of L. 1987, ch. 71, §4(c) is a "new recreation
system" and is subject to a one mill levy
limitation (for general purposes) in its first year
of operation. (L. 1987, ch. 71, §§4, 6.) The
aforesaid levy limitation applies where a joint
district recreation system "replaces" a city
recreation commission which levied 3 mills under
K.S.A. 12-1901 et seq. Cited herein: K.S.A.
12-1901; L. 1987, ch. 71, §§4, 6.

* * *

Dear Mr. Lacey:

You request our interpretation of Chapter 71 of the 1987
Session Laws of Kansas. Specifically, you advise that the
city of McPherson has a city recreation commission which has
been operating at the 3 mill levy limitation prescribed by
K.S.A. 12-1901 et seq. You indicate that there has been
discussion of reorganizing the recreation commission under the
provisions of L. 1987, ch. 71, §4(c), so that the recreation

commission would be a joint recreation commission of the city of McPherson and Unified School District No. 418. Your question is whether the joint recreation commission would be "a new recreation commission" as that term is used in section 6 of the act. Additionally, you ask whether the city and school district could approve a budget in excess of one mill for such a joint commission, if it constitutes a "new recreation commission."

Chapter 71 of the 1987 Session Laws of Kansas recodifies recreation commission statutes. Section 2 of the act provides for the continuation of pre-existing recreation commissions:

"Any recreation system created under the provisions of Article 19 of Chapter 12 of the Kansas Statutes Annotated prior to the effective date of this act shall continue in existence but shall be operated under the provisions of this act."

Section 6 of the act provides for certification of recreation commission budgets to the city or school district "which shall levy a tax sufficient to raise the amount required by such budget," subject to the following proviso:

"The city or school district shall not be required to levy a tax in excess of the maximum tax levy set by the city or school district by current resolution. In the case of a new recreation commission established under the provisions of this act, such levy shall not be required to exceed one mill. Whenever the recreation commission determines that the tax currently being levied for the commission, as previously established by the city or school district, is insufficient to operate the recreation system and the commission desires to increase the mill levy above the current levy, the commission shall request that the city or school district authorize an increase by adopting a resolution declaring it necessary to increase the annual levy. The city or school district may authorize the increase by resolution, but such increase shall not exceed one mill per year. The maximum annual mill levy for

the recreation commission general fund shall not exceed a total of four mills." (Emphasis added.)

In our judgment, the term "new recreation commission," as used in the above-quoted statutory excerpt, clearly refers to a recreation commission established under the provisions of chapter 71 of the 1987 Session Laws, as opposed to a recreation commission which was in existence prior to July 1, 1987.

In regard to your second question, i.e. whether a city and school district could approve a budget in excess of one mill for a joint city-school district recreation commission established under section 4(c) of the act, the aforesaid section provides as follows:

"The governing body of any city and any school district may initiate the establishment of a joint recreation system by adopting a joint ordinance or resolution proposing to establish a joint recreation system and to levy an annual tax not to exceed one mill for such recreation system and to pay a portion of the principal and interest on bonds issued pursuant to K.S.A. 12-1774, and amendments thereto. The proposal shall be submitted for approval by the voters of the city or school district, which ever has the greater assessed evaluation, at an election called and held in the manner provided by the general bond law, and the cost of the election shall be borne equally by the city and school district." (Emphasis added.)

As the above-quoted statute indicates, the proposal which is submitted to voters is to establish a joint recreation system and "to levy an annual tax not to exceed one mill for such recreation system." The initial one mill levy limitation seems to be at variance with the language of section 6, which provides that the levy for a new recreation commission "shall not be required to exceed one mill." In resolving this discrepancy, we are guided by the following rules of statutory construction:

"When a statute is susceptible of more than one construction it must be given that construction which, when considered in its entirety, gives expression to its intent and purpose, even though such construction is not within the strict literal interpretation of the statute.

"In order to ascertain the legislative intent courts are not permitted to consider only a certain isolated part or parts of an act but are required to consider and construe together all parts thereof in pari materia.

When the interpretation of some one section of an act according to the exact and literal import of its words would contravene the manifest purpose of the legislature, the entire act should be construed according to its spirit and reason, disregarding so far as may be necessary the strict letter of the law." Gnadt v. Durr, 208 Kan. 783 (1972), Syllabi 2-4.

Applying the above quoted rules of statutory construction, it seems inconceivable that the legislature would provide for submitting to voters a proposal "to levy an annual tax not to exceed one mill" for a joint recreation system if such one mill limitation were not to be effective for at least the first year of operation of a joint recreation system. Accordingly, even though section 6 of the act might seem to suggest that a city or school district could levy more than one mill for the initial year of operation of a new joint recreation commission, we reject such interpretation. In our opinion, such a new recreation commission is subject to a one mill levy limitation in its first year of operation, and thereafter such levy may be increased by not to exceed one mill per year, up to a maximum levy of four mills.

In summary a joint (city-school district) district recreation system established under the provisions of L. 1987, ch. 71, §4(c) is a "new recreation system" and is subject to a one mill levy limitation (for general purposes) in its first year of operation. (L. 1987, ch. 71, §4, 6.) The aforesaid levy limitation applies where a joint district recreation system

"replaces" a city recreation commission which levied 3 mills
under K.S.A. 12-1901 et seq.

Very truly yours,



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