



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 158

The Honorable Clyde D. Graeber  
State Representative, Forty-First District  
1900 Kingman  
Leavenworth, Kansas 66048

The Honorable Martha Jenkins  
State Representative, Forty-Second District  
Route 1, Box 47  
Leavenworth, Kansas 66048

The Honorable Edward F. Reilly  
State Senator, Third District  
1412 S. Broadway  
Leavenworth, Kansas 66048

Re: Taxation--Aggregate Tax Levy Limitations--  
Mandatory Tax Lid

Synopsis: Although the intent of 1985 Senate Bill No. 164 is to prevent increases in 1989 property taxes as a result of using higher reappraised values, the bill does not prevent political subdivisions from padding their budgets in anticipation of the impending tax lid. Cited herein: K.S.A. 79-1945 et seq.; 79-2925 et seq.; 79-5001 et seq.; K.S.A. 1986 Supp. 79-5021; 79-5022; 79-5028; 79-5029; 79-5030; 79-5033; 79-5036; 1985 Senate Bill No. 164.

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Representative Clyde D. Graeber  
Representative Martha Jenkins  
Senator Edward F. Reilly  
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Dear Representatives Jenkins and Graeber and Senator Reilly:

You request our opinion concerning tax levy limitations. Specifically, you inquire whether certain counties and cities violate the intent of 1985 Senate Bill No. 164 (K.S.A. 1986 Supp. 79-5021 et seq.) by levying more moneys than actually needed for the next fiscal year in their general fund in anticipation of the budgetary restraints imposed by K.S.A. 1986 Supp. 79-5022.

K.S.A. 1986 Supp. 79-5021 et seq. provides for a uniform tax lid on all taxing subdivisions in anticipation of statewide reappraisal. Pursuant to K.S.A. 1986 Supp. 79-5022, amounts levied in 1989 for expenditure in 1990 are limited. You have indicated that the purpose of this limitation is to prevent increases in taxes as a result of using higher reappraised values. In effect, taxing subdivisions must reduce mill levies by the amount increased valuations generate to prevent a tax windfall to the subdivision; i.e. the dollar amount levied in 1989 may not exceed the dollar amount levied in 1988. Certain levies are exempt from the new lid. K.S.A. 1986 Supp. 79-5028. After the first year, taxing subdivisions may permanently exempt themselves from the lid, subject to a protest petition. K.S.A. 1986 Supp. 79-5029. K.S.A. 1986 Supp. 79-5036 authorizes counties and cities to exempt themselves after the first year from the provisions of K.S.A. 1986 Supp. 79-5021 to 79-5033 by home rule. Additionally, the board of tax appeals may authorize tax levies in excess of the aggregate limitation pursuant to K.S.A. 1986 Supp. 79-5030.

In construing a statute, if the language is clear and the purpose appears with reasonable certainty, there is no need to resort to further rules of construction to ascertain its meaning. Pillsbury Co. v. Atchison, Topeka & Santa Fe Ry. Co., 548 F.Supp. 28 (D.C. Kan. 1982). Additionally, when a statute is plain and unambiguous, courts must give effect to the intention of the legislature as expressed, rather than determine what laws should or should not be. Szoboszlay v. Glessner, 233 Kan. 475 (1983).

Our examination of the bill reveals no language restricting the type of activity described in your inquiry. The new tax lid first applies to 1989 levies for 1990 expenditures. K.S.A. 1986 Supp. 79-5022. Thus, the amounts levied in 1988 will be used to limit the amounts authorized to be levied in

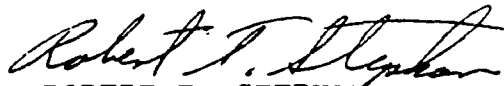
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1989. However, no limitations as to the preparation of the 1988 budget appear in the bill; 1988 levies are not limited by 1987 levies except as otherwise provided by law. See, e.g., K.S.A. 79-2925 et seq.; K.S.A. 79-5001 et seq.; K.S.A. 79-1945 et seq. The public will have an opportunity to contest mill increases pursuant to K.S.A. 79-2929, so that the limitation of K.S.A. 1986 Supp. 79-5022 is not as important in 1988 as it will be in 1989 when the property valuations may increase taxes without opportunity for public input. But for the tax lid, the increases would be automatic. In our opinion, reading in limitations on the 1987 and 1988 levies would be adding meaning to the statute which is otherwise not there. Pursuant to the rules of statutory construction quoted above, it is our opinion that these statutes cannot be read to prevent cities and counties from padding their budgets in anticipation of the impending tax lid.

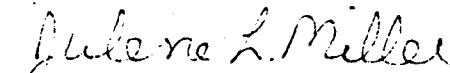
It should be noted that the activity described in your inquiry could give rise to violations of other laws regarding budgetary procedures and expenditures. However, any possible violation would have to be determined on a case-by-case basis. Finally, K.S.A. 1986 Supp. 79-5033 gives the state board of tax appeals jurisdiction to, upon complaint by any taxpayer, "inquire into the levy of taxes by any taxing subdivision for the purpose of determining if such taxing subdivision is operating in compliance with the limitations and provisions of K.S.A. 1985 Supp. [sic] 79-5021 to 79-5035, inclusive."

In conclusion, since the language of 1985 Senate Bill No. 164 does not restrict political subdivisions from budgeting more moneys in 1988 than actually needed for the next fiscal year in their general fund, counties and cities do not violate the act by doing so.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm