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ATTORNEY GENERAL OPINION NO. 87- 163

The Honorable Ed C. Rolfs
State Representative, Sixty-Fifth District
424 N. Madison
Junction City, Kansas 66441

Re: Taxation--Aggregate Tax Levy Limitations--
Reappraisal

Synopsis Assuming that 1989 is the first year reappraised valuations are used as a basis for the levy of taxes, a taxing subdivision to which K.S.A. 1986 Supp. 79-5021 et seq. applies will be limited in 1989 and years thereafter to an aggregate dollar amount not in excess of the actual amount which was levied by such taxing subdivision in 1988. Taxing subdivisions may alter this limitation pursuant to any one of several provisions. Cited herein: K.S.A. 1986 Supp. 79-5021; 79-5022; 79-5023; 79-5024; 79-5025; 79-5026; 79-5027; 79-5028; 79-5029; 79-5030; 79-5036; Kan. Const., Art. 11, Sec. 1 (1986 Supp.).

* * *

Dear Representative Rolfs:

As State Representative for the Sixty-Fifth District, you request our opinion regarding the interpretation of K.S.A. 1986 Supp. 79-5022, the operative section of the aggregate tax levy limitation provisions to become effective in the year in which reappraised valuations are first used. Your specific questions are as follows:

"1. Assuming that the first year of reappraisal is 1989, would all taxing subdivisions be limited to a levy not to exceed either (a) the authorized dollar levy for 1988, or (b) the actual dollar levy for 1988?

"2. If the actual levy for 1988 is less than the authorized limit, would the taxing subdivision be limited to that 1988 actual amount 'for each year thereafter' or could the subdivision increase the actual amount in subsequent years up to the amount authorized in 1988?

"3. For those governing units which, by charter ordinance, have opted out from the statewide tax lid, such that the actual 1988 levy exceeds the limit authorized by statute, would such units have to pass another charter ordinance to provide for any actual levy in excess of the authorized limit after 1989? If so, when must such ordinances be passed (i.e., in 1989? subsequent to 1989?)?

"4. Can governing units with home rule powers pass charter ordinances after 1989 allowing them to exceed the limit authorized in 1988?

"5. What purpose is the 'amount which was levied' limitation designed to address or to what situations could it be applied? Perhaps the 'amount which was levied' limit was designed to apply only to 'charter ordinance' situations."

K.S.A. 1986 Supp. 79-5022 provides:

"In the year in which the valuations established under the program of statewide reappraisal are used as a basis for the levy of taxes and in each year thereafter, all existing statutory fund and aggregate levy limitations on taxing subdivisions are hereby suspended. Except as otherwise hereinafter provided, in such year and in

each year thereafter, any taxing subdivision is authorized to levy taxes upon tangible property which in the aggregate produces an amount not in excess of the amount which was authorized to be levied by such taxing subdivision in the next preceding year, but no taxing subdivision shall certify to the county clerk of the county any tax levies upon tangible property, excluding taxes levied as special assessments and excluding levies specified in K.S.A. 1985 Supp. 79-5028, which in the aggregate will produce an amount in excess of the amount which was levied by such taxing subdivision in the next preceding year."

For purposes of this opinion, we will assume that the year in which the valuations established under the program of statewide reappraisal are first used as the basis for the levy of taxes will be 1989. See Kan. Const., Art. 11, Sec. 1(b) (1986 Supp.).

You first question whether amounts levied in 1989 for expenditure in 1990 will be limited to the authorized dollar levy for 1988, or the actual dollar levy for 1988. Pursuant to K.S.A. 1986 Supp. 79-5022, the aggregate dollar amount levied in 1989 for expenditure in 1990, with specified exceptions, will be limited to the dollar amount which was actually levied by the taxing subdivision in 1988. The purpose for this limitation is to prevent increases in taxes as a result of using anticipated higher reappraised values. Attorney General Opinion No. 87-158.

The statute also provides that a taxing subdivision is authorized to levy taxes upon tangible property which in the aggregate produce an amount not in excess of the amount which was authorized to be levied by such taxing subdivision in 1988. While the meaning of this language is not abundantly apparent, it is believed that the "amount which was authorized" refers to the amount which was levied. In the case of many counties and cities which have opted out from statutorily prescribed limits, the amount which levied is the amount which is currently authorized - those taxing subdivisions are not operating under a lid. The significance of this language is further illuminated when read in conjunction with K.S.A. 1986 Supp. 79-5023 which provides in part:

"It is the intent of this act to prescribe a limitation, with specified exceptions, upon the aggregate amount which may be levied upon tangible property by each of the several taxing subdivisions of the state and not to prescribe a limitation upon the amount produced by each of the several levies imposed by such taxing subdivisions for their various tax supported funds."

Beginning with the levies made in 1989, the statutory fund limits expressed in mills will be indefinitely suspended. K.S.A. 1986 Supp. 79-5022. The focus will instead be placed on aggregate dollar amounts produced by the levies. Thus, a taxing subdivision will have the flexibility to levy more for a particular fund than was previously authorized, provided the aggregate amount produced for all funds does not exceed the authorized or actual aggregate amount levied in 1988. In any event, the provision of the statute which prohibits a taxing subdivision from certifying an aggregate tax levy in excess of what was actually levied the preceding year is clear and unambiguous. Thus, amounts levied in 1989 will be limited to the aggregate amount levied in 1988.

Your second question is: "If the actual levy for 1988 is less than the authorized limit, would the taxing subdivision be limited to that 1988 actual amount 'for each year thereafter' or could the subdivision increase the actual amount in subsequent years up to the amount authorized in 1988?" The provisions of K.S.A. 1986 Supp. 79-5022 apply "in the year in which the valuations established under the program of statewide reappraisal are used as a basis for the levy of taxes [1989 for our purposes] and in each year thereafter." (Emphasis added.) Thus, consistent with our response to your first inquiry, the taxing subdivision will be limited to the actual aggregate dollar amount levied in 1988 for the years 1989 and each year thereafter until the suspension on all existing statutory fund and aggregate levy limitations is removed. However, taxing subdivisions may adjust the aggregate limitation imposed by K.S.A. 1986 Supp. 79-5022 pursuant to any one of several provisions. See K.S.A. 1986 Supp. 79-5024; 79-5025; 79-5026; 79-5027; 79-5029; 79-5030; 79-5036.

Your third question is whether governing units which by charter ordinance have opted out from statutory fund and aggregate levy limitations such that the actual 1988 levy will

exceed the limits authorized by statute in 1988, will be required to pass another charter ordinance to provide for an actual levy in 1989 in excess of the 1988 statutorily authorized limit. The answer to your question is no. K.S.A. 1986 Supp. 79-5022 does not indicate that the amount authorized to be levied by a taxing subdivision in 1988 must be statutorily authorized. If proper home rule procedures were followed by a governing unit to opt out of any statutorily prescribed levy limits, the aggregate amount levied by the governing unit was "authorized" and therefore may be used as the basis for setting the 1989 limitation provided the governing unit does not certify tax levies which in the aggregate will produce an amount in excess of the amount which was levied by such taxing subdivision in 1988.

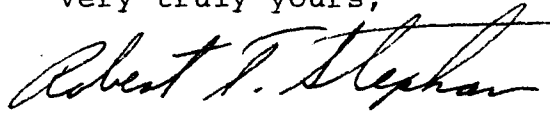
You next ask whether governing units with home rule powers may pass charter ordinances after 1989 allowing them to exceed the limit authorized in 1988. K.S.A. 1986 Supp. 79-5036 specifically authorizes the use of home rule powers "in the year next following the year in which the valuations established under the program of statewide reappraisal are used as a basis for the levy of taxes [1989] or in any year thereafter," to exempt a city or county from the provisions of K.S.A. 1986 Supp. 79-5022. Additionally, K.S.A. 1986 Supp. 79-5036 appears to contemplate the use of procedures similar to those of county home rule by the governing body of any other taxing subdivision to exempt such subdivision from the provisions of K.S.A. 1986 Supp. 79-5022. If such action is taken by a taxing subdivision, it will find itself back under the statutory fund and aggregate levy limitations which were suspended by K.S.A. 1986 Supp. 79-5022 unless it may also, by charter ordinance or resolution, opt out of those limitations. See Attorney General Opinions No. 83-80; 82-154; 81-168; 77-272; 77-253.

Finally, you question the significance of the "amount which was levied" limitation in K.S.A. 1986 Supp. 79-5022. This question has been answered by our response to question number one. The limitation applies across the board with exceptions for special assessments and levies specified in K.S.A. 1986 Supp. 79-5028.

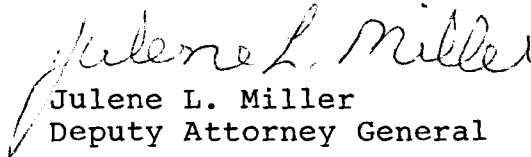
In conclusion, assuming that 1989 is the first year reappraised valuations are used as a basis for the levy of taxes a taxing subdivision to which K.S.A. 1986 Supp. 79-5021 et seq. applies will be limited in 1989 and years thereafter to an aggregate dollar amount not in excess of the actual amount which was levied by such taxing subdivision in

1988. Taxing subdivisions may alter this limitation pursuant to any one of several provisions.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
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