ATTORNEY GENERAL OPINION NO. 87-167

Duane P. Johnson
State Librarian
Kansas State Library
State Capitol, Third Floor
Topeka, Kansas 66612

Re: Taxation--Aggregate Tax Levy Limitations--Public Library Levy

Synopsis: Public library levies are subject to the limitations imposed by K.S.A. 1986 Supp. 79-5022 regardless whether the tax is levied for the library by a taxing subdivision which is required by law to do so. Cited herein: K.S.A. 1986 Supp. 79-5021; 79-5022; 79-5032.

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Dear Mr. Johnson:

As State Librarian, you request our opinion regarding tax levy limitations. Specifically, you inquire whether there is a limitation, under the provisions of K.S.A. 79-5021 et seq., on a public library levy which is levied for the library by a city, township or county.

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

"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." (Emphasis added.)

"Taxing subdivision" is defined in K.S.A. 1986 Supp. 79-5021
as "every taxing district in the state of Kansas other than
the state." Kansas statutes do not define the term "taxing
district" though case law in other jurisdictions indicates
that any entity which can mandatorily require another entity
to make a levy to benefit the people and property within its
territory is a taxing district. See Ebert v. Board of
Education of School Dist. of City of Newport, 126 S.W.2d
1111, 1113 (Ky. 1939); Lee v. Board of Education of Bell
County, 87 S.W.2d 961, 962, 963 (Ky. 1935); Archer v. City
of Indianapolis, 122 N.E.2d 607, 610 (Ind. 1954). We
therefore conclude that a public library which can mandatorily
require a city, county or township to levy a tax for library
purposes is a taxing district and thus a taxing subdivision
for purposes of K.S.A. 1986 Supp. 79-5022. (In support of
this conclusion is the fact that the definition of the term
"taxing subdivision" in K.S.A. 1986 Supp. 79-5021 is much
broader than the definition given that term in prior tax lid
statutes. See L. 1970, ch. 402, §1; K.S.A. 79-5001.)

K.S.A. 1986 Supp. 79-5022 provides for the suspension of all
existing statutory fund and aggregate levy limitations on
taxing subdivisions. With specified exceptions, taxing
subdivisions are prohibited from certifying to the county
clerk any tax levies upon tangible property which in the
aggregate will produce an amount in excess of the amount
levied by such taxing subdivision in the next preceding year.
Though generally libraries do not actually levy taxes, we
believe this limitation operates to limit levies certified by
the library to the taxing subdivision to the amount levied the
preceding year.

Pursuant to K.S.A. 1986 Supp. 79-5032:

"Whenever any taxing subdivision of this
state shall be required by law to levy
taxes for the financing of the budget of
any political or governmental subdivision
of this state which is not authorized by
law to levy taxes on its own behalf, and
the governing body of such taxing
subdivision is not authorized or empowered
to modify or reduce the amount of taxes
levied therefor, the tax levies of such
political or governmental subdivision
shall not be included in or considered in computing the aggregate limitations upon the property tax levies of the taxing subdivisions levy ing taxes for such political or governmental subdivision."

Under this provision, any taxing subdivision which is required by law to levy taxes for a library and is not empowered to modify or reduce the amount of those taxes shall not include or consider those taxes in computing aggregate limitations. This provision does not, however, exclude political or governmental subdivisions for which taxes are levied by another taxing subdivision from the provisions of K.S.A. 1986 Supp. 79-5022. (Compare K.S.A. 79-5015). The library's aggregate levy will be subject to the limitations, though its levy will not increase the aggregate of the taxing subdivision which actually levies the tax.

In conclusion, public library levies are subject to the limitations imposed by K.S.A. 1986 Supp. 79-5022 regardless whether the tax is levied for the library by a taxing subdivision which is required by law to do so.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Julene L. Miller
Deputy Attorney General

RTS:JLM:jm