



STATE OF KANSAS

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February 11, 1988

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ATTORNEY GENERAL OPINION NO. 88- 19

Stanley C. Grant, Ph.D.
Secretary
Department of Health and Environment
Forbes Field
Topeka, Kansas 66620-0001

Re: Public Health -- Local Boards of Health; Clinics --
County Health Funds; Increase in Levy

Synopsis: K.S.A. 1987 Supp. 65-204(d) excepts from the
aggregate tax levy limitations contained in K.S.A.
79-5001 to 79-5016 any tax levy increase over
previous levies, i.e. those authorized prior to
the 1986 amendment to K.S.A. 65-204. Cited
herein: K.S.A. 1987 Supp. 65-204(d); K.S.A.
79-5001; 79-5016; 79-5017; K.S.A. 1987 Supp.
79-5037.

* * *

Dear Secretary Grant:

As Secretary of the Kansas Department of Health and
Environment (K.D.H.E.) you request our opinion on the tax levy
authorized under K.S.A. 1987 Supp. 65-204(d). You inform us
that the issue results from the financial participation of the
K.D.H.E. with local health departments. Your specific
question concerns the new language contained in K.S.A. 1987
Supp. 65-204(d) which states:

"Any increase authorized by this subsection shall not be subject to the provisions of K.S.A. 79-5001 to 79-5016, inclusive, and amendments thereto."

You ask which levy increase this language refers to -- any levy made pursuant to this act, any increase over previously levied mills, or any increase exceeding the authorized one mill.

It is a well established rule that, whenever possible, a statute should be interpreted and applied according to the plain meaning of the language used and the intent of the legislative body enacting it. Atchison, Topeka and Santa Fe Ry. Co. v. U.S., 628 F.Supp. 1431 (Kan. 1986); Earth Scientists (Petro Services) Ltd. v. U.S. Fidelity & Guar. Co., 619 F.Supp 1465 (Kan. 1985). When construing the meaning of a statute, the facts and circumstances surrounding enactment may properly be considered. Lincoln Am. Corp. v. Victory Life Ins. Co., 375 F.Supp. 112 (Kan. 1974); Matter of Estate of Estes, 239 Kan. 192 (1986); State v. Thompson, 237 Kan. 562 (1985); Jackson v. City of Kansas City, 235 Kan. 278 (1984). As we have been unable to find written documentation of legislative discussion concerning the adoption of this amendment, interpretation of it must be in light of the plain language used and by comparison with the former version of the statute.

Changes made by the 1986 amendment to K.S.A. 65-204(d) include the elimination of mandatory electorate approval for all levy increases. The electorate must now file a protest petition in order to put the matter to a vote. Secondly, previous versions of K.S.A. 65-204 did not contain tax-lid exemption language. The Municipal Accounting Division of the Department of Administration further informs us that, in the past, city and county budget forms prepared by that office did not exclude tax levies made under this act from the aggregate tax levy limitations. Thus, the 1986 amendment to K.S.A. 65-204 created a new exemption from tax-lid restrictions. (We note that this new exemption applies only to K.S.A. 79-5001 to 79-5016 and does not exempt the applicability of K.S.A. 79-5017 to 79-5037.)


The final change implemented by the amendment authorizes an increase in the allowable tax levy up to one mill, and includes procedures for increasing the levy beyond that one


mill. Thus, subsection (d) includes two permissible tax levy increases; an increase from previous 1974 levels to one mill and an increase over that one mill.

K.S.A. 65-204(d) does not exempt all tax levies made pursuant to the act. There is an express exemption for any levy increase authorized by subsection (d). This subsection currently authorizes two increases over previous levels as discussed above: an increase from the levy allowed prior to the 1986 amendment to one mill, and an increase over that one mill. Any such increase is thus exempted from K.S.A. 79-5001 to 79-5016.

It is therefore our opinion that K.S.A. 1987 Supp. 65-204(d) permits an exemption from the aggregate tax levy limitations contained in K.S.A. 79-5001 to 79-5016 for any increase over previous tax levies (those authorized prior to the 1986 amendment to K.S.A. 65-204), up to and over one mill.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


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RTS:JLM:TMN:bas