ATTORNEY GENERAL OPINION NO. 88-63

Mr. Curtis E. Watkins
Kingman County Attorney
105 Avenue A East
Kingman, Kansas 67068

Re: Counties and County Officers -- General Provisions -- Home Rule Powers; Charter Resolutions; Tax Levy

Counties and County Officers -- County Commissioners -- Ambulance Service


Dear Mr. Watkins:

As Kingman County Attorney you request our opinion on whether K.S.A. 19-101a(a)(4) prohibits Kingman County from levying a tax that exceeds the one mill authorized pursuant to K.S.A. 19-262. We understand that this question results from an increase in the amount charged for ambulance service for the upcoming year, making the funds raised by a one mill levy insufficient.

The limitation set forth under K.S.A. 1987 Supp. 19-101a(4) mandates the applicability of all acts of the legislature prescribing limits of indebtedness. These limitations insure
that counties carefully make and follow their budgets, thereby
preventing deficits. See K.S.A. 10-1101 et seq. (cash-basis law), K.S.A. 79-2925 et seq. (budgetary laws). See also Shouse v. Cherokee County Commissioners, 155 Kan. 407 (1940). An increase in a tax
levy to pay for an expected increase in expenditures helps to
prevent deficits and therefore K.S.A. 10-101a(4) would not
apply to a proposed levy increase.

K.S.A. 1987 Supp. 19-101a sets forth the extent of home rule
powers enjoyed by counties. One important limitation
contained therein states:

"(1) Counties shall be subject to all acts
of the legislature which apply uniformly
to all counties."

K.S.A. 1987 Supp. 19-101a(a)(11) allows a county to exempt
itself from a non-uniform statute authorizing or requiring the
levy of taxes, and provide substitute and additional
provisions therefor, so long as the county's charter
resolution specifies that a portion of the proceeds of such
levy is to be used to pay a portion of the principle and
interest on any bonds issued by cities under the authority of
K.S.A. 12-1774 and amendments thereto. (See Attorney
General Opinion No. 83-80). Thus, if K.S.A. 19-262 is
non-uniform, the tax levy limitation contained therein may be
changed by charter resolution.

K.S.A. 19-262 provides in part:

"The board of county commissioners is
authorized by resolution to levy a tax for
ambulance service purposes and to pay a
portion of the principal and interest on
bonds issued under the authority of K.S.A.
1979 Supp. 12-1774, and amendments
thereto, by cities located in the county
upon all taxable tangible property in such
county not in excess of one mill on the
dollar of assessed valuation on such
property, except that in any county having
a population of more than twenty-four
thousand (24,000) and less than
twenty-nine thousand (29,000) which has an
assessed taxable tangible valuation of
more than ninety million dollars
($90,000,000) and less than one hundred
thirty million dollars ($130,000,000) and in which there are located two cities of the second class, the board of county commissioners may fix the rate of such levy at not to exceed two mills."

Pursuant to K.S.A. 19-262, the allowable tax levy mill rate varies depending upon the population, the assessed property valuation and the number of second class cities. This exception makes K.S.A. 19-262 non-uniform. Thus, pursuant to K.S.A. 1987 Supp. 19-101a(a)(11) and 19-101b, Kingman county may adopt a charter resolution wherein it exempts itself from applicability of part of all of K.S.A. 19-262.

Very truly yours,

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Theresa Marcel Nuckolls
Assistant Attorney General

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