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ATTORNEY GENERAL OPINION NO. 89- 20

The Honorable Marvin L. Littlejohn
State Representative, One Hundred Nineteenth District
State Capitol, Room 426-S
Topeka, Kansas 66612

Re: Taxation--Aggregate Tax Levy Limitations--
Suspension of Statutory Fund and Levy Limitations

Synopsis: County hospitals operated by elected boards of trustees are taxing districts for purposes of K.S.A. 1988 Supp. 79-5021 et seq. As such, these hospitals may levy in 1989 an amount not in excess of the dollar amount levied by them in 1988. Beginning in 1990, such hospitals' levies are exempted from the aggregate tax levy limitation. County hospitals operated by appointed boards of trustees are not taxing districts in and of themselves, but levies for these hospitals must be included in calculating the counties' aggregate tax levy limitations in 1989. Beginning in 1990, levies for county hospitals with appointed boards of trustees will be exempted from the calculation of the counties' aggregate tax levy limitations. Cited herein: K.S.A. 19-4601; 19-4606; 79-5001 et seq.; K.S.A. 1988 Supp. 79-5021; 79-5022; ~~79-5028~~; 79-5032; L. 1988, ch. 393, §2; L. 1985, ch. 314, §12.

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Dear Representative Littlejohn:

You request our opinion regarding the application of K.S.A. 1988 Supp. 79-5022, the current aggregate tax levy limitation, to the Phillips county hospital. You advise that the county hospital is operated by a board of trustees appointed by the Phillips county commission pursuant to K.S.A. 19-4601 et seq. The county has previously levied an annual tax in the amount of two mills for the hospital and seeks to increase the levy to six mills under the authority of K.S.A. 19-4606 for the budget year 1990 and thereafter. You question whether this will be possible in view of K.S.A. 1988 Supp. 79-5021 et seq.

K.S.A. 1988 Supp. 79-5022 provides as follows:

"(a) In the reappraisal year and in each year thereafter, all existing statutory fund mill levy rate and aggregate levy limitations on taxing subdivisions are hereby suspended.

"(b) Except as otherwise provided in K.S.A. 1987 Supp. 79-5024 to 79-5027, inclusive, and amendments thereto, in the reappraisal year, no taxing subdivision shall certify to the county clerk of the county any tax levies upon tangible property, excluding levies specified in K.S.A. 1987 Supp. 79-5028, and amendments thereto, which in the aggregate will produce an amount in excess of the amount which was levied by such taxing subdivision in the prior year.

"(c) In each year after the reappraisal year, the fund levy limits shall be increased by multiplying the dollar amount produced by the levy limit for the year prior to the reappraisal year by the quotient determined by dividing the assessed tangible valuation amount of the current year by the assessed tangible valuation amount of the reappraisal year.

"(d) Except for adjustments described in K.S.A. 1987 Supp. 79-5024 to 79-5027,

inclusive, and amendments thereto, in each year after the reappraisal year the aggregate levy limits for cities and counties shall be the authorized aggregate levy limit in effect for the year prior to the reappraisal year. All tax levies existing or authorized hereafter by law, except those levies specifically exempt pursuant to K.S.A. 1987 Supp. 79-5028, and amendments thereto, or levy authorizations exempted from the provisions of K.S.A. 1987 Supp. 79-5021 to 79-5027, inclusive, and amendments thereto, or levy authorizations exempted from the provisions of K.S.A. 79-5001 to 79-5016, inclusive, as existing prior to January 1, 1989, shall be subject to the aggregate limit prescribed hereunder." (Emphasis added).

You first ask whether the county hospital is a "taxing district" to which the aggregate tax levy limitation applies. The term "taxing district" is not defined in K.S.A. 1988 Supp. 79-5021 et seq. However, we have opined previously that the term "taxing district" includes any entity which can mandatorily require another entity to make a levy to benefit the people or property within its territory. Attorney General Opinion No. 87-167. See also cases cited therein. Pursuant to K.S.A. 19-4606, a county hospital operated by an elected board of trustees would clearly fit within this definition, but a hospital operated by an appointed board of trustees does not appear to have the ultimate decision-making authority when it comes to whether to tax or how much of a tax will be levied. Thus, Phillips county hospital may not be a "taxing district" for purposes of applying the tax lid. Phillips county, however, is a taxing district and is subject to the limitations imposed by K.S.A. 1989 Supp. 79-5022. If the county hospital is not itself a taxing district, its 1988 levy, unless otherwise exempted, will be figured in the county's aggregate levy limitation for the 1990 budget year. K.S.A. 1988 Supp. 79-5032. Thus, while Phillips county may levy more for the hospital in 1989 than was levied in 1988, it may do so only if the aggregate dollar amount produced for all funds does not exceed the aggregate dollar amount levied by the county in 1988. See Attorney General Opinion No. 87-163, 87-158; Minutes of the House Committee on Taxation, March 25, 1988.

The question thus becomes whether the county hospital's levy is exempted from the provisions of K.S.A. 1988 Supp. 79-5021 et seq. K.S.A. 1988 Supp. 79-5022 was significantly amended in the 1988 Session to lift the tax levy freeze beginning in the year after the reappraisal year. L. 1988, ch. 393, §2. Beginning in 1990, taxing subdivisions will revert back to the authorized aggregate levy limit in effect for the year prior to the reappraisal year; tax levies specifically exempt pursuant to K.S.A. 1988 Supp. 79-5028, levy authorizations exempted from the provisions of K.S.A. 1988 Supp. 79-5021 et seq. and levy authorizations previously exempted from the provisions of K.S.A. 79-5001 through 79-5016 will be exempt from the aggregate levy limitation. The levy authorization for county hospitals was exempt from the provisions of K.S.A. 79-5001 through 79-5016. K.S.A. 19-4606. Thus, beginning with the 1990 levy for the 1991 budget year, the levy for the Phillips county hospital will be exempt from the Phillips county aggregate tax levy limitation.

While the legislature clearly intended to loosen the lid beginning with the 1990 levies, we find no documentation of an intent to loosen the lid in the year of reappraisal. As explained in Attorney General Opinion No. 87-158, the intent of the lid enacted in 1985 (L. 1985, ch. 314, §12) was to prevent a windfall of unknown proportions to local units of government due solely to increased valuations. Neither the language of the act nor the 1988 legislative history disclose any indication of an intent to the contrary. It is therefore our opinion that the 1988 amendments to K.S.A. 79-5021 et seq. did not effect the freeze placed on levies for the year 1989. The levy for operation of a county hospital is not listed in K.S.A. 1988 Supp. 79-5028 as one of the exceptions to K.S.A. 1988 Supp. 79-5022(b) and thus must be included in calculating the aggregate tax levy limitation for Phillips county in 1989 for the budget year 1990. For county hospitals which are themselves taxing districts, their 1989 levies will be limited to the dollar amount levied for the hospital in 1988.

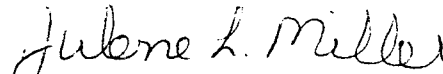
In conclusion, county hospitals operated by elected boards of trustees are taxing districts for purposes of K.S.A. 1988 Supp. 79-5021 et seq. As such, these hospitals may levy in 1989 an amount not in excess of the dollar amount levied by them in 1988. Beginning in 1990, such hospitals' levies are exempted from the aggregate tax levy limitation. County hospitals operated by appointed boards of trustees are not taxing districts in and of themselves, but levies for these

hospitals must be included in calculating the counties' aggregate tax levy limitations in 1989. Beginning in 1990, levies for county hospitals with appointed boards of trustees will be exempted from the calculation of the counties' aggregate tax levy limitations.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



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