



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 89- 50

Duane F. Johnson
State Librarian
Kansas State Library
State Capitol, Third Floor
Topeka, Kansas 66612-1593

Re: Cities and Municipalities--Miscellaneous
Provisions--Employee Benefits Contribution Fund in
Certain Taxing Subdivisions; Public Libraries

Synopsis: Once an employee benefits contribution fund is
created by a taxing subdivision for a library for
which it levies, the taxing subdivision may not
decline to levy for the fund amounts necessary,
within authorized limits, to allow the fund to be
used for the purpose for which it was created.
Cited herein: K.S.A. 12-1220; K.S.A. 1988 Supp.
12-16,102; 74-4920.

* * *

Dear Mr. Johnson:

As State Librarian, you request our opinion regarding the
authority of a taxing subdivision, levying on behalf of a
library board of trustees, to decline to levy for an employee
benefits contribution fund created for the library pursuant to
K.S.A. 1988 Supp. 12-16,102.

K.S.A. 12-1220 authorizes the board of trustees of a public
library established pursuant to that statute to determine the
amount of taxes to be levied for the maintenance and operation
of the library. The governing body of the municipality in

which the library is located is required to levy the amount determined necessary by the board of trustees, within the limitations fixed by law. Attorney General Opinions No. 86-36; 82-193.

K.S.A. 1988 Supp. 12-16,102 creates some confusion because it appears to give taxing subdivisions the option not to levy for an employee benefits contribution fund created by the taxing subdivision:

"(b) Any taxing subdivision may create and establish employee benefits contribution funds for (1) the taxing subdivision or (2) any political subdivision for which a tax is levied by such taxing subdivision for the purpose of paying the employer's share of any employee benefits, exclusive of any salaries, wages or other direct payments to such employees, as may be prescribed in the ordinance or resolution of the governing body creating such funds. The taxing subdivision may receive and place in such funds any moneys from any source whatsoever which may be lawfully utilized for the purposes stated in the ordinance or resolution creating such funds, including the proceeds of tax levies authorized by law for such purposes.

"(c) The governing body of any taxing subdivision having established employee benefits funds under subsection (b) is hereby authorized to levy an annual tax upon all taxable tangible property within the taxing subdivision in an amount determined by the governing body to be necessary for the purposes for which such funds were created and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county." K.S.A. 1988 Supp. 12-16,102 (emphasis added).

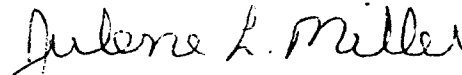
Legislative history, however, indicates that the language is permissive to reflect the fact that creation of such a fund is optional. See Minutes of the House Committee on Local

Government, March 13, 1978 ("purpose of the bill is to provide an option to local governments by which a single employee benefits fund may be established to pay the cost of employer contributions, in lieu of separate tax levies and separate funds for employee benefit programs"). However, once the fund has been created, and until it is replaced by another mechanism, we believe a levy must be made if necessary to allow the fund to be used for the purposes for which it was created. Otherwise the library board, and other entities which rely on a separate governmental entity to levy taxes for them, would be helpless to avoid violation of statutes such as K.S.A. 1988 Supp. 74-4920 which require participating employers to make certain contributions annually.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm