



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 67

Wayman Favors  
Wyandotte County Counselor  
1314 N. 5th  
Kansas City, Kansas 66101

Re: Counties and County Officers -- County Treasurer --  
Publication of Delinquent Personal Property Tax  
Statements; Designation of Newspaper

Synopsis: 1989 House Bill No. 2077 does not alter the exclusive authority to control publication expenditures given to the board of county commissioners pursuant to K.S.A. 19-229. Thus, although the 1989 amendment allows newspapers other than the official county newspaper to publish delinquent tax lists, it is our opinion that 1989 House Bill No. 2077 has not given the county treasurer sole authority over which newspaper shall publish these lists. However, if the board of county commissioners has included publishing expenditures in the county treasurer's budget without designating which newspaper shall publish these lists, the board has delegated the choice to the county treasurer who may expend the funds in the manner and amount provided for in the budget. Cited herein: K.S.A. 19-212; 19-229; 19-547; K.S.A. 1988 Supp. 64-101; 1989 House Bill No. 2077.

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Dear Mr. Favors:

As County Counselor for Wyandotte County, you request our opinion concerning the 1989 amendment to K.S.A. 19-547. You specifically inquire whether this amendment allows a county treasurer sole authority to determine which newspaper shall publish delinquent personal property lists.

1989 House Bill No. 2077 provides:

"Section 1. K.S.A. 19-547 is hereby amended to read as follows: 19-547. In addition to the duties required by K.S.A. 1989 Supp. 79-2101, and amendments thereto, each county treasurer shall within 10 days after October 1 of each year, shall cause a statement to be published with respect to unpaid or partially unpaid delinquent personal property tax returns made by the sheriff as of October 1. Such statement shall be published once each week for three consecutive weeks in the official county newspaper or in a newspaper of general circulation printed in the county in accordance with the provisions of K.S.A. 64-101, and amendments thereto. The statement shall show the name of each delinquent or partially delinquent taxpayer, listed alphabetically, appearing on such returns, followed by the taxpayer's last known address and by the total amount of unpaid taxes, penalties and costs. The cost of such publication shall be paid from the general fund of such county, and \$5 \$15 shall be added to the tax due as part of the costs of collection, to be collected in the same manner as provided by law for the collection of the delinquent tax."  
(Emphasis added).

The first sentence of the bill directs that "each county treasurer . . . shall cause a statement to be published". The duty to publish is thus clearly given to the treasurer. However, the sentence concerning in which newspaper such

publication shall be made does not discuss or mention the county treasurer. Rather, it dictates that the tax list shall be published in either the official county newspaper or an alternative newspaper which meets certain criteria. Thus, while the treasurer must cause the publication to occur, the bill does not discuss which entity makes the decision concerning which newspaper should publish the list.

An argument exists that, because the treasurer must cause the list to be published, the treasurer should be allowed to choose between qualified newspapers. However, publishing the list does not require that the choice of where to publish be made by the county treasurer. If the legislature wishes to allow the entity charged with the duty to publish to choose the publication, it may do so. However, 1989 House Bill 2077 does not by its terms give the treasurer that authority.

Prior to the 1989 amendment, and pursuant to K.S.A. 19-212, 19-229 and K.S.A. 1988 Supp. 64-101, the board of county commissioners designated the newspaper in which these lists were to be published. See Attorney General Opinion No. 85-57 (enclosed). Legislative history indicates that 1989 House Bill No. 2077 amended K.S.A. 19-547 in order to give counties an option regarding the newspaper which publishes lists of delinquent taxpayers. Previously, only the official county newspaper could publish such lists. The language in the amendment does not alter authority given to the board of county commissioners pursuant to K.S.A. 19-229: "The boards of county commissioners of the several counties of this state shall have exclusive control of all expenditures accruing, either in the publication of the delinquent tax lists, treasurer's notices, county printing, or any other county expenditures." However, pursuant to this authority, the board of county commissioners may include publishing expenses in the budget of the county treasurer. If such an item is included in the budget without restricting the source to which such fund shall be paid, the board has allowed the county treasurer the discretionary authority to expend the funds in compliance with the purpose and amounts contained in the budget. Thus, it is our opinion that 1989 House Bill No. 2077 does not give the county treasurer sole authority over which newspaper shall publish delinquent tax lists. Rather, the board of county commissioners may provide for such publication expenditures in

the treasurer's budget and, if no restrictions are included in the budget, the treasurer may then choose between qualified publications.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls  
Assistant Attorney General

RTS:JLM:TMN:bas