



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 136

Laurence A. Taylor
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P.O. Box 509
Colby, Kansas 67701

Re: Taxation -- Limitation on Tax Levies -- Townships;
Extermination of Prairie Dogs

Townships and Township Officers -- Prairie Dogs,
Moles and Gophers -- Tax Levy

Synopsis: While the governing body of a township has authority to implement a prairie dog eradication program, the tax levy for such program must be authorized by the board of county commissioners. The amount of the levy cannot exceed seven mills. Cited herein: K.S.A. 1988 Supp. 79-1962; K.S.A. 80-1201; 80-1202; 80-1203; 80-1206.

* * *

Dear Mr. Taylor:

As Thomas County Attorney you request our opinion regarding two statutes concerning the authority to levy taxes to eradicate prairie dogs. Specifically, you ask which statute provides the levy limitation and whether the township board or the board of county commissioners may authorize the levy.

Chapter 79 of the Kansas statutes concerns taxation and article 19 of that chapter sets limitations on tax levies.

K.S.A. 1988 Supp. 79-1962 provides the tax levy limitations for townships:

"The governing body of any township is hereby authorized and empowered to levy taxes in each year for township purposes but the governing body shall not fix a rate of levy . . . in excess of the following named rates:"

Listed among the rates is a one mill limitation for the extermination of prairie dogs. The statute then states:

"Such rates are not intended to, and shall not be construed to apply to any township not specifically authorized by law to make such levy." K.S.A. 1988 Supp. 79-1962(a).

Chapter 80, which regulates townships and township officers, contains article 12 titled "Prairie Dogs, Moles and Gophers." Township boards are authorized to purchase materials and to employ persons "to destroy prairie dogs, moles and gophers within the limits of such township. . . ." K.S.A. 80-1201. The expenditures involved are to be paid out of the township's general fund. K.S.A. 80-1202 details the manner in which the eradication is to occur. Tax moneys to pay for such eradication is to be levied pursuant to K.S.A. 80-1203:

"The trustees of the several townships infested by prairie dogs shall appear before the board of county commissioners of their respective counties at their annual meeting in August of each year, when they convene to make the annual tax levy, and make a report of the probable expense to exterminate the prairie dogs in their respective townships. And the commissioners of the respective counties, after receiving said reports, shall cause to be levied on real estate assessed for taxation in each township thus infested by prairie dogs the approximate amount estimated by the several trustees as herein provided, or any part thereof: Provided, however, That no assessment for this purpose shall be greater than seventy cents on each one hundred dollars valuation as herein provided."

The county treasurer pays over to the township treasurer the moneys collected. K.S.A. 80-1206.

In answer to both of your questions, it is our opinion that the provisions of K.S.A. 80-1201 et seq. control. While K.S.A. 1988 Supp. 79-1962 sets a tax levy limit for the extermination of prairie dogs, it must be kept in mind that this rate cannot "be construed to apply to any township not specifically authorized by law to make such levy." There is no statute which authorizes the township board to levy taxes for this purpose. K.S.A. 80-1201 et seq. authorize the township board to do the eradicating and the county commissioners to raise the funds therefore.

In summary, the board of county commissioners must levy the taxes to raise funds for a township board to eradicate prairie dogs. The amount of the levy cannot exceed seven mills.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General

RTS:JLM:RLN:bas