



STATE OF KANSAS

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May 11, 1990

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ATTORNEY GENERAL OPINION NO. 90- 57

Mr. Franklin Fisher, Chairman
Marshall County Emergency Medical
Services Committee
P.O. Box 86
Waterville, Kansas 66548

Re: Public Health--Emergency Medical Services--
Ambulance Service Taxing District; Creation;
Body; Tax Levy

Synopsis: Pursuant to K.S.A. 1989 Supp. 65-6118 an unofficial ambulance taxing district becomes official when the board of county commissioners passes a resolution creating the district and defining its boundaries. Furthermore, as the governing body of the district, the board may levy a tax not to exceed three mills on each taxing district to cover the costs incurred in providing ambulance service in that district, provided the resolution or ordinance authorizing the tax in that district is enacted pursuant to K.S.A. 1989 Supp. 65-6113. Cited herein: K.S.A. 1989 Supp. 65-6113; 65-6118.

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Dear Mr. Fisher:

As chairman of the Marshall County Emergency Medical Services Committee and at the request of the Marshall county attorney you inquire how an unofficial volunteer emergency medical service district can be declared an official district. You

indicate that the taxing district was created by the governing body of the city of Waterville in conjunction with the board of county commissioners in 1981. (Minutes, Board of County Commissioners, February 2, 1981).

We addressed the question of creating ambulance service taxing districts in a letter opinion dated November 20, 1989 to the Marshall county commissioners (a copy is enclosed.) In short, it concludes that current statutes authorize the board of county commissioners to create ambulance service taxing districts by adoption of a resolution to that effect. Thus it is our opinion that the board of county commissioners must pass a resolution creating and defining the boundaries of your taxing district to make it official.

Your second question is whether a mill levy increase of an ambulance district has to be approved by the voters in the district. You indicate that Marshall county has five ambulance service districts, Waterville, Axtell, Blue Rapids, Frankfort and the Marysville District, all receiving funds from a county-wide tax levy. Four of these ambulance taxing districts have and are served by volunteer ambulance services and one contracts with a private ambulance service to serve that district. Marysville Ambulance Service contracts with both the city and the county to provide ambulance service in the Marysville district.

To answer your question we must first determine whether each district is authorized to levy a tax in such district in accordance with that district's needs, and second whether an increase in the mill levy must be approved by the residents of that district.

For purposes of your question we will assume that all five districts will be made "official" pursuant to K.S.A. 1989 Supp. 65-6118, which requires the board of county commissioners (Board) to pass a resolution creating and defining the boundaries of such districts. This statute also authorizes the Board, as the governing body of the district, to levy a tax on all taxable tangible property in such district. The statute states in part:

"The board of county commissioners shall be the governing body of the district and shall have the authority, powers and duties granted to boards of county commissioners under the authority of this act, except that all costs incurred by

the governing body of the district in providing ambulance services in such district shall be paid from the proceeds of the tax levies of the district hereinafter authorized. The provisions of this act shall govern the operation of ambulances providing services within districts established under the provisions of this section. The governing body of each ambulance service taxing district is hereby authorized to levy an annual tax upon all taxable tangible property in such district in accordance with the provisions of K.S.A. 1988 Supp. 65-6113. The county treasurer shall receive and have custody of all of the funds of the district and shall expend the same upon the order of the governing body of the district as provided by law. (Emphasis added).

The statute authorizes the governing body of each ambulance district to levy an annual tax in such district in accordance with K.S.A. 1988 [1989] Supp. 65-6113, which deals with an ambulance taxing district created by a municipality. Thus, each taxing district created by the Board pursuant to K.S.A. 1989 Supp. 65-6118 will be taxed the same way as one created by a municipality would. Therefore pursuant to the language of the statute it is our opinion that each ambulance service taxing district is authorized to levy a tax that will cover the costs incurred by providing ambulance service to that district with certain limitations. See 84 C.J.S. Taxation, § 361 (1954) (the levying board may determine, within statutory limitations, the rate of taxes for a particular purpose). The limitations imposed by subsections (b) and (c) of the statute provide that the Board cannot exceed an annual tax levy of three mills [subsection (b)] and require the board adopt an ordinance or resolution imposing the tax levy on the district [subsection (c)].

Subsection (c) also includes a procedure for the opposition of the tax and addresses the second part of your question. To reiterate, you inquire whether the residents of the taxing district must approve an increase of the tax levy currently imposed in that district. You indicate that the county currently imposes a 1.45 mill levy on all five districts, but may need to raise the levy for the district that contracts

with the private ambulance service. Subsection (c) of K.S.A. 65-6113 states:

"(c) No tax shall be levied under the provisions of subsection (b) until the governing body of the municipality adopts an ordinance or resolution authorizing the levy of such tax. Such ordinance or resolution shall be published once each week for three consecutive weeks in the official newspaper of the municipality. If within 60 days following the last publication of such ordinance or resolution, a petition in opposition to the levy of such tax, signed by a number of the qualified electors of such municipality equal to not less than 5% of the electors of such municipality who voted for the office of secretary of state at the last general election, is filed with the county election officer of the county in which such municipality is located, the question of whether the levy shall be made shall be submitted to the electors of the municipality at the next primary or general election within such municipality, or if such primary or general election does not take place within 60 days after the date the petition was filed, the question may be submitted at a special election called and held therefore. If no petition has been filed and the time prescribed for filing the petition expires prior to August 1 in any year, or if the petition was filed and a majority of the electors voting on the question of levying the tax vote in favor thereof at an election held prior to August 1 in any year, the governing body of the municipality may levy in that year and in each succeeding year in the amount specified in the ordinance or resolution, but not exceeding three mills. If no petition has been filed and the time prescribed for filing the petition expires after September 30 in any year, or if the petition was filed and a majority of the electors voting on the question of levying

the tax vote in favor thereof at an election held after September 30 in any year, the governing body of the municipality may levy in the next succeeding year and in each succeeding year thereafter the amount specified in the ordinance or resolution, but not exceeding three mills.

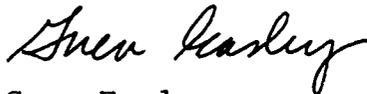
Accordingly, it is our opinion that if more than 5% of the electors in the taxing district created pursuant to K.S.A. 1989 Supp. 65-6118 oppose the tax levy increase in that district, the question of increasing the tax must be approved by the voters of that district.

In summation, pursuant to K.S.A. 1989 Supp. 65-6118 an unofficial ambulance taxing district becomes official when the board of county commissioners passes a resolution creating the district and defining its boundaries. Furthermore as the governing body of the district, the board may levy a tax not to exceed three mills on each taxing district to cover the costs incurred in providing ambulance service in that district, provided the resolution or ordinance authorizing the tax in that district is enacted pursuant to K.S.A. 1989 Supp. 65-6113.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Guen Easley
Assistant Attorney General



STATE OF KANSAS

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2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 20, 1989

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Marshall County Commissioners
Marshall County Courthouse
1201 Broadway
Marysville, Kansas 66508

ATTN: Jenie Long

Re: Public Health--Emergency Medical Services--Ambulance
Service Taxing District; Creation; Governing Body;
Tax Levy

Dear Commissioners:

As County Commissioners you authorized Franklin H. Fisher, Chairman of the Marshall County EMS Committee to inquire whether the county commissioners can create ambulance service taxing districts and define the boundaries thereof, and second, whether the governing body of a district must show just cause for requesting an increase in the mill levy.

K.S.A. 1988 Supp. 65-6118 addresses the first question. It states in part:

"Whenever the board of county commissioners of any county which is furnishing ambulance services within the county under the authority of this act shall determine that such service can best be provided by the creation of an ambulance service taxing district, such board shall by resolution create and establish such district and define the boundaries thereof. (Emphasis added).

Pursuant to this statute the Board of County Commissioners of any county furnishing ambulance services within the county pursuant to K.S.A. 65-6101 et seq. must first determine

that ambulance service can best be provided by creating an ambulance service taxing district. The Board then by resolution can create it and define its boundaries. The only limitation or requirement to the boundaries of such district is that they include the territory receiving ambulance service provided by the county on the date the Board adopts the resolution.

As part of your first question you also inquire how the commissioners make the boundaries official. Other than the appropriate adoption of a resolution creating and defining the boundaries there is no additional requirement imposed by the statute. Thus it is our opinion that K.S.A. 1988 Supp. 65-6118 clearly provides the Board of County Commissioners the authority to create and define the boundaries of an ambulance service taxing district by adopting a resolution to this effect in accordance with the statutory requirements. See also K.S.A. 19-101 et seq.

Your second question is whether the governing body of a district must show just cause when requesting an increase in the mill levy. While the provisions of K.S.A. 1988 Supp. 65-6113 govern the terms under which the governing body of each ambulance service taxing district is to levy an annual tax, it does not address your specific question. (See K.S.A. 65-6118 regarding costs that refer to the provisions of K.S.A. 1988 Supp. 65-6113.)

General principles of taxation apply when a governing body uses its discretion to establish the necessary mill rate:

"Subject to the restriction that there must be a compliance with the constitutional or statutory requirements with respect to the manner or mode of determining and fixing the amount or rate, and with respect to the limitation of such amount or rate, the amount levied should be commensurate with public needs, and such a rate of taxation should be fixed as will produce the amount required to be raised, and it is illegal as to any excess over the amount necessary to produce the funds required to be raised. Within these limitations the levying board, provided it uses sound business judgment, may exercise a reasonable discretion in determining what amount or rate of taxes

shall be raised for any general or particular purposes; and in determining such amount it should consider and deduct funds on hand which are available and applicable to the purpose or purposes for which the tax is being levied." 84 C.J.S. Taxation, § 361 (1954). (Emphasis added).

Thus in our opinion it appears clear the governing body may exercise a reasonable discretion in determining what rate of taxes are necessary and in so doing the board would by necessity show just cause for any increase. (See Attorney General Opinion No. 89-78, a governing body can establish a mill levy rate below statutory maximum levy.)

In conclusion, first the board of county commissioners may by resolution create and establish an ambulance taxing district and define the boundaries thereof in accordance with and pursuant to K.S.A. 1988 Supp. 65-6118. There is no additional requirement imposed by the statute to make the boundaries official. Second, within statutory limits, the Board exercises a reasonable discretion in determining the rate of taxes to be raised and in exercising this discretion, the board need show just cause for any increases.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas

RTS:GE:jm