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June 20, 1990

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ATTORNEY GENERAL OPINION NO. 90- 76

Ted D. Ayres
General Counsel
Kansas Board of Regents
Suite 609, Capitol Tower
400 S.W. Eighth
Topeka, Kansas 66603-3911

Re: Taxation--Aggregate Tax Levy Limitations--Extension
Council Levies

Synopsis: County extension councils are not taxing subdivisions for purposes of the tax lid law (K.S.A. 79-5021 *et seq.*, as amended by 1990 House Bill No. 2700) and thus may not "charter" out of its provisions pursuant to K.S.A. 79-5036(c), as amended. However, the tax levy for an extension council is part of the county's levy and is thus subject to K.S.A. 79-5022(b), as amended. Cited herein: K.S.A. 1989 Supp. 2-610; K.S.A. 79-5021, 79-5022, 79-5036, all as amended by 1990 H.B. No. 2700.

* * *

Dear Mr. Ayres:

On behalf of Kansas State University and the Kansas Board of Regents, you request our opinion regarding the applicability of 1990 House Bill No. 2700 to county extension council levies. Specifically, your questions are as follows:

- "1. Does House Bill 2700, as passed by the 1990 Kansas Legislature, cover extension council levies?

"2. If so, can the extension council independently exempt itself from the bill's effects?"

1990 House Bill No. 2700 amends the tax lid law, K.S.A. 79-5021 et seq. K.S.A. 79-5022(b), as amended, contains an aggregate levy limitation which applies only to cities, counties, townships, municipal universities and community colleges. K.S.A. 79-5022(c), as amended, provides for fund levy limits on all taxing subdivisions except those listed above. "Taxing subdivision" is defined in K.S.A. 79-5021, as amended, to include "every taxing district in the state of Kansas other than the state."

In Attorney General Opinion No. 87-167 we discussed the type of entity which would be considered a taxing district.

"Kansas statutes do not define the term "taxing district" though case law in other jurisdictions indicates that any entity which can mandatorily require another entity to make a levy to benefit the people and property within its territory is a taxing district. See Ebert v. Board of Education of School Dist. of City of Newport, 126 S.W.2d 1111, 1113 (Ky. 1939); Lee v. Board of Education of Bell County, 87 S.W.2d 961, 962, 963 (Ky. 1935); Archer v. City of Indianapolis, 122 N.E.2d 607, 610 (Ind. 1954). We therefore conclude that a public library which can mandatorily require a city, county or township to levy a tax for library purposes is a taxing district and thus a taxing subdivision for purposes of K.S.A. 1986 Supp. 79-5022. (In support of this conclusion is the fact that the definition of the term 'taxing subdivision' in K.S.A. 1986 Supp. 79-5021 is much broader than the definition given that term in prior tax lid statutes. See L. 1970, ch. 402, § 1; K.S.A. 79-5001.)"

K.S.A. 1989 Supp. 2-610 is the statute that deals with tax levies for county extension councils. It provides in part:

"(a) On or before July 15 each year, the executive board of the county extension

council shall file with the county commissioners in the office of the county clerk:

. . . .

"(4) a proposed budget prepared in cooperation with the director of extension of Kansas state university of agriculture and applied science for the ensuing calendar year.

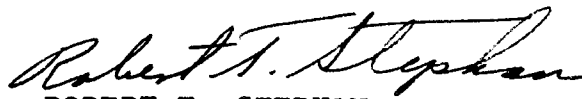
"(b) If the commission does not approve the proposed budget within 10 days after receipt thereof, it shall return the budget to the board. Upon receipt of the returned budget, the board shall consider amendments or modifications and may consult with the commission concerning the budget. Within 10 days after receipt of the returned budget, the board shall resubmit its proposed budget, with or without amendment or modification, to the commission. Within 10 days after resubmission of the proposed budget, the commission shall approve, or amend or modify and approve as amended or modified, such proposed budget. The commission shall adopt the proposed budget as approved and shall make the same a part of the regular county budget. The board of county commissioners shall make an appropriation and certify to the county clerk the amount of tax necessary to be levied on all tangible taxable property of the county sufficient to provide a program of county extension work 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, which levy shall not exceed the limitation prescribed by K.S.A. 79-1947, and amendments thereto."
(Emphasis added).

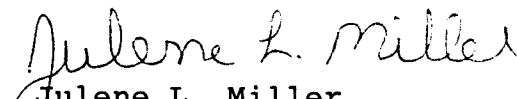
It is clear from the above-underscored language that county extension councils cannot mandatorily require counties to levy a specific amount for the benefit of the council or persons

within the county. See Attorney General Opinion No. 88-114. Thus county extension councils are not themselves taxing districts and are not taxing subdivisions for purposes of the tax lid law. However, counties clearly are taxing subdivisions and therefore county levies for extension councils are subject to the provisions of K.S.A. 79-5022(b), as amended by 1990 House Bill No. 2700. See Attorney General Opinion No. 89-20.

K.S.A. 79-5036, as amended, authorizes the governing body of a city, county, or "any other taxing subdivision" to elect to exempt the taxing subdivision from the provisions of the tax lid law or to modify the provisions thereof. We have opined that county extension councils are not taxing subdivisions for purposes of the tax lid law. It is therefore our opinion that such councils may not independently exempt themselves from the provisions of that law. A county, however, may utilize the provisions of K.S.A. 79-3056(b), as amended, and K.S.A. 19-101b to exempt an extension council's levy from the tax lid law.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm