



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 2, 1991

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91- 46

Mr. Richard A. Boeckman
Barton County Counselor
P.O. Box 459
2200 Lakin
Great Bend, Kansas 67530

Re: Agriculture -- Agricultural Society and Fairs --
Counties Having Fair Associations; Tax Levy;
Aggregate Limitations

Taxation -- Aggregate Tax Levy Limitations --
Authority to Levy Taxes in Addition to Aggregate
Levy Limits; County Fair Associations

Synopsis: A county fair association properly utilizing levy authority pursuant to K.S.A. 2-131b must comply with the provisions of K.S.A. 1990 Supp. 79-5021 et seq., unless that association has exempted itself or the levy from the act pursuant to K.S.A. 1990 Supp. 79-5036, 79-5029, 79-5030, or 79-5032, until such time as the aggregate tax levy limitation is sunseted, repealed or otherwise amended. Cited herein: K.S.A. 79-5021; 2-131b; 79-5022(d); 79-5028; 79-5029; 79-5032; 79-5036; 2-215; 79-502 et seq.; and 79-1947.

* * *

Dear Mr. Boeckman:

As Barton county counselor you request our opinion on whether the tax levy authorized by K.S.A. 2-131b is subject to

the aggregate tax limitations. You note that Barton county has recently formed a county fair association and authorized a tax levy to support those efforts. The tax levy resolution provided for a levy not to exceed five-tenths of one mill. You note the provisions of K.S.A. 2-131b and question the applicability of the tax lid limitation noted in that statute and in other Kansas taxing statutes.

K.S.A. 2-131b provides taxing authority for certain purposes which may be utilized only by entities organized and operating pursuant to K.S.A. 2-125 to 2-131. You do not indicate whether the Barton County Fair Association was created pursuant to this authority nor do you address whether the funds raised from the proposed levy will be "used for the erection and maintenance of buildings . . . , for the purchase of grounds and for any other improvements to the buildings and grounds. . . ." Thus, we are unable to determine whether K.S.A. 2-131b may be utilized by the Barton County Fair Association. However, in order to respond to your questions, we will assume that K.S.A. 2-131b is the proper taxing authority and we will address the applicability of any aggregate tax limitations to the levy authority provided by that statute.

K.S.A. 2-131b states in pertinent part:

"The board of county commissioners of any county in which there is a fair association or a society which is organized and operating under the provisions of K.S.A. 2-125 to 2-131, inclusive, and amendments thereto, upon request of such fair association or society is hereby authorized and empowered to make an annual tax levy of not to exceed five-tenths of one mill upon all the taxable tangible property of the county for the purpose of raising funds to be used for the purpose of raising funds to be used for the erection and maintenance of buildings of such a fair association having obtained recognition from the state board of agriculture as an official county fair association 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. . . .

"The board of county commissioners shall determine the amount necessary to be raised by such levy for such purposes. The tax levy authorized by this section shall be in addition to all other tax levies authorized or limited by law and shall be outside the aggregate limitation provided in K.S.A. 1982 Supp. 79-1947, and the amount collected therefrom shall be paid to such association or society for the purposes herein specified, and shall be in addition to the amount allowed to such association or society under the provisions of K.S.A. 2-129 and amendments thereto." (Emphasis added).

The issue raised arises due to the fact that K.S.A. 79-1947 no longer makes any reference to an aggregate limit. This language was removed from K.S.A. 79-1947 pursuant to L. 1973, ch. 392, § 1. A new aggregate limit was enacted in the same year, pursuant to L. 1973, ch. 393, § 3, which was codified at K.S.A. 79-5001 et seq. This aggregate tax levy limit was subsequently repealed pursuant to L. 1988, ch. 393, § 8 and the current aggregate tax levy limitation is set forth at K.S.A. 1990 Supp. 79-5021 et seq. See also Attorney General Opinion No. 89-130.

The current aggregate tax levy limitation set forth at K.S.A. 1990 Supp. 79-5021 et seq. does not exempt from its provisions the tax levy authorized by K.S.A. 2-131b. Rather, K.S.A. 1990 Supp. 79-5022(d) appears to include such a tax levy.

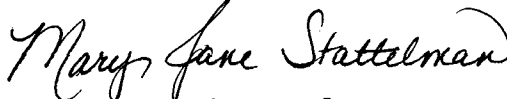
Despite a 1979 amendment to K.S.A. 2-131b and several subsequent legislative aggregate tax levy limitation provisions, the original exemption in K.S.A. 2-131b was not altered. Thus, it is our opinion that while a properly organized county fair association may utilize its authority under K.S.A. 2-131b in order to levy for the appropriate purposes, such a levy is subject to the aggregate tax levy limit set forth at K.S.A. 1990 Supp. 79-5021 et seq. unless the association or the levy is exempted pursuant to procedures provided by K.S.A. 1990 Supp. 79-5036, 79-5028, 79-5029, 79-5030 or 79-5032.

Please note that these aggregate tax levy limitations will sunset July 1, 1991, which could moot the issue of aggregate limitations, unless the legislature extends K.S.A. 1990 Supp. 79-5021 et seq. However, the limitations set forth in K.S.A. 2-131b remain applicable to those entities authorized to use that authority.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmann
Assistant Attorney General

RTS:JLM:MJS:bas