



STATE OF KANSAS

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May 18, 1992

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ATTORNEY GENERAL OPINION NO. 92- 65

Scott A. Eads
Counsel for Hospital District
No. 1 of Sumner County
1600 Epic Center
301 N. Main
Wichita, Kansas 67202-4800

Re: Taxation--Aggregate Tax Levy Limitations--
Suspension of Statutory Fund and Levy Limitations;
Fund Levy Limit Adjustments; Hospital Districts

Synopsis: Hospital district no. 1 of Sumner county is a taxing subdivision for purposes of K.S.A. 79-5021 et seq., the tax lid law. Thus, the hospital districts' fund and aggregate levy limitations were suspended by K.S.A. 1991 Supp. 79-5022(a), any increase in its fund levy limitations is subject to K.S.A. 1991 Supp. 79-5022(c) and it has the authority to exempt itself from the provisions of the tax lid law pursuant to K.S.A. 1991 Supp. 79-5036(c). Cited herein: K.S.A. 19-101b; K.S.A. 1991 Supp. 79-5021; 79-5022; 79-5032; 79-5036; K.S.A. 80-2516.

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Dear Mr. Eads:

As counsel for hospital district no. 1 of Sumner county, you request our opinion regarding the application of K.S.A. 79-5021 et seq., the tax lid law, to the hospital district. Specifically you question whether the hospital district is a "taxing subdivision" for purposes of this act,

whether the hospital district is subject to the provisions of K.S.A. 1991 Supp. 79-5022(c), and if so whether the hospital district may exempt itself from those provisions pursuant to K.S.A. 1991 Supp. 79-5036(c).

K.S.A. 1991 Supp. 79-5022 provides as follows:

"(a) In 1990 and in each year thereafter, all existing statutory fund mill levy rate and aggregate levy rate limitations on taxing subdivisions are hereby suspended.

"(b) Except as otherwise provided in K.S.A. 79-5024 to 79-5027, inclusive, and amendments thereto, no city, county, township, municipal university or community college shall certify to the county clerk of the county any tax levies upon tangible property, excluding levies specified in K.S.A. 79-5028, and amendments thereto, which in the aggregate will produce an amount in excess of the amount which was levied by such taxing subdivision in the base year.

"(c) In 1990, and each year thereafter, the fund levy limits shall be increased by multiplying the dollar amount produced by the levy limit for 1988 by the quotient determined by dividing the assessed tangible valuation amount of the current year by the assessed valuation amount for 1989. The provisions of this subsection shall not be applicable to any city, county, township, municipal university or community college."

The term "tax subdivision" is defined in K.S.A. 1991 Supp. 79-5021 as "every taxing district in the state of Kansas other than the state." In Attorney General Opinion No. 87-167 this office concluded that any entity "which can mandatorily require a city, county or township to levy a tax [for its governmental purposes] is a taxing district and thus a taxing subdivision for purposes of K.S.A. [1991] Supp. 79-5022." This conclusion has been reaffirmed in Attorney General Opinions No. 89-20, 89-130, 90-11, 91-46A and 91-100. You advise that the hospital district is subject to the provisions of K.S.A. 80-2501 et seq. K.S.A. 80-2516 authorizes the

hospital district's board to "determine and fix an annual tax to be levied for the purpose of operating, equipping, maintaining and improving the hospital." There is no provision allowing the county or any other entity to modify or decline to levy the amount fixed by the hospital board. Thus, it is our opinion that the hospital district is a taxing district, and therefore a taxing subdivision, for purposes of K.S.A. 79-5021 et seq. (We further note that K.S.A. 80-2516 refers to hospital districts under its auspices as "taxing districts.")

As a taxing subdivision, the hospital district's "statutory fund mill levy rate and aggregate levy rate limitations" are suspended by operation of K.S.A. 1991 Supp. 79-5022(a). Subsection (b) of K.S.A. 1991 Supp. 79-5022 does not apply to the hospital district since it is not a "city, county, township, municipal university or community college." Subsection (c) of K.S.A. 1991 Supp 79-5022 is applicable to the hospital district. This provision applies to all taxing subdivisions other than cities, counties, townships, municipal universities and community colleges. See Attorney General Opinion No. 90-78; K.S.A. 1991 Supp. 79-5032. Thus, notwithstanding the provisions of K.S.A. 80-2516 [which were suspended pursuant to K.S.A. 1991 Supp. 79-5022(a)], the hospital district may increase its fund levy limits only as authorized by K.S.A. 1991 Supp. 79-5022(c).

The language of K.S.A. 80-2516(a) stating that the hospital district's tax levy "shall not be subject to the aggregate tax levy limitation imposed by law upon the political subdivision" does not negate the effect of K.S.A. 1991 Supp 79-5022(c). Subsection (c) is not an aggregate tax limitation, it is a fund levy limitation.

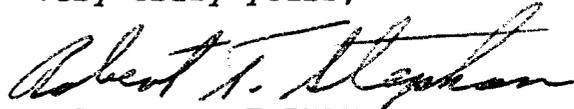
Finally, you inquire about the application of K.S.A. 1991 Supp. 79-5036(c), which provides:

"(c) The governing body of any other taxing subdivision subject to the provisions of K.S.A. 79-5021 to 79-5033, inclusive, may elect, in the manner prescribed by and subject to the limitations of K.S.A. 19-101b, and amendments thereto, insofar as such section may be made applicable, to exempt such subdivision from the provisions of K.S.A. 79-5021 to 79-5033, inclusive, or to modify the provisions thereof."

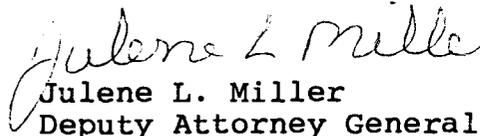
Since we have determined that the hospital district is a taxing subdivision subject to the provisions of K.S.A. 79-5021 et seq., the district is authorized by K.S.A. 1991 Supp. 79-5036(c) to exempt itself from the provisions of that act in the manner prescribed by K.S.A. 19-101b. See Attorney General Opinions No. 89-130, 90-11.

In conclusion, hospital district no. 1 of Sumner county is a taxing subdivision for purposes of K.S.A. 79-5021 et seq., the tax lid law. Thus, the hospital districts' fund and aggregate levy limitations were suspended by K.S.A. 1991 Supp. 79-5022(a), any increase in its fund levy limitations is subject to K.S.A. 1991 Supp. 79-5022(c) and it has the authority to exempt itself from the provisions of the tax lid law pursuant to K.S.A. 1991 Supp. 79-5036(c).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm