

FILE



Subject Counties
Levy of Tax
Copy to State Board
Am. Bicentennial
Commission

STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 29, 1974

Opinion No. 74- 303

Daniel A. Young
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Dear Mr. Young:

You inquire whether the Douglas County Board of County Commissioners is authorized to levy a tax for the support of activities commemorating the bicentennial in 1976 of the United States. No express statutory authority exists for the levy of taxes for this purpose. Article 11, section 5 of the Kansas Constitution states thus:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same"

Absent express statutory authority for such a levy, it is authorized only if 1974 Senate Bill 175, now found at ch. 110, L. 1974, authorizes the county to impose levies which are not otherwise authorized by statute, pursuant to a resolution adopted pursuant to section 2(b) of the new enactment. Section 2(a) states in pertinent part thus:

"Counties are hereby empowered to transact all county business and perform such other powers of local legislation and administration as they deem appropriate, subject only to the following limitations, restrictions, or prohibitions: *First*, counties shall be subject to all acts of the legislature which apply uniformly to all counties ; and *eighth*, counties shall be subject to the limitations and prohibitions imposed under K.S.A. 1973 Supp. 12-172 *et seq.* prescribing limitations upon the levy of retailers' sales tax by counties."

Section 2(b) provides that the powers granted under the foregoing shall be exercised by resolution:

"Counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) of this section and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper."

Senate Bill 175 bears obvious resemblances to Article 12, § 5 of the Kansas Constitution, which conferred powers of home rule upon Kansas cities. Subparagraph (b) of that section explicitly provides that the "local affairs and government" which cities are empowered to determine thereunder includes

"the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class"

Cities are empowered to determine their "local affairs and government," counties, to perform "such powers of local legislation and administration as they deem appropriate. . . ." Taxation is an exercise of legislative power, and the power to tax may fairly be deemed a component part of the local legislative power delegated under ch. 110, L. 1974.

On the one hand, the fact that ch. 110 lacked a specific reference to taxation, unlike Article 12, § 5 of the Kansas Constitution, may be argued to suggest an inference that the Legislature intended to omit from the legislative powers delegated to counties the power to impose taxes for which no express statutory authority existed. Such an inference is only that, and not of great weight. Whatever force it might have, it is countered by the specific direction in section 2(a), as a limitation upon the powers of local legislation granted thereby, that

"counties shall be subject to the limitations and prohibitions imposed under K.S.A. 1973 Supp. 12-172 *et seq.* prescribing limitations upon the levy of retailers' sales taxes by counties."

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If the powers of local legislation granted by section 2(a) did not include the power to levy taxes independently of any express statutory authority for particular levies, this limitation would be entirely superfluous. Its presence must be given great weight in construing the breadth and content of the phrase "local legislation." Moreover, section 4 states thus:

"The powers granted counties pursuant to this act shall be referred to as county home rule powers and *they shall be liberally construed for the purpose of giving to counties the largest measure of self-government.*" [Emphasis supplied.]

Giving this guide to construction due consideration, we cannot but conclude that the term "local legislation" includes the power to impose levies notwithstanding specific statutory authority therefor may not be found in the Kansas Statutes Annotated, and supplements thereto. Ch. 110, L. 1974, thus, constitutes a legislative delegation of general legislative power to impose taxes, which power must be exercised in accordance with Article 11, § 5, and which power may be exercised to impose a given levy, such as that in question, notwithstanding the county is not specifically authorized by law to make such a levy.

Such a levy is subject, of course, to the aggregate levy limitations of K.S.A. 79-5001 *et seq.* This levy not being one upon which a limitation is imposed by K.S.A. 79-1947, such a levy would be subject only to the limitation imposed by the resolution authorizing it, consistent, of course, with the aggregate tax levy limitations.

Yours very truly,


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