



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

October 7, 1975

ATTORNEY GENERAL OPINION NO. 75- 395

Mr. Jack R. Shelton
Linn County Attorney
Linn County Courthouse
Mound City, Kansas 66056

Re: Counties--Public Buildings--Fair Buildings

Synopsis: A building constructed for the storage of road equipment, and used annually for fair and livestock exhibition purposes, may be constructed under the general county public building law, K.S.A. 19-15,114 *et seq.*

* * *

Dear Mr. Shelton:

You advise that in early July, 1975, the board of county commissioners of Linn County was approached by a committee of the Linn County Fair Association, requesting that a new "hog barn" be constructed for the Linn County Fair. The fair was then scheduled to commence August 13, 1975. You indicate that at the time, you agreed to assist in determining title to the property upon which the building was to be constructed. Shortly thereafter, you learned that the board retained other counsel to assist it in the matter, and it next came to your attention on August 18, 1975, when a county claim voucher was presented to you for signature. The voucher was in the amount of \$15,352.00, and recites that the claim was approved by the board of county commissioners on August 11, 1975, notwithstanding that the approval was in violation of K.S.A. 19-716, which provides that in certain counties, including Linn, "no bill shall be allowed by the board of county commissioners until the county attorney has passed upon the same." In addition, the voucher was approved by the board lacking any certification that the

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claim was correct, due and unpaid. Notwithstanding, after that approval, a check for that amount was issued dated August 11, 1975, and honored on August 15, 1975, reciting that the amount was to be drawn from the special building fund, presumably that under K.S.A. 19-15,114.

In addition, it now appears that on July 31, 1975, the board of county commissioners entered into a lease with the Linn County Fair Association, which recites that the county is in need of a tract of real estate for the construction of storage facilities for road machinery, and that the Fair Association is in need of additional display space for fair purposes. Under the agreement, the county leased the property in question from the Fair Association for a period of ninety-nine years "for the purpose of constructing thereon a structure for the storage of road machinery." As part of the consideration, the county agreed to remove stored machinery therefrom during fair time, and the Association was entitled to

"make such use of said building as may be compatible with the proper conduct of the Linn County Fair and its need for exhibit or display purposes."

Apparently, funds for the building were provided pursuant to K.S.A. 19-15,115, whereunder the board of county commissioners "may when it deems necessary erect or construct . . . a public building or buildings." No election is required thereunder unless bonds are issued for an improvement the cost of which exceeds \$100,000, or unless a special levy is authorized thereunder and a petition in opposition thereto is filed. As the board proceeded in this instance, the expenditure of funds was not submitted to a vote of the people.

Under other statutes, however, approval of the electorate is required for the expenditure of public funds for the construction of buildings to be used for livestock shows. K.S.A. 19-1561, for example, states thus in pertinent part:

"The board of county commissioners of any county is hereby authorized to make an annual levy of not to exceed one mill . . . for the purpose of creating and providing a building fund to be used for the acquiring of a site for, the erecting and equipping of, and the furnishing of a building or

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buildings to be used for 4-H club purposes, livestock shows, and other agricultural or civic activities
Provided, Before any such levy shall be made, the question shall be submitted on a resolution duly adopted by the board to the qualified electors . . . , and no levy shall be made until a majority of the qualified electors of such county voting on such question shall have voted in favor of such levy. [Emphasis supplied.]

Similarly, K.S.A. 2-131b states in pertinent part as follows:

"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 sections 2-125 to 2-131 . . . upon request of such fair association or society is hereby authorized and empowered to make an annual tax levy"

However, levies authorized by this provision may not be made unless approved by the electors of the county or alternatively, requested to be made by a petition signed by electors of the county equal in number to more than fifty percent of the votes cast for secretary of state in the last preceding general election.

The board of county commissioners in this instance chose not to utilize any of the special statutes providing for the financing of buildings for livestock shows and fair purposes, each of which would have required a vote of the people, and instead resorted to a statute dealing with public buildings generally, thus avoiding the necessity of approval of the voters for the expenditure.

In *Seltmann v. Board of County Commissioners*, 212 Kan. 805, 512 P.2d 334 (1973), the question was raised whether the board could construct a medical clinic as a "public building" under the general public building law, K.S.A. 19-15,114 *et seq.*, without a vote of the people, or whether it was required to utilize a statutory procedure applicable specifically to the construction of a medical clinic used in connection with the operation of a county hospital, and which required submission of the question to the electorate. The question posed was

whether the general or the special statutory enactment should control. The court stated thus:

"When we turn our attention to the statutes in question here it is obvious to us that K.S.A. 1971 Supp. 19-15,114 *et seq.* is a general law which covers a general class, public buildings generally. It is also clear to us that K.S.A. 1971 Supp. 19-1868 is a special statute since it relates to a particular member of the class of public buildings, medical clinics used in connection with county hospitals. Is there repugnancy between the general statute and the special statute? We believe there is. The statutes are in conflict and repugnant to each other in that the general statute, K.S.A. 19-15,114, *et seq.*, does not require a vote of approval from the people where the construction cost of a public building is less than \$100,000, whereas the specific statute, K.S.A. 19-1869, requires the submission of a proposal to construct a medical clinic to the vote of the electors for their approval in all cases. As the appellees point out in their brief, the conflict between the statutes is 'vote' versus 'no vote' when applied to the case at bar.

Under the rule stated above a special statute prevails over a general statute *unless it appears that the legislature intended to make the general act controlling* We have concluded on the record presented to us that it has not been shown that the legislature intended to make the general act controlling and therefore the specific statute pertaining to the construction of medical clinics should be applied and followed. We wish to make it clear that in other cases the intention of the legislature to make the general statute controlling may be shown by an expressed legislative intention to that effect or by other circumstances not present here." [Emphasis by the court.]

We find little to distinguish the circumstances presented here from the holding in *Seltmann*. Here, K.S.A. 19-1561 and

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2-131b each authorize levies for the erection of buildings for livestock shows and fair purposes, respectively. K.S.A. 1974 Supp. 2-131b authorizes a levy for the erection of buildings of any fair association officially recognized by the State Board of Agriculture; however, although no election is required thereunder, this levy may not exceed the rate which will result in producing more than \$3,000 annually.

Clearly, the legislature has provided very specifically the means whereby taxes may be levied for the purposes of erecting buildings for livestock shows and fair purposes. Under *Seltmann*, these statutes are specific statutes, providing specifically for a particular class of public buildings, whereas K.S.A. 19-15,114 *et seq.*, provides for the construction of public buildings generally. The special statutes here are repugnant to the general statute just as in *Seltmann*; an election is required under the special statutes to authorize levies for that purpose. Moreover, the legislature has imposed a specific limitation under K.S.A. 1974 Supp. 2-131d on the rate of any levy imposed thereunder for fair building purposes.

The only question remaining is whether the dual purpose of the building, for livestock shows and for storage of road machinery, distinguishes this instance from *Seltmann*. As you point out, the fact finder in any future litigation would have ample basis upon which to make a finding that the building which was constructed was indeed a storage facility for county equipment, and was used only annually for exhibition purposes. Based on these factual circumstances, a court would likewise have adequate foundation for a legal conclusion that the building which was actually constructed was not a building required to be authorized by the statutes cited above applicable specially to fair and livestock exhibition buildings. Accordingly, we cannot conclude purely as a matter of law that the general public building statute is inapplicable to this structure, or that the commissioners acted upon improper statutory authority in the construction of the building in question.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj