



STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
Attorney General

February 10, 1976

ATTORNEY GENERAL OPINION NO. 76- 49

The Honorable James L. Ungerer  
State Representative  
3rd Floor - State Capitol Building  
Topeka, Kansas 66612

Re: Counties--Buildings--Courthouses

Synopsis: House Bill 2988, which proposes to authorize any county which has made a levy pursuant to K.S.A. 19-1569, since repealed, for the purpose stated in that provision "for the purpose of acquiring a site, building, furnishing and equipping of a courthouse and jail" for the purpose of repair and remodeling of an existing facility, seeks to authorize the use of proceeds of a tax levied for a specific purpose, to be expended for a purpose other than for which the tax was levied, in violation of Article 11, § 5 of the Kansas Constitution.

\* \* \*

Dear Representative Ungerer:

You inquire concerning the constitutionality of 1976 H.B. 2988, section 1 of which provides in pertinent part thus:

"The board of county commissioners of any county which heretofore levied an annual tax for the purpose of creating a building fund for the building and furnishing of court houses and jails under the provisions of K.S.A. 19-1569 is hereby authorized to utilize moneys in such fund for the purpose of restoring, remodeling and repairing an existing county court house and jail."

The Honorable James L. Ungerer

Page Two

February 10, 1976

Several times in the past, the question has been raised whether the proceeds of a levy under K.S.A. 19-1569, designated by the statute "for the purpose of acquiring a site, building, furnishing and equipping of a courthouse and jail," may be used for repair and remodeling of an existing courthouse. Attorneys General William Ferguson and Robert Londerholm each concluded that the proceeds of such a levy could not lawfully be used for the repair and remodeling of an existing building. In Opinion No. 75-368, I joined in that view, on the grounds, first, that the statutory language clearly provided the lawful use of the funds in terms which did not include repair and remodeling, and on the basis of Article 11, § 5 of the Kansas Constitution, which states thus:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied."

In a letter dated February 23, 1968, Attorney General Londerholm addressed the question whether, as stated in his letter, "constitutional legislation [may] be enacted authorizing the county to set over the special fund heretofore accumulated into the county general fund to be used for general county purposes, including the remodeling of the existing court house." Citing Article 11, § 5, he stated thus:

"We fail to see how valid legislation could be adopted authorizing the diversion of monies accumulated for a building fund to purposes other than those for which the levy was made."

I share that view entirely. In *State ex rel. Jackson v. Butler County*, 77 Kan. 527, 94 Pac. 1004 (1908), the court upheld legislation authorizing certain counties to construct county buildings, levy a tax for that purpose, and to expend the proceeds of that levy, together with "any surplus funds that may be in the treasury belonging to said county" for that purpose. Concerning article 11, § 5, the court stated thus:

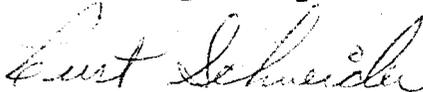
"The object of the provision of the constitution is to prevent the levy of a tax for one purpose and the use of the funds raised thereby for another purpose. To levy a tax to

The Honorable James L. Ungerer  
Page Three  
February 10, 1976

build a bridge and divert the funds so raised to the erection of county buildings, or to levy a tax for general purposes and use the funds for the erection of a courthouse or to improve a road, is exactly what the constitution prohibits. But there is such a thing as surplus funds which arise by reason of the fact that all the money raised for a special purpose is not always required for the accomplishment of the purpose. It is impossible to raise by taxation an exact amount. If, for instance, a bridge is to cost \$5000, and a tax levy is made at a certain rate, it is impossible for any one to estimate in advance the exact amount that will be collected under the levy." 77 Kan. at 539.

The court upheld the use of such a surplus for purpose of defraying costs in the erection of county buildings. Here, we deal with no surplus, but the plain diversion of tax proceeds levied for one purpose, and now sought to be used for another. In my opinion, it is clearly beyond the power of the Legislature to authorize the expenditure of the proceeds of a levy under K.S.A. 19-1569, for any purpose other than for which the levy was made, *i.e.*, "for the purpose of acquiring a site, building, furnishing and equipping of a courthouse and jail." If the purpose for which the levy was made is determined to no longer exist, the board of county commissioners may invoke K.S.A. 79-2958. However, the proposed diversion of the money involved, sought to be accomplished by H.B. 2988, is, in my opinion, in violation of Article 11, § 5 of the Kansas Constitution.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj