

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 18, 1977

ATTORNEY GENERAL OPINION NO. 77- 20

Mr. James R. Cobler
Director
Division of Accounts and Reports
Department of Administration
5th Floor - State Office Building
Topeka, Kansas 66612

Re: Taxation--Countywide Retailers' Sales Tax--Distribution

Synopsis: The entire general fund levy of a governmental unit is to be included in the "total tangible property tax levies" of such unit, on the basis of which its distributive share to the proceeds of the countywide retailers' sales tax is to be determined, notwithstanding some portion of the general fund is to be applied to a purpose for which a separate levy might have been made under other statutory authority, which itself would have been exempt from the aggregate levy limitations of K.S.A. 1976 Supp. 79-5001 et seq.

* * *

Dear Mr. Cobler:

You inquire concerning the distribution of the proceeds of local retailers' sales taxes pursuant to K.S.A. 12-177(a), which provides in pertinent part thus:

"(a) Except as otherwise provided in subsection (b) of this section, all revenue received by any county treasurer from a countywide retailers' sales tax shall be apportioned among the county and each city and community junior college district, all or part of which

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is located in such county in the following manner: (1) one-half of all revenue received by the county treasurer shall be apportioned among the county and each city and community junior college district all or a part of which is located in such county in the proportion that the total tangible property tax levies made in such county in the preceding year for all funds to each such governmental unit, except funds, tax levies for which are not subject to the limitations imposed by this act, bear to the total of all such levies made in the preceding year.
. . ." [Emphasis supplied.]

The act which is referred to is ch. 393, L. 1973, sections 1 through 16 of which comprise the so-called "tax lid," or aggregate levy limitations. Section 11 of that act, found at K.S.A. 1976 Supp. 79-5011, exempts from that limitation certain levies thus, in pertinent part:

"The provisions of K.S.A. 1973 Supp. 79-5001, inclusive, shall not apply to or limit the levy of taxes for the payment of:
(a) Principal and interest upon bonds and temporary notes;

* * *

(f) . . . The provisions of article 50 of chapter 79 of Kansas Statutes Annotated do not apply to the tax levies authorized or required under K.S.A. 40-2305, 42-4424, 74-4920 and 74-4967 and K.S.A. 1973 Supp. 12-11a01, 13-1441, 13-14,100, 13-14a02, 19-262, 19-4004, 19-4011, 19-4102, 19-4443, 71-301 and 72-7074 or to tax levies required for the payment of employer contributions to any other employee pension and retirement program not hereinbefore specifically designated which was in existence on July 1, 1970.

Amounts produced from any levy specified in this section shall not be used in computing any aggregate limitation under article 50 of chapter 79 of Kansas Statutes Annotated." [Emphasis supplied.]

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The italicized statutes authorize levies for Social Security contributions, contributions to the Kansas Public Employees Retirement System, police and firemen's retirement, industrial development, pension funds and fire and police pensions, respectively.

You advise that examination of various budgets which have been submitted to your office pursuant to K.S.A. 79-2930 discloses that monies for these purposes have been included in the general fund, to be derived from the general fund levy, rather than from separate levies authorized by these respective statutes. Although permitted to make a separate levy, e.g., under K.S.A. 40-2305, for the purpose of making contributions for benefits under the Old Age and Survivors' Insurance system embodied in the Social Security Act, some cities have chosen to budget those contributions from its general fund, supported by the general fund levy. The question is raised, then, whether that portion of the general fund levy which is attributable to social security expense, in this example, shall be included in the total tangible property tax levies on the basis of which the entitlement of the governmental unit to share in the countywide retailers' sales tax is based. Once again, under K.S.A. 12-177, distribution is to be made in the

"proportion that the total tangible property tax levies made in the county in the preceding year for all funds of each such governmental unit, except funds, tax levies for which are not subject to the limitations imposed by this act, bear to the total of all such levies made in the preceding year.
 . . . "

The city could have made a separate levy for its social security expense; had it done so, the levy for that purpose would have been exempt from the aggregate levy limitations and would not be included as a part of its local tax effort, on which its share of the countywide retailers' sales tax distribution is based in part. Because it chose not to make a separate levy for social security expense, exempt from the aggregate levy limitation, but budgeted that expense in its general fund, fundable by a levy which is wholly subject to the aggregate levy limitations, it is questioned, nonetheless, whether that portion of the general fund levy attributable to the social security expense should be deducted from its local tax effort in determining its share of the retailers' sales tax distribution.

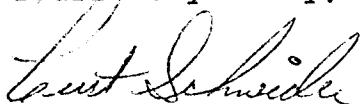
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The local tax effort on which distribution is in part based is measured by the total tangible property tax levies extended by the city for all of its funds, except levies for funds which are not subject to the aggregate levy limitations of K.S.A. 1976 Supp. 79-5001 et seq. Local tax effort is measured by levies subject to the "lid," and not by levies which are exempt from the "lid." The general fund levy is subject in its entirety to the aggregate levy limitations, and is to be considered in its entirety as reflecting the local tax effort on which retailers' sales tax distribution is based. The fact that monies from the general fund will be used to meet obligations which *might* have been met from other funds which were supported by other levies, themselves exempt from the aggregate levy limitations, does not render any portion of the general fund levy itself subject to the aggregate levy limitations.

The penultimate paragraph of K.S.A. 1976 Supp. 79-5011 exempts from the aggregate levy limitations those levies which are made under the authority of the statutes cited in that section. It does not exempt from the aggregate levy limitations any portion of a levy made under the authority of another statute, itself not exempt from the aggregate levy limitations, merely because some portion of the proceeds of that levy will be applied to a purpose for which an exempt levy *might* have been made.

Accordingly, in my judgment, the entire general fund levy of a city is to be included in the "total tangible property tax levies" of such city, on the basis of which its entitlement to distribution of countywide retailers' sales tax is to be computed, notwithstanding some portion of the general fund will be applied to a purpose for which a separate levy might have been made under other statutory authority, which itself would have been exempt from the aggregate levy limitations of K.S.A. 1976 Supp. 79-5001 et seq. Accordingly, in my opinion the county treasurer has no authority to alter the formula prescribed by K.S.A 12-177, or to reduce the distributive share of the proceeds of the countywide retailers' sales tax to a governmental unit by treating any portion of a levy which is itself subject to the aggregate levy limitations of K.S.A 1976 Supp. 79-5001 et seq. as exempt therefrom merely because some portion of the proceeds thereof are to be applied to a purpose which could have, but was not, funded by a separate levy which itself would have been exempt from the aggregate levy limitations.

Yours very truly,


CURT T. SCHNEIDER
Attorney General