



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 18, 1977

ATTORNEY GENERAL OPINION NO. 77-22

Mr. Larry Shoaf
McDonald, Tinker, Skaer, Quinn
& Herrington
Suite 530, R. H. Garvey Building
300 West Douglas Avenue
Wichita, Kansas 67202

Re: Cities--Levies--Expenditure

Synopsis: The proceeds of a levy which was extended by the City of Haysville for the establishment of a municipal library, which has since been approved by the voters thereof, and which were paid without protest, are lawfully available for expenditure by the city for library purposes.

* * *

Dear Mr. Shoaf:

You advise that the city council of the City of Haysville voted, upon oral motion duly seconded, to establish a library board under the authority of K.S.A. 12-1218 *et seq.* and thereafter budgeted and levied a tax for library purposes within the limitation prescribed by K.S.A. 1976 Supp. 79-1952. However, during the summer of 1976, and after you took office, it was learned that the procedure prescribed by K.S.A. 12-1220, including approval of the establishment of a library by a vote of the electorate, had not been followed. The question was thereafter placed on the ballot for November, 1976, and was approved. The library board is now duly constituted and organized, but the question has been raised whether the funds collected for library purposes for 1976, in the amount of \$2,289.00, may be turned over to the library board for its use.

Mr. Larry Shoaf
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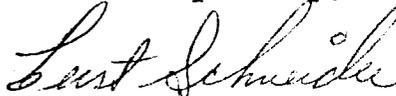
At 72 Am.Jur.2d, *State and Local Taxation*, § 1123, the writer states thus:

"Where the tax is merely irregular or erroneous, equity will not, as a general rule, interfere by way of injunction with the collection of such tax, the proper remedy being at law. Thus, in a case of mere noncompliance with some particular direction of a tax statute, aside from which the tax is sufficiently regular, or where the irregularities relate only to the time in which the different steps were taken, and do not affect the principle of taxation or the groundwork of the proceedings, relief in equity will not be allowed, such irregularities being regarded as merely technical defects which, while they can never be wholly avoided, do not go to the merits of the proceedings.

On the other hand, an irregularity in the nature of a jurisdictional defect, however, may in a proper case be ground for injunctive relief." [Footnotes omitted.]

The conduct of an election may well be regarded as a jurisdictional prerequisite for the levy of the tax authorized by K.S.A. 12-1220, and in an action to enjoin collection of the tax, lack of an authorizing election might well have been an adequate ground upon which to challenge it. However, the tax has been collected, and the proceeds lie in the municipal treasury, not subject to any claim or protest, and are in my opinion lawfully subject to expenditure by the governing body, just as the proceeds of any levy.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj