



STATE OF KANSAS

## Office of the Attorney General

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

**Curt T. Schneider**  
Attorney General

January 26, 1977

ATTORNEY GENERAL OPINION NO. 77-30

Mr. David R. Heger  
Miami County Attorney  
Box 245  
Paola, Kansas 66071

Re: Counties--Intangible Levy--Elections

Synopsis: Upon the filing of sufficient petitions in opposition to a resolution adopted by the board of county commissioners concerning the levy of an intangibles tax, pursuant to K.S.A. 1976 Supp. 79-3109(b), the board may refuse to call a special election, and thus effectively abandon the resolution without incurring the expense of a special election.

\* \* \*

Dear Mr. Heger:

You advise that on December 30, 1976, the board of county commissioners of Miami County adopted a resolution pursuant to K.S.A. 1976 Supp. 79-3109(b), electing that no tax shall be levied for the benefit of the county upon money, notes or other evidence of debt having a tax situs in the county. The resolution has been published twice, as required by the cited statute, and you indicate that petitions are presently circulating which request an election thereon, pursuant to that portion of K.S.A. 1976 Supp. 79-3109(b) which states thus:

"If within sixty (60) days following the date of the last publication of such resolution a petition signed by electors of the

Mr. David R. Heger  
Page Two  
January 26, 1977

county equal in number to not less than five percent (5%) of the qualified electors of such county is filed in the office of the county election officer requesting the same, no such resolution shall become effective without first having been submitted to and been approved by a majority of the electors of the county voting thereon at an election called and held thereon."

You inquire whether the present board, its members having commenced their terms since adoption of this resolution, is bound by the action in the previous board in adopting this resolution, and are thus required to call a special election if sufficient petitions are filed. It is estimated that a special election would cost approximately \$12,000.00.

The language quoted above does not specifically require that an election be held if sufficient petitions are filed. It does provide that if sufficient petitions are filed, the resolution shall not become effective "without first having been submitted to and been approved by a majority of the electors of the county voting thereon . . . ." Thus, the effect of filing sufficient protest petitions is not to require a special election on the question, but to prevent the resolution from becoming effective without an election. If, for example, the sentiment of the voters is fairly apparent to the board of county commissioners, the board might deem it expedient to forego a special election and the costs it would entail, and to abandon the resolution. The apparent purpose of the provision for petitions in this statute is to prevent the board of county commissioners from exercising its legislative power regarding the intangibles tax without voter approval. This purpose is served equally whether a special election is called, or whether the proposition is abandoned, for in either instance, the resolution has not become effective without voter approval.

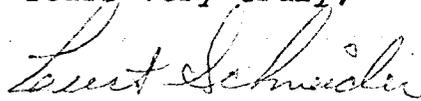
Thus, in my opinion, the board may, if it so chooses, effectively abandon the resolution by failing to call a special election upon the filing of sufficient petitions, whereupon the resolution simply does not become effective.

As an alternative, the board may wish to consider repealing the December 30, 1976, resolution. However, that election not to levy an intangibles tax was an election made as provided by K.S.A. 1976 Supp. 79-3109, and may be superseded only by a further resolution which authorizes the levy of an intangibles tax and fixes

Mr. David R. Heger  
Page Three  
January 26, 1977

the rate thereof. That resolution itself must be adopted in accordance with K.S.A. 1976 Supp. 79-3109(b) and would likewise be subject to the petition provisions of that section.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj