



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 1, 1977

ATTORNEY GENERAL OPINION NO. 77- 289

Mr. Firman G. Gladow
Attorney at Law
114 East Avenue South
Lyons, Kansas 67554

Re: Taxation--Aggregate Levy Limitations--Base Year

Synopsis: A city which has adopted a charter ordinance exempting a particular levy which is imposed for a stated purpose, as, e.g., for utility costs, is neither required nor authorized to reduce the "taxes levied for the base year," as defined by K.S.A. 1976 Supp. 79-5002(b), by the amount of taxes levied for the base year for that stated purpose.

* * *

Dear Mr. Gladow:

You inquire whether a city which has adopted a charter ordinance, in the exercise of its home rule powers under Article 12, § 5 of the Kansas Constitution, to exempt a particular levy for a stated purpose, e.g., a levy for utility costs, from the aggregate levy limitations set forth in K.S.A. 1976 Supp. 79-5001 et seq., must reduce the "taxes levied for the base year," as defined by K.S.A. 1976 Supp. 79-5002(b), by the amount of taxes levied for the base year for that stated purpose.

K.S.A. 1976 Supp. 79-5003 provides in pertinent part thus:

"Except as otherwise hereinafter provided, no taxing subdivision shall certify to the county clerk of the county any tax

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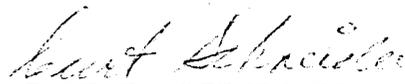
upon tangible property, excluding taxes levied as special assessments and excluding levies specified in section 11 [79-5011] of this act and amendments thereto, which in the aggregate will produce an amount in excess of the amount which was levied by such taxing subdivision for the base year"

The phrase "taxes levied for the base year" is defined by K.S.A. 1976 Supp. 79-5002 to refer to

"taxes, other than special assessments and excluding levies specified in section 11 [79-5011] of this act, which were levied in the year next preceding the base year and which became due on November 1 of such preceding year for the use of and expenditure by taxing subdivision during the base year."

This latter definition is relatively free of ambiguity. The only taxes which are to be exempted in computing the taxes levied for the base year, either 1969 or 1970, are 1) special assessments and 2) levies which are specified in section 11 of the act, now K.S.A. 1976 Supp. 79-5011. In adopting the act in 1973, the legislature did not contemplate that cities would be empowered to exempt levies therefrom by charter ordinance, and no provision was made in the latter section exempting those levies, i.e., those identified by charter ordinance, from the aggregate levy limitations. Because such levies are not exempted from the aggregate levy limitations by section 11 of the 1973 act, and, of course, because such levies are not special assessments, there is no statutory basis for adjusting the "taxes levied for the base year," by deducting therefrom any levy which a city subsequently exempts from the aggregate levy limitations by charter ordinance.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj