



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 28, 1977

ATTORNEY GENERAL OPINION NO. 77- 317

Mr. Robert E. Duncan, II
Attorney and Secretary
Board of Tax Appeals
1030-S, State Office Building
Topeka, Kansas 66612

Re: Counties--Assessor--Budget

Synopsis: Any county which did not publish the notice required by K.S.A. 19-436 prior to adoption of its budget by August 25, 1977, may thereafter publish said notice once each week consecutively for two consecutive weeks, and levy the taxes required to fund operations of the office of assessor in excess of the aggregate levy limitation of the county after the expiration of sixty days if no sufficient petition in opposition thereto is filed. Tax statements may not be mailed until expiration of that sixty days, if said statement includes such taxes in excess of those permitted by the "tax lid."

* * *

Dear Mr. Duncan:

You inquire concerning steps which might now be taken by boards of county commissioners in counties where the publication required by K.S.A. 19-436 was not prior to adoption of the budget for fiscal 1978 and, in many instances, has not yet been made.

K.S.A. 19-436 provides in pertinent part thus:

"The board of county commissioners of each county shall each year determine the

total cost to be incurred by the county in complying with the requirements of this act and shall itemize and identify the same in the budget of the county. The board of county commissioners shall publish a notice once each week for two consecutive weeks in the official county newspaper stating that all taxes levied to pay such costs shall be exempt from the aggregate levy limitation of the county and if within sixty (60) days after the last publication thereof a [sufficient] petition . . . is filed in the office of the county election officer, requesting an election thereon, such costs shall be within the aggregate tax levy limitation of the county unless a proposition to exclude the same from such limitation is submitted to and approved by a majority of the electors of the county voting at an election and held thereon."

This provision became effective July 1, 1976, and accordingly, last year the required publication was made in each county, advising the electorate of the total costs to be incurred in complying with the act, and that taxes levied for these costs would be exempt from the aggregate levy limitation of the county unless a sufficient and timely protest petition were filed. This year, we understand, it has been widely assumed that no further publication was required, and that the 1976 publication was sufficient to exempt all subsequent levies for these costs from the tax lid. As a result, this notice was not published this year in a number of counties. Unfortunately this assumption is in error, for K.S.A. 19-436 directs that "each year" the board of county commissioners will determine those costs, and publish a notice that all taxes levied to pay "such costs" shall be exempt from the aggregate levy limitation of the county unless a sufficient protest petition is filed within sixty days of the second publication.

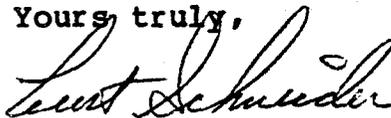
The question now arises as to what steps, if any, a county may take to remove levies for office of the assessor from the aggregate levy limitation. K.S.A. 19-436 does not specify when the required publication must be made. In the ordinary course, obviously, it should be made prior to final adoption of the budget. However, where the publication has been omitted, and a budget has been adopted including funds for the assessor for which a levy outside the aggregate levy limitation is required, the county may still make the required publication. However, under the cited statute, any levy for the costs of the office of assessor may

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not be made outside the aggregate levy limitation of the county until the required notice has been published twice, and sixty days has elapsed from the second publication, for the voters are entitled to that full period in which to file a petition protesting the levy of taxes for this purpose outside the tax lid. If, for example, the required notice is published twice forthwith, once each week for two consecutive weeks, tax statements may not be mailed until after sixty days from the second publication has elapsed. This will necessarily delay the mailing of statements beyond the date this is normally accomplished. However, in many counties in which there remains insufficient levy authority within the aggregate levy limitation to provide adequate funds to support operation of the office of the assessor, this delay, thus permitting the required publication and protest period, is the only alternative to resort to no-fund warrants, and the additional costs which are necessarily incurred thereby.

Thus, to recapitulate, in my judgment, a county which has not heretofore published the notice required by K.S.A. 19-436 should do so forthwith, once each week for two consecutive weeks, and withhold issuance of tax statements until expiration of sixty days from the second publication. If a sufficient petition protesting the levy outside the lid is filed within that period, the statements must be computed omitting the increased levy prior to issuance. If no sufficient petition is filed, the statements bearing the levy for the office of assessor outside the aggregate levy limitation of the county may be issued. Where a county is unable to accommodate the delayed preparation of tax statements which is called for in the foregoing procedure, it has no alternative but to levy only those taxes for operation of the office of assessor which it may afford within the aggregate levy limitation, and seek additional relief from the Board of Tax Appeals.

Yours truly,



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CTS:JRM:kj

cc: Mr. Raymond C. Vaughn
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