STATE OF KANSAS

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*Curt T. Schneider*
*Attorney General*

February 23, 1978

ATTORNEY GENERAL OPINION NO. 78-89

Mr. Robert Pennington
City Attorney
Memorial Building
Post Office Box 311
Chanute, Kansas 66720

Re: Cities--Service Program for the Elderly--Duplication

Synopsis: A city may operate its own service program for the elderly pursuant to K.S.A. 1977 Supp. 12-1680 at the same time that the county in which such city is located also operates its own service program for the elderly under the same provision. However, such a city which operates its own program may not participate in the program operated at the same time by the county, although taxable tangible property in the city remains liable for the levy imposed to support the county property.

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Dear Mr. Pennington:

You advise that several years ago, the voters of Neosho County approved a one-half mill levy pursuant to K.S.A. 12-1680 for the purpose of creating or continuing a service program for the elderly. Funds derived from that levy are administered and allocated by the board of county commissioners. At that time, the City of Chanute had no service program for the elderly.

Recently, the director of the Retired Senior Volunteer Program has requested support of that program by the City of Chanute, and the question has arisen whether the city may, upon the approval of a proposition authorizing such a levy, impose an annual tax pursuant to K.S.A. 1977 Supp. 12-1680 for the purpose of

creating a service program for the elderly in the City of Chanute, and administered and allocated by the city governing body.

K.S.A. 1977 Supp. 12-1680 authorizes submission of the question whether an annual tax of not more than one mill shall be levied to fund a service program for the elderly to the voters of either the county or city. Nothing in this section prohibits both a county and a city located therein from submitting the question to their respective electors and, upon obtaining the requisite approval, from proceeding to levy taxes within their respective territories and implementing service programs for the elderly for their respective residents. The section does state in pertinent part thus:

> "No city which has approved a service program for the elderly at an election held pursuant to the authority granted herein shall be included in a county service program for the elderly so long as such city service program is in operation."

This sentence prohibits duplication of program: a city which operates its own program shall not be included in a county program.

However, the taxable tangible property in the city remains liable to the county levy for operation of the county program, and if the city chooses to undertake its own service program for the elderly, the city governing body has no power to exempt property in the city from the county levy, or in any other fashion alter the county levy or proceeds therefrom. It may be objected that if both the county and the city levy a tax for the same purpose, that invidious double taxation results. At 71 Am.Jur.2d, *State and Local Taxation*, § 31, the writer states thus:

> "Not every kind of duplicate taxation is proscribed. Although taxation of the same person twice because of his ownership of the same property, or, more simply, taxation of the same property twice, is sometimes referred to as illegal or unconstitutional, certain limitations and qualifications of this broad concept are usually laid down. Thus, it is frequently stated or implied that before

> invalid double taxation may be said to exist, both taxes must have been imposed in the same year, for the same purpose, upon property owned by the same person, *and by the same taxing authority*." [Emphasis supplied.] [Footnotes omitted.]

At § 35 of the same title, the writer amplifies upon the foregoing thus:

> "It is not invalid double taxation to impose state and local taxes upon the same property in the same year. This principle is equally applicable with respect to taxation by more than one local political subdivision. Thus, imposition with proper legislative authority by a local taxing unit, such as a county, town, or highway district, of a tax for a special purpose, such as the construction or maintenance of roads or highways, upon the property situated in a smaller taxing unit, such as a city located within the borders of the larger unit, is not invalid as double taxation because the same property is also taxed, or is subject to taxation, by the smaller taxing unit for the same or similar purposes." [Footnotes omitted.]

In *Rural High School District No. 3 v. Baker*, 176 Kan. 647, 272 P.2d 1073 (1954), the question presented was which of two school districts was entitled to tax certain real property. After deciding that question, the court concluded its opinion with language which is utterly dicta:

> "In conclusion it should perhaps be stated we find nothing in the statutory provisions heretofore mentioned, or elsewhere in our statute, indicative of an intention on the part of the legislature to subject real estate to double taxation under the confronting facts and circumstances. In that

> situation we feel constrained to state this court is committed to the rule that unless expressly authorized by statute, because of peculiar circumstances and conditions warranting that action, the law of this state does not contemplate that real estate should be subjected to the payment of taxes by two separate and distinct taxing districts for the same purpose in any one year."

Here, of course, both the county and city are expressly authorized to levy a tax for service programs for the elderly, and levy that tax throughout their taxing territory. And while each levies for a common general objective, service programs for the elderly, each also levies for a different purpose, because each levies for the operation of a different service program for the elderly. The language quoted above from *Baker* has not, so far as our research discloses, ever been followed or cited in any subsequent decision, and certainly it gives us entirely too little guidance as to precisely what the court found to be fundamentally and constitutionally objectionable in the levy of taxes upon the same property by two different political subdivisions for the same purpose, to permit us to conclude in this instance that both the city and the county may not, as they are expressly authorized to do, levy separate taxes for and operate their separate service programs for the elderly at the same time.

Yours truly,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj