



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

March 8, 1978

ATTORNEY GENERAL OPINION NO. 78- 110

The Honorable A. James Gillmore
State Representative
3rd Floor - State Capitol
Topeka, Kansas 66612

Re: Recreation Commission--Levies--Authority

Synopsis: The 1977 amendment to K.S.A. 12-1908 does not authorize U.S.D. 373 to levy an additional one mill levy for the Newton Recreation Commission. The additional levy authority provided by the 1977 amendment applies only to levies made for the Commission by the city, and not to such levies made by the school district.

* * *

Dear Representative Gillmore:

You advise that the City of Newton and U.S.D. No. 373 operate a joint recreation commission pursuant to K.S.A. 12-1901 *et seq.* K.S.A. 1977 Supp. 12-1908(a) provides that once the provisions of the act have been adopted, the recreation commission shall certify its budget to the

"city or school district, which shall levy a tax sufficient to raise the amount required by such budget, *Provided*, When said petition shall have been submitted to a city and school district jointly said budget shall be certified to the city or school district, whichever shall be the larger, and the tax levied by such city or school district"

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You advise that the Newton Recreation Commission is required to certify its budget to the school district, as the larger taxing subdivision, which levies the amount required and authorized therefor. The levy cannot, however, exceed two mills. You advise that during the 1977 legislative session your predecessor, Representative Walker, introduced House Bill 2099, proposing to amend K.S.A. 12-1908 to increase the levy authority from two to three mills, the bill being prompted by a funding crisis of the Newton Recreation Commission. On the floor of the House, however, opposition developed to the bill, and it was amended to apply only to the City of Newton. As enacted, the amendment added the following language to K.S.A. 12-1908 thus:

"Any city of the first class located in any county having a population of more than twenty-seven thousand (27,000) and not more than thirty-two thousand (32,000) may levy for a recreation commission located therein a tax in an amount not to exceed one (1) mill in addition to those levies authorized herein and in K.S.A. 12-1904."

You advise that the specific purpose of the amendment was to permit the levy of an additional mill in behalf of the Newton Recreation Commission, and that the minutes of the Senate Committee on Assessment and Taxation of March 22, 1977, so state.

After the amendment was enacted, and in reliance thereon, the Newton Recreation Commission certified its budget to the school district, providing for the levy of an additional mill. Attorneys for the school district and the city both questioned whether the amendment authorized the levy of an additional mill by the school board, as well as the city, and as a result, the additional mill was not levied.

You inquire "whether the Newton Recreation Commission has authority to levy an additional one mill by certifying its budget, including the additional mill, to the School Board and the School Board levying the tax."

The recreation commission does not levy a tax. It does certify its budget to the city or school district, as the case may be, which levies the tax authorized therefor. The Newton Recreation

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Commission certifies its budget to the school district, and not to the city. The additional one mill levy authority authorized by the 1977 amendment to K.S.A. 12-1908 applied only to levies made by the city for the recreation commission, and not to levies made for the commission by the school district.

Legislative intent may be helpful in resolving an ambiguity or uncertainty in a legislative enactment. However, there is no ambiguity in the 1977 amendment. It refers explicitly and clearly to levies made by the city, and only by the city, for the recreation commission. Because the Newton Recreation Commission certifies its budget to the school district, the additional one mill levy authority is not available to the school district in levying a tax to fund that budget. Doubtless, as you indicate, the legislative intent is clear. However, unfortunately, the legislative language is equally clear, and it clearly does not authorize the result which the legislature intended to accomplish. I can only suggest that an additional amendment be adopted, to indicate that the additional levy authority applies to the school district as well as to the city.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj