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August 22, 1979

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ATTORNEY GENERAL OPINION NO. 79- 184

Mr. Theodore H. Hill
County Counselor
Sedgwick County Courthouse
Suite 315
Wichita, Kansas 67203

Re: Counties and County Officers--Public Improvements--
Combination and Operation of Sewer Districts Under
Single Budgets

Synopsis: The board of county commissioners of any county may
by resolution combine for operation and maintenance
purposes any sewer districts created pursuant to
K.S.A. 19-2704 et seq., wherever located in the
county, under a single, combined budget for such
purposes.

* * *

Dear Mr. Hill:

You have asked for our interpretation of K.S.A. 1978 Supp.
19-27,154. You have correctly noted that the statute allows
a board of county commissioners to combine the operation and
maintenance functions of the several sewer districts created
pursuant to Article 27 of Chapter 19 of Kansas Statutes Annotated
"regardless of the respective sewer districts' locations in the
county." You have stated that "it would seem to follow that a
board of county commissioners could by resolution make one
combined operation and maintenance budget for all [such]
sewer districts . . . in the county."

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K.S.A. 1978 Supp. 19-27,154 expressly allows county commissioners to adopt a single budget if the commissioners choose to combine the sewer districts. The statute provides as follows:

"The board of county commissioners of any county may by resolution combine for operation and maintenance purposes any sewer districts created pursuant to the provisions of article 27 of chapter 19 of the Kansas Statutes Annotated, as amended or supplemented. Such combined districts may thereafter operate under a single budget for operation of the main sewer district office and for the maintenance and repair of main, joint or lateral storm or sanitary sewers, treatment plants, pumping stations or other equipment or appurtenances used in connection therewith. In addition, the combined district shall have the authority to make the levy for operation and maintenance purposes as provided in K.S.A. 1975 Supp. 19-2709, 19-2751 and 19-27,108 and upon all land and improvements within such combined district except public roads, public parks and cemeteries and such funds may be used for operation and maintenance as above provided throughout the combined district without distinction as to the initially created district boundary line. The combining of such districts for this specific purpose shall not affect the bond authority as otherwise provided by law nor affect any existing bonded debt and obligations and liens created thereby."

In our judgment, the statute in question reflects the legislature's intention to provide a more administratively convenient and efficacious means by which counties may perform sewage treatment and disposal functions. The legislature has offered counties a new and simpler mechanism by which the administrative tasks of budgeting and levying of taxes for sewer district purposes may be facilitated.

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Arguably, however, the method the legislature used to establish this new mechanism is constitutionally suspect, for two reasons. First, it may be argued that the statute violates Article 11, Section 5 of the Kansas Constitution, which provides:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied." (Emphasis added.)

K.S.A. 1978 Supp. 19-27,154 permits counties to combine the several sewer districts established pursuant to provisions of Article 27 of Chapter 19 of the Kansas Statutes Annotated, to combine the budgets of several districts into a single budget and, significantly, "to make the levy . . . as provided in K.S.A. 1975 Supp. 19-2709, 19-2751 and 19-27,108 . . . and [to use] such funds . . . for operation and maintenance . . . throughout the combined district without distinction as to the initially created district boundary line." (Emphasis added.) Because the statute in question permits counties to use tax funds levied for a specific object (maintenance and operation of an individual sewer district) for a different purpose, *i.e.*, maintenance and operation of a combined district, it may be argued that the enactment is void for violation of Article 11, Section 5. In other words, if a county chose to combine the several sewer districts, funds derived from a tax levy authorized by one of the statutes referenced in K.S.A. 1978 Supp. 19-27,154 for use in a single sewer district would no longer be applied to the original object of the tax. The tax funds would be diverted to a concededly similar but broader and constitutionally impermissible purpose.

It is our judgment, however, that the statute in question constitutionally authorizes a new levy stating a new object to which the tax funds derived from the individual levies shall be applied: maintenance and operation purposes in the combined district. Counties opting to combine the sewer districts and the respective levies would accordingly be levying the new tax "in pursuance of a law" which law distinctly states the object of the tax, as required by the Kansas Constitution.

That interpretation of the statute, however, raises another constitutional question. Article 2, Section 16, of the Kansas Constitution, inter alia, imposes the following requirements:

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"No law shall be revived or amended, unless the new act contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed."

It may be argued that K.S.A. 1978 Supp. 19-27,154, the act in question, is constitutionally infirm for violation of the above-quoted constitutional provision, because it purports to amend the statutes referenced in that act (K.S.A. 1975 Supp. 19-2708, 19-2751 and 19-27,108) by changing the provisions of those statutes which authorize the various tax levies without setting out the sections so amended in a "new act" and without repealing the old sections. To the contrary, we conclude that the statute does not violate Article 2, Section 16.

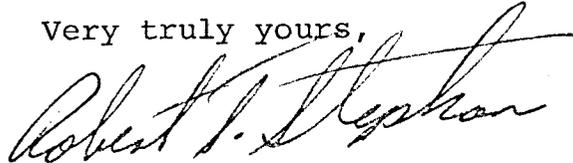
It is our opinion that the act in question does not purport to amend or repeal any statute, but merely offers counties a different mechanism by which certain county functions may be performed. The reference to the above-mentioned statutes in the act in question is merely that, an incorporation by reference, and is not indicative of any legislative intent to amend those statutes, or to change their substantive effect. Those statutes remain intact. Rather, the act merely establishes new and independent authority for boards of county commissioners, giving them a choice to combine or not to combine sewer districts, and to combine or not to combine the respective district tax levies authorized under the statutes referenced in the act, as discussed above.

In sum, although important constitutional questions may be raised about the act, we cannot say as a matter of law that the statute is constitutionally infirm, in light of a reasonable construction in support of the law, and with due respect to the presumption of constitutionality of statutes. "[T]he constitutionality of a statute is presumed . . . [A]ll doubts must be resolved in favor of its legality and before it may be stricken down it must clearly appear to violate constitutional requirements." Shawnee Hills Mobile Homes, Inc. v. Rural Water District, 217 Kan. 421, 435 (1975). See also State, ex rel. v. Fadely, 180 Kan. 652, 658-659 (1957).

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Accordingly, it is our opinion that the board of county commissioners of any county may by resolution combine for operation and maintenance purposes any sewer districts created pursuant to K.S.A. 19-2704 et seq., wherever located in the county, under a single, combined budget for such purposes.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:WRA:SC:gk