

STATE OF KANSAS

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November 10, 1980

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ATTORNEY GENERAL OPINION NO. 80-242

Mr. William T. North
Chase County Attorney
P.O. Box 280
Cottonwood Falls, Kansas 66845

Re: Taxation--Intangibles Tax--Effect of Repeal on
County's Tax Levy Authority

Synopsis: That portion of a county's general fund tax levy which is not levied to offset the loss in revenue from elimination of the county's tax on intangible personal property remains within the aggregate tax levy limitation prescribed in K.S.A. 79-5001 *et seq.* However, under the provisions of K.S.A. 1979 Supp. 79-3109, that portion of the county's general fund tax levy which is levied to offset said loss in revenue is not within the aggregate tax levy limitation.

The provisions of K.S.A. 1979 Supp. 79-3109 do not authorize a board of county commissioners to exceed the rate of levy prescribed in K.S.A. 1979 Supp. 79-1946, even though the electors of the county have voted to eliminate the county's tax on intangible personal property. Thus, if a county is required to eliminate the county's tax on intangible personal property and finds it is necessary to exceed the mill levy rate limitation prescribed in K.S.A. 1979 Supp. 79-1946 in order to defray the current general expenses of the county, the board of county commissioners of said county must exercise its home rule power under K.S.A. 19-101b and exempt the county from the provisions of K.S.A. 1979 Supp. 79-1946. Cited herein: K.S.A. 19-101b, K.S.A. 1979 Supp. 79-1946, 79-3109, K.S.A. 79-5001; L. 1979, ch. 318, §1; L. 1973, ch. 392, §1.

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Dear Mr. North:

You have inquired as to the limitations on the authority given to a county by K.S.A. 1979 Supp. 79-3109 to levy additional property taxes in the event the intangibles tax in the county is eliminated as a result of a petition and election by the county's electors.

In 1979, K.S.A. 79-3109 was amended by adding provisions whereby the electors of a county could, by petition, force an election on the question of eliminating the intangible tax. (See L. 1979, ch. 318, §1.) Under the provisions added to the statute, the proposition of eliminating the county's intangibles tax is required to be placed on the ballot in substantially the following form:

"Shall _____ county eliminate the tax on intangible personal property and be authorized to impose and levy property taxes or any other taxes as may be authorized by law or to levy taxes on real estate and tangible personal property in addition to any aggregate levy amount limitation on the county's ad valorem tax levy authority as may be necessary to offset the revenue lost from elimination of the tax on intangible personal property?" (Emphasis added.)

If a majority of the electors voting on the proposition vote in favor thereof, the board of county commissioners is required to provide, by resolution, for elimination of the intangibles tax. However, pursuant to the language of the proposition approved by the electors and the provisions of K.S.A. 1979 Supp. 79-3109:

"The board of county commissioners shall thereupon be authorized to offset the loss in revenue from the elimination of said tax by the imposition and levying of any other taxes as may be authorized by law or by increasing its ad valorem tax levy for the general fund for any year in which revenue is not received from the tax on money, notes and other evidence of debt in an amount not to exceed the amount of such tax received in the year prior to elimination of such tax. The increase in the amount of such ad valorem tax authorized herein shall be in addition to any aggregate levy amount which may be fixed by any existing state law or any law which may hereafter be enacted. (Emphasis added.)

It is to be noted that the provisions of 79-3109 do not authorize the board of county commissioners of a county to impose a separate and distinct ad valorem tax levy to offset the loss in revenue from elimination of the county's intangibles tax. The statute merely authorizes the imposition of taxes other than property taxes or an increase in the county's ad valorem tax levy for the county's general fund. Moreover, it is clear from the emphasized portion of the foregoing provisions that the increase in the amount of the county's ad valorem tax levy for its general fund that is necessary to offset the loss of intangibles tax revenue is not subject to any existing or future statutorily-prescribed aggregate levy limitation. Currently, such aggregate limitation is prescribed under K.S.A. 79-5001 et seq., which is commonly referred to as "the tax lid law."

Under the provisions of the tax lid law, and without regard to the provisions of K.S.A. 1979 Supp. 79-3109, the amount of money produced by the ad valorem tax levy of a county for its general fund must be included in determining the total dollar amount that may be produced in the county by the imposition of property tax levies. Pursuant to K.S.A. 1979 Supp. 79-3109, though, the portion of a county's general fund tax levy, which is levied to offset the loss in revenue from elimination of the county's tax on intangible personal property, is not within the aggregate tax levy limitation prescribed in K.S.A. 79-5001 et seq. However, K.S.A. 1979 Supp. 79-3109 does not, and in our judgment, was not intended to alter the fact that the portion of the county's general fund tax levy, which is not levied to offset the loss in revenue from elimination of the intangibles tax, remains within the aggregate tax levy limitation prescribed in K.S.A. 79-5001 et seq.

Notwithstanding the fact that such increase in the county's general fund levy is not subject to the tax lid law, the fact remains that such general fund levy is but a single tax levy, the maximum rate of which is prescribed by K.S.A. 1979 Supp. 79-1946. It is our understanding that, pursuant to this statute, Chase County is limited to a levy of 6.50 mills for its general fund.

The provisions of K.S.A. 1979 Supp. 79-1946 do not fix an aggregate levy amount; they set a maximum rate of levy for a single county fund, i.e., the county's general fund. Since 1973, counties have not been subject to aggregate mill levy rate limitations. (See L. 1973, ch. 392, §1.) Those limitations were repealed when the provisions of the tax lid law were amended in 1973. Thus, in our judgment, it would be inappropriate to construe any of the provisions of

K.S.A. 1979 Supp. 79-3109 as relating to the provisions of K.S.A. 1979 Supp. 79-1946. Consequently, it is our opinion that, while a county can exempt itself from the provisions of K.S.A. 1979 Supp. 79-1946 by exercise of its home rule power, nothing contained in K.S.A. 1979 Supp. 79-3109 authorizes a county to exceed the mill levy limitation prescribed in K.S.A. 1979 Supp. 79-1946.

Therefore, if a county is required to eliminate the county's tax on intangible personal property and, as a result, finds it is necessary to exceed the mill levy rate limitation prescribed in K.S.A. 1979 Supp. 79-1946 in order to defray the current general expenses of the county, the county must exercise its home rule power under K.S.A. 1979 Supp. 19-101b and exempt itself, by charter resolution, from the provisions of K.S.A. 1979 Supp. 79-1946.

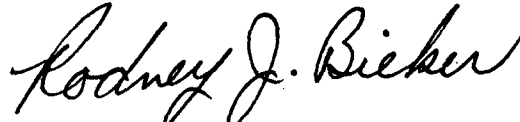
In conclusion, it is our opinion that the portion of a county's general fund tax levy which is not levied to offset the loss in revenue from elimination of the county's tax on intangible personal property remains within the aggregate tax levy limitation prescribed in K.S.A. 79-5001 et seq. However, under the provisions of K.S.A. 1979 Supp. 79-3109, that portion of the county's general fund tax levy which is levied to offset said loss in revenue is not within the aggregate tax levy limitation.

The provisions of K.S.A. 1979 Supp. 79-3109 do not authorize a board of county commissioners to exceed the rate of levy prescribed in K.S.A. 1979 Supp. 79-1946, even though the electors of the county have voted to eliminate the county's tax on intangible personal property. Thus, if a county is required to eliminate the county's tax on intangible personal property and finds it is necessary to exceed the mill levy rate limitation prescribed in K.S.A. 1979 Supp. 79-1946 in order to defray the current general expenses of the county, the board of county commissioners of said county must exercise its home rule power under K.S.A. 19-101b and exempt the county from the provisions of K.S.A. 1979 Supp. 79-1946.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General