



STATE OF KANSAS

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June 29, 1981

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ATTORNEY GENERAL OPINION NO. 81- 147

L. M. Cornish
Glenn, Cornish, Schulteis & Hanson
900 Merchants National Tower
Topeka, Kansas 66612

Re: Cities and Municipalities -- Libraries -- Increase
in Levies in Certain Cities; Procedure

Synopsis: K.S.A. 1980 Supp. 12-1215, as amended by 1981
Senate Bill No. 204, allows the board of directors
of certain city libraries to increase the mill
levy above the current levy, either from 2.5 mills
up to, but not exceeding, 4 mills, or, if this has
proven to be insufficient, above 4 mills by an
additional amount not to exceed 1/4 mill each year,
up to a limit of 6 mills. A resolution to this
effect which is adopted by the board must state
the total amount of the tax to be levied for li-
brary purposes, which amount represents a figure
based on mills rather than a total dollar amount.
Cited herein: K.S.A. 1980 Supp. 12-1215 as amend-
ed by 1981 Senate Bill No. 204, K.S.A. 79-2963.

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Dear Mr. Cornish:

As counsel for the Topeka Public Library, you request the
opinion of this office concerning the procedure which the
library's board of directors must follow to increase its ad
valorem tax levy, under the provisions of K.S.A. 1980 Supp.
12-1215, as amended by 1981 Senate Bill No. 204. Specifically,
you wish to know whether the language of the statute, which
requires a resolution passed by the board to state "the total
amount of the tax to be levied," refers to the total dollar
amount that is to be raised by the tax levy or the total
number of mills per dollar of assessed tangible valuation that
is to be levied for library purposes.

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Initially, we note that the Topeka Public Library, pursuant to K.S.A. 1980 Supp. 12-1215 as amended, is a separate and distinct taxing unit which possesses the power to establish its own budget and levy a tax for the maintenance and support of the library, subject to statutory limits. These limits, established by the above statute, were altered by action of the 1981 Legislature, which enacted Senate Bill No. 204. As enacted, said bill amends K.S.A. 1980 Supp. 12-1215 so as to expand the board's power to increase the tax levy, and becomes effective on July 1, 1981.

At present, the library's board of directors may levy "a tax of not to exceed two and five-tenths (2.5) mills on each dollar." However, if this sum is determined to be insufficient to maintain and support the library, the board may

"adopt a resolution declaring it necessary to increase such annual levy in an amount which together with the current levy shall not exceed a total of four (4) mills."

Under the terms of 1981 Senate Bill No. 204, a board may go even further, for once the above step is taken and it is still determined that more money is needed,

"the board shall adopt a resolution declaring it necessary to increase the annual levy by an additional amount not to exceed 1/4 mill in any one year up to a total amount which shall not exceed an amount equal to six mills in any year." §1(b)

Under the statute as amended, any resolution to increase the tax levy rate is required to "state the total amount of the tax to be levied for library purposes," and be published twice in the official city newspaper. In our opinion, this phrase refers to the mill levy rate (e.g., 5 1/4 mills on each dollar of assessed tangible valuation), rather than the total dollar amount to be raised by the tax levy. While an argument could be made for the latter, based on the language "total amount of the tax," we believe this would be an incorrect result for at least two reasons.

First, it seems clear that the purpose of the statutory requirement is to provide notice to taxpayers of the magnitude of the proposed increase. A dollar figure, in addition to

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being dependent on assessed valuation figures not yet available, would not inform an individual taxpayer of the effect such an increase would have on the taxpayer. A mill figure, on the other hand, would allow an individual taxpayer to better know what the increase would mean as to his or her property. As the intent of the legislature must govern in construing any statute, the latter interpretation would be preferable to the former. Gorup v. KPERS, 3 Kan. App. 676 (1979).

Second, to the extent that the statute is ambiguous, we believe that K.S.A. 79-2963 provides guidance as to how the amount should be expressed. Therein, it is stated:

"In addition to all other requirements now provided by law, whenever the amount of any ad valorem tax levy is required by law to be stated in any notice, upon any ballot, in any proposed budget or in any other form for the purpose of giving notice of the amount thereof to the electors or taxpayers of any taxing subdivision of the state of Kansas, the amount of such levy shall be expressed at a rate in dollars or fraction thereof upon each one hundred dollars of assessed valuation." (Emphasis added.)

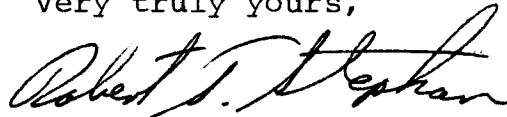
In that this statute speaks to the form which a notice to taxpayers should take, it may be read in pari materia with K.S.A. 1980 Supp. 12-1215, as amended by 1981 Senate Bill No. 204, even though not enacted at the same time. Clark v. Murray, 141 Kan. 533 (1935), Flowers v. Marshall, 208 Kan. 900 (1972). As it is clearly the intent of K.S.A. 79-2963 that the amount of the tax levy be expressed in mills, and not in the total amount of tax to be raised, a similar construction of K.S.A. 1980 Supp. 12-1215 (as amended) would avoid a conflict between two statutes concerning the same subject -- a preferred result. Callaway v. City of Overland Park, 211 Kan. 646 (1973).

In conclusion, K.S.A. 1980 Supp. 12-1215, as amended by 1981 Senate Bill No. 204, allows the board of directors of certain city libraries to increase the mill levy above the current levy, either from 2.5 mills up to, but not exceeding 4 mills, or, if this has proven to be insufficient, above 4 mills by an additional amount not to exceed 1/4 mill each year, up to

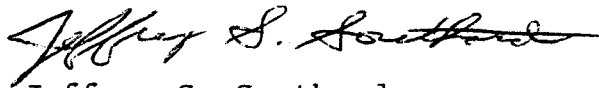
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a limit of 6 mills. A resolution to this effect which is adopted by the board must state the total amount of the tax to be levied for library purposes, which amount represents a figure based on mills rather than a total dollar amount.

Very truly yours,



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RTS:BJS:JSS:hle