



STATE OF KANSAS

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June 11, 1982

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ATTORNEY GENERAL OPINION NO. 82- 126

William D. Rustin
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Suite 315, County Courthouse
Wichita, Kansas 67203

Re: Infants -- Detention Homes -- Public Youth Residential Facilities; Levy of County Therefor Subject to Tax Lid

Synopsis: Pursuant to K.S.A. 38-554, in a county such as Sedgwick with a population in excess of 300,000, the board of county commissioners is required to levy a tax and to expend general fund moneys for the operation of public youth residential facilities. While the annual budget for such facilities is administered by the administrative judge of the district court, it is set initially by the board of county commissioners, and is subject to the board's control in all areas but that of salaries, which are set by the district court. As is the case with expenses of the district court, the fact that a county is mandated by statute to fund public youth residential facilities does not in and of itself remove this expense from the aggregate tax levy limitation (i.e. "tax lid") statutes. Rather, a county can seek to exempt such expenses from the tax lid, either by legislative action or by an exercise of home rule authority under K.S.A. 19-101b. Cited herein: K.S.A. 19-101b, 20-349, 20-613a, 38-554, 79-5003, 79-5004, 79-5011, 79-5012.

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Dear Mr. Rustin:

As Sedgwick County Counselor, you request the opinion of this office on a matter which was touched upon, but not directly addressed, in Attorney General Opinion No. 81-134. That opinion, issued in response to an earlier request by you,

dealt with the duty of Sedgwick County to fund certain expenses of the district court, and whether such expenses came within the scope of the aggregate tax levy limitation statutes, K.S.A. 79-5001 et seq., commonly known as the tax lid laws. In concluding that such expenditures were included, thus requiring the county to either seek legislative relief or exercise home rule authority, the opinion did not specifically state whether certain juvenile facilities were also included under the tax lid. Clarification of this point is the purpose of your request.

The specific facilities involved here are the Lake Afton Boys Ranch and the Youth Holding Center, both of which are located in Sedgwick County. The operation and funding of these facilities is the subject of K.S.A. 38-554, which states:

"In every county having a population of not less than three hundred thousand (300,000) the board of county commissioners shall authorize an expenditure per annum for allowed expenses incurred in the operation of public youth residential facilities and such expenses shall be paid by the administrative judge of the district court.

"The operation of such facilities shall be under the supervision and control of the district court. The administrative judge of the district court shall appoint and set salaries of such staff members of the facilities as he or she shall deem necessary, for the proper operation of such facilities. The board of county commissioners shall set an annual budget of the costs and expenses for the purchase, improvement, operation and maintenance of said detention facilities and payment of salaries of staff members, and the county commissioners shall levy a tax as in the case of providing for other expenses of the county on the assessed taxable valuation of said county for such purpose and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 1979 Supp. 12-1774, and amendments thereto, by cities located in the county. After the budget is established, said budget shall be under the control of the administrative judge of the district court and not subject to the control and supervision of the said county commissioners. The provisions of K.S.A. 19-229 shall not apply to the operation of such facilities. All purchases shall be

made through the county purchasing agent. The administrative judge shall direct the county purchasing agent to make such purchases and said county purchasing agent shall immediately proceed to procure bids and to purchase in conjunction with the judge the requested items." (Emphasis added.)

Upon reading the above statute, it is apparent that the two youth facilities in question are essentially hybrids in nature, in that both the board of county commissioners and the district court possess elements of control. In this respect, K.S.A. 38-554 is similar to K.S.A. 20-349, which concerns the adoption of the budget of the district court itself. Both involve a sharing of authority between executive and judicial agencies whereby the district court is given sole control over the expenditure of funds which are assessed and collected by the county. Furthermore, both involve situations where the legislature has directed the county to assume certain expenses and yet has included no exemption from the operation of the tax lid, which (pursuant to K.S.A. 79-5003 and 79-5004) acts to impose a limit upon the total dollar amount of ad valorem taxes on tangible property in the county. Attorney General Opinion No. 81-134 concluded that, while undoubtedly placing counties in a fiscal bind, this factual result did not invalidate or otherwise create a legally implied exemption in the tax lid. We affirm that conclusion here.

This is not to say that no differences exist between K.S.A. 20-349 and 38-554. While under the former statute the district court, through the administrative judge, draws up a budget which is then submitted to the board of county commissioners, K.S.A. 38-554 allows the board to prepare the youth facilities budget itself. Additionally, no minimum amount must be allocated as is the case under K.S.A. 20-349, which establishes as a statutory "floor" the amount of the 1978 calendar year budget. And, while the salaries of youth facility personnel are not under the county's control, the rest of the budget is, with no statutory language imposing an implied duty to provide an amount of money necessary to meet minimum requirements. As noted in our earlier opinion, K.S.A. 20-613a has the opposite effect with regard to the operations of the district court itself.

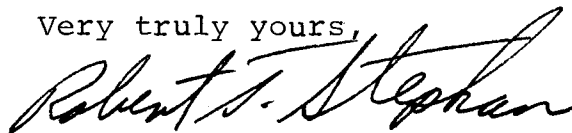
In our opinion, however, such distinctions are of no importance when considering the effect of the tax lid laws. While K.S.A. 38-554 creates a different type of fiscal hybrid involving the county and the district court than does K.S.A. 20-349, the county is still faced with a legislatively-imposed duty to provide funds for the operation of the youth facilities out of its general budget. As exceptions to the tax lid must be expressly set forth by either K.S.A. 79-5011 or another

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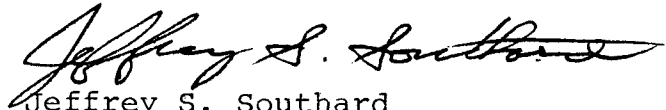
specific statute, and should not be implied, the county's share of the facilities' cost must be included thereunder, pending either an amendment by the legislature or a charter ordinance pursuant to K.S.A. 19-101b. In addition to these options, both of which were set out more fully in Opinion No. 81-134, the county could, through a special election called under K.S.A. 79-5012, suspend the tax lid for one or more years. Only in these ways may Sedgwick County obtain relief from the pressure of increasing youth facility expenses within a fixed ceiling on the amount which can be raised through ad valorem taxes.

In conclusion, pursuant to K.S.A. 38-554, in a county such as Sedgwick with a population in excess of 300,000, the board of county commissioners is required to levy a tax and to expend general fund moneys for the operation of public youth residential facilities. While the annual budget for such facilities is administered by the administrative judge of the district court, it is set initially by the board of county commissioners, and is subject to the board's control in all areas but that of salaries, which are set by the district court. As is the case with expenses of the district court, the fact that a county is mandated by statute to fund public youth residential facilities does not in and of itself remove this expense from the aggregate tax levy limitation (i.e. "tax lid") statutes. Rather, a county can seek to exempt such expenses from the tax lid, either by legislative action or by an exercise of home rule authority under K.S.A. 19-101b.

Very truly yours,



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RTS:BJS:JSS:hle