



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 12

David K. Clark
Buffalo City Attorney
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Re: Taxation--Limitations on Tax Levies--Limitation
on Certain Tax Levies in Cities of the Third Class

Synopsis: The maximum tax levy which a city of the third class may be compelled to certify, in any one year, to satisfy a judgment entered against it, is limited to an amount which a court determines to be reasonable and not oppressive. Cited herein: K.S.A. 12-151, 79-1953, 79-5011.

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Dear Mr. Clark:

You request our interpretation of K.S.A. 12-151. Specifically, you advise that a judgment in the amount of \$350,000 has been rendered against the city of Buffalo, and you request information as to the maximum tax levy, if any, which the city of Buffalo must certify (for the purpose of satisfying said judgment) in any one year in order to comply with the provisions of the aforesaid statute.

K.S.A. 12-151 provides as follows:

"Except for judicial tax foreclosure, all lands, buildings, monies, debts due the city, and all other property and other

assets of every description belonging to any city shall be exempt from levy, execution and sale, and no judgment against a city shall be a charge or lien on such property: Provided, That nothing herein shall relieve a city from the obligation of levying taxes or otherwise providing funds to pay judgments, and any such taxes levied or funds provided for such purpose shall not be exempt from any appropriate judicial process to enforce a judgment." (Emphasis added.)

As is readily apparent, the above-quoted statute does not set forth any mathematical formula whereby one may calculate, in quantitative terms, the obligation of a city to levy a tax to satisfy a judgment. As you point out, K.S.A. 79-1953, which establishes levy limitations for certain prescribed city purposes for cities of the third class, does not set forth such a limitation in relation to taxes levied to satisfy judgments. Additionally, the tax lid law (K.S.A. 79-5001 et seq.) does not apply to or limit the levy of taxes for the payment of judgments rendered against a city. See K.S.A. 79-5011(d).

Although we are unaware of any statutory provision which places a limitation upon the amount of taxes which must be levied by a city of the third class to satisfy a judgment, the Kansas Supreme Court has indicated that courts will not compel a levy, for such purposes, which is unreasonable or oppressive. Phelps v. Lodge, 60 Kan. 122, 125 (1899). In the Phelps case, the court held that the governing body of a city of the third class may be compelled by mandamus to levy taxes to pay a judgment rendered against the city, and also noted the court's discretion in compelling a tax levy:

"The court has some measure of discretion in awarding writs of mandamus, and in requiring levies of taxes they will not be so employed as to impose an unnecessarily oppressive burden at one time. In providing for the payment of a large judgment the whole amount may be apportioned and collected part at a time by successive levies." (Emphasis added.) Phelps v. Lodge, supra, Syllabus ¶3.

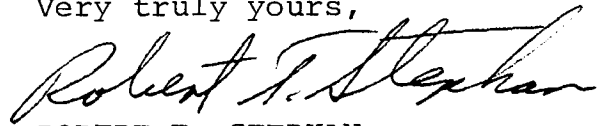
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Similarly, a recognized authority on the law of municipal corporations has noted the discretion which a court may exercise in compelling a municipal corporation to exercise its taxing power to pay judgments against it, to wit:

"The court may exercise a reasonable discretion in determining whether the amount of a judgment shall be raised by a single tax or by two or more levies spread over a reasonable number of years." McQuillin, Mun. Corp. (3rd Ed.) §51.46.

In accordance with the above quoted authorities, it is our opinion that the maximum tax levy which the city of Buffalo may be compelled to certify, in any one year, to satisfy a judgment, is limited to an amount which a court determines to be reasonable and not oppressive.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm