



STATE OF KANSAS

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April 4, 1983

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ATTORNEY GENERAL OPINION NO. 83- 45

Jack Cramer, Chairman
Johnson County Extension Council
1205 East Santa Fe
Olathe, Kansas 66061

Re: Agriculture -- County Extension Councils; Boards
and Agents -- Budgets; Procedure for Approval

Synopsis: Participation by a board of county commissioners
in the preparation of the county extension council's
budget pursuant to K.S.A. 2-610 requires the exercise
of the board's judgment and discretion. Therefore,
this function is in the nature of a public trust
and not delegable to an agent or employee of
the board of county commissioners.

Unless agreement can be reached by consensus,
a vote must be taken by the individuals specified
in K.S.A. 2-610 to approve an extension council's
budget, and under this statute each county
commissioner has one vote in the extension
council's budget approval process. Cited herein:
K.S.A. 2-610.

* * *

Dear Mr. Cramer:

You have requested the opinion of this office regarding issues
relative to preparation and approval of the Johnson County
Cooperative Extension service budget. Specifically, you
inquire as follows:

"1) In reference to meeting and preparing the budget, the County Commissioners have delegated the responsibilities to their financial personnel to meet with the Executive Board and the Director of Extension's representative. Does the law require the County Commissioners to meet with the Executive Board and the Director's representative or may this responsibility be delegated?

"2) Does the law provide for a vote to be taken in the adoption of the budget?

"3) If the law provides for a vote to approve the budget, does this mean that the County Commissioners have one vote, the Director's representative have one vote, and the Chairman of the Executive Board have one vote, or does each County Commissioner have a vote, the Director's representative have one vote, and the Chairman of the Executive Board have one vote?"

K.S.A. 2-610 provides as follows:

"On or before the thirteenth day of June each year, the executive board of the county extension council shall file with the county commissioners in the office of the county clerk:

"(a) A list of current members of the county extension council and its executive board: (b) a certification of election of officers as provided in subsection (c) of K.S.A. 2-611: (c) a certificate by the director of extension of Kansas state university of agriculture and applied science that the county extension council is properly functioning and entitled to receive the appropriations provided by law; and (d) a budget prepared in cooperation with the board of county commissioners and the director of extension of Kansas state university of agriculture and applied science for the ensuing calendar year. The budget shall clearly show all receipts from all sources. After the approval of such budget by (1) the board of county commissioners, (2) the director of extension of Kansas state university of agriculture and applied science or the director's

duly authorized representative, and (3) the chairperson of the executive board of the county extension council, acting as a body, the board of county commissioners shall then make an appropriation and certify to the county clerk the amount of tax necessary to be levied on all tangible taxable property of the county sufficient to provide a program of county extension work and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county, which levy shall not exceed the limitation prescribed by K.S.A. 1982 Supp. 79-1947, and amendments thereto."

Regarding your first inquiry, it is a well-settled proposition of law that

"the right of a county board to delegate its authority depends on the nature of the duty to be performed. Powers involving the exercise of judgment and discretion are in the nature of public trusts and cannot be delegated to a committee or agent. Duties which are purely ministerial and executive and do not involve the exercise of discretion may be delegated by the board to a committee or to an agent, an employee, or a servant." (Footnotes omitted.) 20 C.J.S. Counties §89.

In Kansas Milling Co. v. Ryan, 152 Kan. 137 (1940), the Kansas Supreme Court cited Martin, Governor v. Ingham, 38 Kan. 641 (1888), for the proposition that

"[a] ministerial act is one which a public officer or agent is required to perform on a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed." 152 Kan. at 140. (Emphasis added.)

See also: County of Los Angeles v. Nesvis, 41 Cal. Rpts. 918 (1965), Bowley v. City of Omaha, 149 N.W. 2d 417 (Neb. 1967), Levine v. Perry, 49 S.E. 2d 821 (GA. 1948), and Cf. Kellett v. Fulton Co., 111 S.E. 2d 264 (Ga. 1959).

We think it to be axiomatic that the setting of budgets by local governmental bodies is a discretionary, rather than ministerial, function. Determination of the amount and purpose for each item of the budget involves the exercise of personal judgment, knowledge of the needs of the community in question and the setting of priorities in the expenditure of limited resources. Specifically, the preparation of the extension council's budget involves the exercise of judgment and discretion by those involved in the process. Moreover, the language of K.S.A. 2-610 evinces a legislative intent that boards of county commissioners be directly involved in the budget preparation process. Therefore, such responsibility is in the nature of a public trust and not amenable to delegation.

Secondly, you inquire whether a vote is required in order to adopt the extension council's budget. K.S.A. 2-610 is silent as to the specific method by which approval of the budget is to occur, except that the statute requires the participants to act "as a body." In order for the individual participants to reach a single consensus and "act as a body," they must express their individual views in the form of a vote approving some particular course of action.

Your third inquiry concerns whether the budget approval method specified in K.S.A. 2-610 allows the members of the board of county commissioners to each have a vote or, alternatively, only one vote which would represent the entire board of county commissioners. K.S.A. 2-610 requires that the extension council's budget be approved by

"(1) the board of county commissioners, (2) the director of extension of Kansas State University of agriculture and applied science or the director's duly authorized representative, and (3) the chairperson of the executive board of the county extension council, acting as a body" (Emphasis added.)

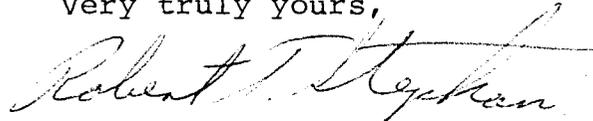
We believe that the phrase "acting as a body" contemplates all individuals specified in the above-quoted portion of K.S.A. 2-610 will meet and consider the extension council's budgetary requirements and vote as individual members comprising the approving body. Therefore, in direct response to your inquiry, we believe each county commissioner has one vote in the extension council's budget approval process.

In conclusion, the participation of a board of county commissioners in the preparation of the county extension council's

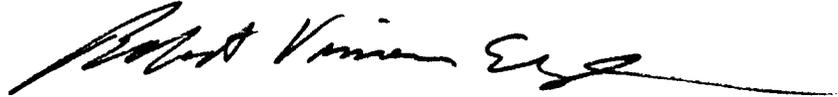
Jack Cramer
Page Five

budget pursuant to K.S.A. 2-610 requires the exercise of the board's judgment and discretion. Therefore, this function is in the nature of a public trust and not delegable to an agent or employee of the board of county commissioners. Further, unless agreement can be reached by consensus, a vote must be taken by the individuals specified in K.S.A. 2-610 to approve an extension council's budget, and under this statute, each county commissioner has one vote in the extension council's budget approval process.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Robert Vinson Eye
Assistant Attorney General

RTS:BJS:RVE:hle