



STATE OF KANSAS

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May 20, 1983

ATTORNEY GENERAL OPINION NO. 83- 80

Lyndus A. Henry
Johnson County Counselor
8th Floor, Courthouse
Olathe, Kansas 66061

Re: Counties and County Officers--General Provisions--
Home Rule Powers; Limitation on Tax Levies

Synopsis: 1983 amendments to K.S.A. 1982 Supp. 19-101a(a) permit a county to exempt itself from a nonuniform tax levy statute and provide substitute and additional provisions therefor, so long as the county's charter resolution specifies that a portion of the proceeds of any property tax levied by the county will be used to pay the principal of, and interest upon, bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto. This amendment supersedes the conclusion reached in Attorney General Opinion No. 82-87. Cited herein: K.S.A. 12-1774, K.S.A. 1982 Supp. 19-101a, as amended by 1983 Senate Bill No. 302, §1, 79-1946, 79-1947.

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Dear Mr. Henry:

You seek an opinion on the authority of the Board of Johnson County Commissioners to "charter out" from the mill levy limitations prescribed in K.S.A. 1982 Supp. 79-1946 and 79-1947, in light of Attorney General Opinion No. 82-87.

Your inquiry prompted consideration of the language employed in K.S.A. 1982 Supp. 19-101a(a), eleventh, and the legislative history of the bill in which that language was added to 19-101a(a), i.e., 1979 Substitute for Senate Bill No. 454. Based upon this consideration and discussions with legislators, staff members of the Legislative Research Department and the Revisor of Statutes office, and others, we came to the conclusion that the language of this limitation provision was extremely ambiguous and did not accurately state the intent of the legislature for the inclusion of this limitation in 19-101a(a).

These facts prompted us to request a clarification of the provisions of this portion of K.S.A. 1982 Supp. 19-101a(a). The legislature responded to our request by amending this statute to provide, in relevant part:

"(a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

. . . .

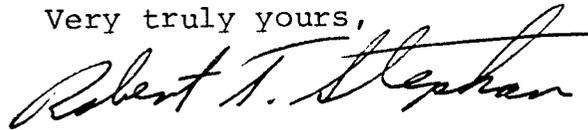
"(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto" (Emphasis added.)
1983 Senate Bill No. 302, §1.

The enactment of this new language makes clear the scope of the limitation on county home rule intended by the legislature. This language makes it clear that the legislature does not intend to prohibit counties from making any change whatsoever in the provisions of a nonuniform statute either authorizing or requiring the levy of a property tax. Instead, the intent is to prevent a county from exempting itself from a nonuniform tax levy statute, then imposing the same tax, but without providing that a portion of the tax will be used to pay principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and

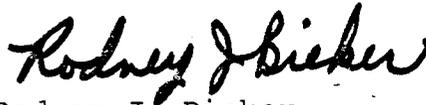
Lyndus A. Henry
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amendments thereto. Under this new language, the legislature has provided that a county may exempt itself from a nonuniform tax levy statute and provide substitute and additional provisions therefor, so long as the county's charter resolution specifies that a portion of the proceeds of any property tax levied by the county will be used to pay the principal of, and interest upon, bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto. Since both K.S.A. 1982 Supp. 79-1946 and 79-1947 obviously are not uniformly applicable to all counties, this amended language permits Johnson County (or any other county) to exempt itself from the provisions of those statutes and provide substitute and additional provisions on the subject addressed therein, as long as those substitute provisions provide that a portion of any tax proceeds derived from the levy of a property tax under the county law will be used to pay the principal of, and interest upon, bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm