



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 122

Edwin H. Bideau, III  
Neosho County Attorney  
123 West Main  
Chanute, Kansas 66720

Re: Townships and Township Officers -- Fire Protection --  
Tax Levies by Township; Fire Protection Contract  
with City

Synopsis: Pursuant to authority granted by K.S.A. 80-1501 et seq., a township may enter into a contract for fire protection with a city, and may levy a tax for the purpose of paying compensation to the city thereunder. Such a tax, as permitted by K.S.A. 1982 Supp. 80-1503(a), is not restricted to any specified mill levy, and to the extent that the levy is one mill or less, it is not subject to the aggregate tax levy limit of 2.5 mills found in K.S.A. 79-1962. While the tax may be more than one mill, such excess will be included in the aggregate limit figure. Cited herein: K.S.A. 68-518c, 79-1962, 79-5001, 80-1501, K.S.A. 1982 Supp. 80-1502, 80-1503, K.S.A. 80-1509, K.S.A. 1982 Supp. 80-1543, K.S.A. 80-1545, 80-2125.

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Dear Mr. Bideau:

As County Attorney for Neosho County, you request our opinion on a question concerning the ability of a township located in the county to levy a tax for fire protection. Specifically, you inform us that Tioga Township has previously entered into

contracts for fire protection with the City of Chanute, and has compensated the city through a one mill tax levy made under the provisions of K.S.A. 1982 Supp. 80-1503(a). Faced with a request by the city for additional funds, the township inquires whether it has the authority to impose an additional levy, either under K.S.A. 1982 Supp. 80-1503(a) or another statute.

In providing fire protection, a township is provided with a variety of statutory alternatives. It may create its own fire district under K.S.A. 80-1540 et seq., and either establish an independent fire fighting unit (K.S.A. 1982 Supp. 80-1543), or contract with another township, city or fire district for fire protection (K.S.A. 80-1545). Alternatively, a township may proceed under K.S.A. 80-1501 et seq., and act with a city to create a joint department (K.S.A. 80-1501) or contract with the city for protection (K.S.A. 1982 Supp. 80-1502).

In the present case, Tioga Township has taken the last of these alternative courses of action, and has contracted with the City of Chanute. A levy of one mill has been assessed against all tangible property located in the township, pursuant to K.S.A. 1983 Supp. 80-1503(a), which states:

"Townships are hereby authorized and empowered to levy a special tax on all tangible property in the township not including a corporate city in a sufficient amount to join with a municipality or township for the purposes as provided in K.S.A. 80-1501, or to pay the compensation agreed upon by contract under authority of K.S.A. 1982 Supp. 80-1502. Any such levy by a township to the extent of one mill shall be in addition to all other tax levies authorized or limited by law and shall not be subject to the aggregate tax levy limit prescribed by K.S.A. 79-1962 or acts amendatory thereof or supplemental thereto." (Emphasis added.)

Authority to impose the "special tax" was contained in the original act (L. 1931, ch. 113, §3), with the second sentence added in 1955 (L. 1955, ch. 438, §1) and amended to its present form two years later (L. 1957, ch. 523, §1). Unlike other statutes concerning townships, this subsection does

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not establish a definite limit for the levy [See, e.g. K.S.A. 68-518c (road maintenance), K.S.A. 80-1509 (fire protection benefit district), and K.S.A. 80-2125 (operation of hospital)], nor does it merely adopt by reference one of the limits enumerated at K.S.A. 79-1962. Rather, the township is authorized to levy the tax "in a sufficient amount" to pay its obligation under the contract with the city.

To the extent that the amount required can be raised by a levy of one mill or less, the statute provides that such levy not be included toward the "lid" imposed by K.S.A. 79-1962. That statute, after setting out the maximum rates for a number of mill levies, states:

"Such rates are not intended to, and shall not be construed to apply to any township not specifically authorized by law to make such levy, and the aggregate of all tax levies of any such township except for the payment of bonds and interest thereon, and levies for cemeteries or parks, the control and eradication of noxious weeds, and levies for roads and bridges is hereby limited to 2.50 mills on each dollar of assessed tangible valuation of such township, . . ." (Emphasis added.)

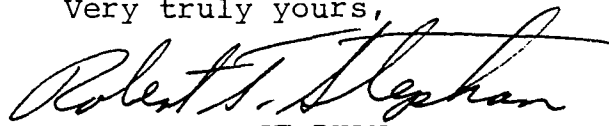
Therefore, while Tioga Township is legally allowed to set any rate it desires in order to provide the funds for the fire protection contract with Chanute, anything beyond the one mill limit counts toward the 2.5 mill lid. Given other funds which may also be included under this limit, as a practical matter the township may be forced to stay at or close to the one mill level.

It has been argued that the township is unable to increase its levy under K.S.A. 1982 Supp. 80-1503 for a variety of reasons. First, some would read the statute to establish a maximum limit of one mill on a levy for the purpose of compensating a city, an interpretation which we believe to be at odds with the plain wording of the statute, as noted above. Second, it has been said that the statute, while perhaps not limited by K.S.A. 79-1692, is still subject to the general tax lid law, K.S.A. 79-5001 et seq. However, in that K.S.A. 79-5001 defines "taxing subdivisions" subject to the act to mean only cities and counties, we do not see how the act would affect the operations of a township such as Tioga.

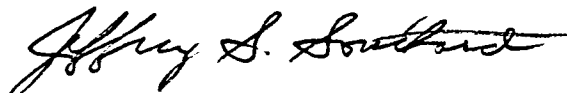
It is also our opinion that a township's authority to impose a levy in excess of 1 mill is entirely derived from K.S.A. 1982 Supp. 80-1503, and does not involve the use of the 1 mill limit placed on "fire protection, joint with cities or townships" by K.S.A. 79-1692. While this provision once may have referenced K.S.A. 80-1501 et seq., the 1955 and 1957 amendments to K.S.A. 1982 Supp. 80-1503 make it clear that the latter statute is entirely independent of the former, and that it is not necessary to "stack" the levy limit of the one onto the other. Further, K.S.A. 1982 Supp. 80-1502, under which Tioga Township has acted, does not involve joint action with the city, but instead is a contracting arrangement by which Chanute alone provides fire protection services.

In conclusion, pursuant to authority granted by K.S.A. 80-1501 et seq., a township may enter into a contract for fire protection with a city, and may levy a tax for the purpose of paying compensation to the city thereunder. Such a tax, as permitted by K.S.A. 1982 Supp. 80-1503(a), is not restricted to any specified mill levy, and to the extent that the levy is one mill or less, it is not subject to the aggregate tax levy limit of 2.5 mills found in K.S.A. 79-1662. While the tax may be more than one mill, such excess will be included in the aggregate limit figure.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Assistant Attorney General