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March 14, 1986

ATTORNEY GENERAL OPINION NO. 86- 36

The Honorable Burt DeBaun  
State Representative, Thirtieth District  
Room 171-W, State Capitol  
Topeka, Kansas 66612

Re: Taxation--Limitation on Tax Levies--Townships  
Cities and Municipalities--Libraries--Tax Levy

Synopsis: K.S.A. 12-1220 provides that the governing body of any municipality shall annually levy a tax for the maintenance of a library "in such sum as the library board shall determine within the limitations fixed by law." K.S.A. 1985 Supp. 79-1962 sets the limitation for a levy by any township for the purpose of establishing and maintaining a library at 2.50 mills. As long as the levy does not exceed the 2.50 mill limitation, a township board may not refuse to increase the mill levy for library purposes submitted by a township library board pursuant to K.S.A. 12-1220. Cited herein: K.S.A. 12-1218, 12-1219, 12-1220, K.S.A. 1985 Supp. 79-1962.

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Dear Representative DeBaun:

You request our opinion regarding the authority of a township board to block, a requested increase in the mill levy for establishing and maintaining a library pursuant to K.S.A. 12-1220 and K.S.A. 1985 Supp. 79-1962.

K.S.A. 12-1220 provides in pertinent part as follows:

"The governing body of any municipality may by resolution, and shall, upon presentation of a petition signed by ten percent (10%) of the qualified electors of such municipality . . . cause to be submitted to the voters of such municipality at the first local or general election thereafter, or if the petition so requires, at a special election called for that purpose, the question of the establishment and maintenance of a library by such municipality. If a majority of the votes cast at such election on such proposition shall be in the affirmative, the governing body shall forthwith establish such library and is hereby authorized to and shall annually levy a tax for the maintenance of such library in such sum as the library board shall determine within the limitations fixed by law 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. . . ." (Emphasis added.)

"Municipality" is defined at K.S.A. 12-1218(a) to include a township, with "governing body" defined in subsection (b) as "the township trustee, clerk and treasurer acting as the township board of a township." The library board is the board of directors of the library in question [K.S.A. 12-1218(f)] which is appointed by the township trustee with the approval of the township board. Finally, K.S.A. 12-1219 provides that "[a]ny library heretofore established and being maintained by a municipality shall be maintained in accordance with the provisions of this act . . . ." These sections clearly show that the provisions of K.S.A. 12-1215 et seq. apply to the instant situation.

This office has previously issued an opinion regarding whether the governing body of a municipality could reduce the amount of money requested by the library board for maintenance of the library. Attorney General Opinion No. 81-193 concluded as follows:

"The annual tax levy for the maintenance of a library established under these statutes is to be 'in such sum as the library board shall determine within the limitations fixed by law.' (Emphasis added.) Given this explicit statutory provision, we have no hesitancy in concluding that the amount of money to be raised through the imposition of a property tax to maintain a library established under the provisions of K.S.A. 12-1218 et seq., is to be determined by the board of directors of the library, not the governing body of the municipality. Although the sum requested cannot result in a mill levy in excess of that allowed by law, the governing body of the city may not reduce the amount requested by the library board." (Emphasis added.)

It is clear from this opinion and the language of K.S.A. 12-1220 that the amount of the mill levy is to be determined by the library board rather than by the governing board of the municipality, here the township board.

The only limitation placed on the authority of the library board to determine the mill levy is that the sum requested by the library board must remain "within the limitations fixed by law." K.S.A. 12-1220. K.S.A. 1985 Supp. 79-1962 places limitations upon the levy of taxes by townships. That statute provides a limit of 1.00 mill for the purposes of establishing and maintaining a free library and reading room. It continues, however, as follows:

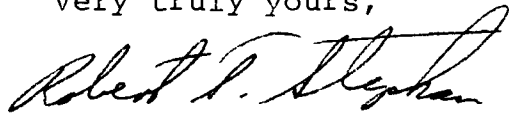
"The levy for establishing and maintaining a free library and reading room may be increased from 1.00 mill to not more than 2.50 mills. Before any township increases this levy the township board shall publish a notice of its intention to make such increase. . . ."

Thus, the levy may be increased from the 1.00 mill authorized in the first part of the statute to 2.50 mills if such increased is determined to be necessary.

It is the opinion of this office that such determination is properly made by the township library board pursuant to K.S.A. 12-1220. That statute gives the board authority to determine the amount necessary for maintenance of the library, within the limitations fixed by law. The upper limitation fixed by K.S.A. 1985 Supp. 79-1962 is 2.50 mills. As indicated in Attorney General Opinion No. 82-193, the governing board of the municipality has no authority to reduce the amount requested by the library board unless it is in excess of that permitted by law. Thus, the township board may not raise, lower or refuse to make the mill levy for library purposes authorized by K.S.A. 1985 Supp. 79-1962.

Further, the township board may not block the mill levy increase simply by refusing to publish a notice of its intention to make such increase. K.S.A. 1975 Supp. 79-1962 mandates the publishing of such notice; it is a ministerial duty which must be performed by the township board once a determination has been made to increase the levy by the library board.

Very truly yours,



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RTS:JSS:JLM:jm