



STATE OF KANSAS

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November 23, 1987

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ATTORNEY GENERAL OPINION NO. 87- 167

Duane F. Johnson
State Librarian
Kansas State Library
State Capitol, Third Floor
Topeka, Kansas 66612

Re: Taxation--Aggregate Tax Levy Limitations--Public
Library Levy

Synopsis: Public library levies are subject to the
limitations imposed by K.S.A. 1986 Supp. 79-5022
regardless whether the tax is levied for the
library by a taxing subdivision which is required
by law to do so. Cited herein: K.S.A. 1986 Supp.
79-5021; 79-5022; 79-5032.

* * *

Dear Mr. Johnson:

As State Librarian, you request our opinion regarding tax levy
limitations. Specifically, you inquire whether there is a
limitation, under the provisions of K.S.A. 79-5021 et
seq., on a public library levy which is levied for the
library by a city, township or county.

K.S.A. 1986 Supp. 79-5022 provides in part:

"In the year in which the valuations
established under the program of statewide
reappraisal are used as a basis for the
levy of taxes and in each year thereafter,
all existing statutory fund and aggregate

levy limitations on taxing subdivisions
are hereby suspended. (Emphasis added.)

"Taxing subdivision" is defined in K.S.A. 1986 Supp. 79-5021 as "every taxing district in the state of Kansas other than the state." Kansas statutes do not define the term "taxing district" though case law in other jurisdictions indicates that any entity which can mandatorily require another entity to make a levy to benefit the people and property within its territory is a taxing district. See Ebert v. Board of Education of School Dist. of City of Newport, 126 S.W.2d 1111, 1113 (Ky. 1939); Lee v. Board of Education of Bell County, 87 S.W.2d 961, 962, 963 (Ky. 1935); Archer v. City of Indianapolis, 122 N.E.2d 607, 610 (Ind. 1954). We therefore conclude that a public library which can mandatorily require a city, county or township to levy a tax for library purposes is a taxing district and thus a taxing subdivision for purposes of K.S.A. 1986 Supp. 79-5022. (In support of this conclusion is the fact that the definition of the term "taxing subdivision" in K.S.A. 1986 Supp. 79-5021 is much broader than the definition given that term in prior tax lid statutes. See L. 1970, ch. 402, §1; K.S.A. 79-5001.)

K.S.A. 1986 Supp. 79-5022 provides for the suspension of all existing statutory fund and aggregate levy limitations on taxing subdivisions. With specified exceptions, taxing subdivisions are prohibited from certifying to the county clerk any tax levies upon tangible property which in the aggregate will produce an amount in excess of the amount levied by such taxing subdivision in the next preceding year. Though generally libraries do not actually levy taxes, we believe this limitation operates to limit levies certified by the library to the taxing subdivision to the amount levied the preceding year.

Pursuant to K.S.A. 1986 Supp. 79-5032:

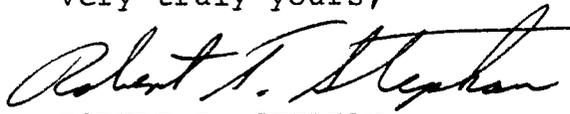
"Whenever any taxing subdivision of this state shall be required by law to levy taxes for the financing of the budget of any political or governmental subdivision of this state which is not authorized by law to levy taxes on its own behalf, and the governing body of such taxing subdivision is not authorized or empowered to modify or reduce the amount of taxes levied therefor, the tax levies of such political or governmental subdivision

shall not be included in or considered in computing the aggregate limitations upon the property tax levies of the taxing subdivisions levying taxes for such political or governmental subdivision."

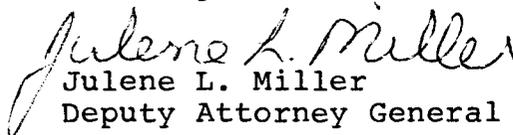
Under this provision, any taxing subdivision which is required by law to levy taxes for a library and is not empowered to modify or reduce the amount of those taxes shall not include or consider those taxes in computing aggregate limitations. This provision does not, however, exclude political or governmental subdivisions for which taxes are levied by another taxing subdivision from the provisions of K.S.A. 1986 Supp. 79-5022. (Compare K.S.A. 79-5015). The library's aggregate levy will be subject to the limitations, though its levy will not increase the aggregate of the taxing subdivision which actually levies the tax.

In conclusion, public library levies are subject to the limitations imposed by K.S.A. 1986 Supp. 79-5022 regardless whether the tax is levied for the library by a taxing subdivision which is required by law to do so.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General