



STATE OF KANSAS

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May 4, 1988

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ATTORNEY GENERAL OPINION NO. 88- 63

Mr. Curtis E. Watkins
Kingman County Attorney
105 Avenue A East
Kingman, Kansas 67068

Re: Counties and County Officers -- General Provisions
-- Home Rule Powers; Charter Resolutions; Tax Levy

Counties and County Officers -- County
Commissioners -- Ambulance Service

Synopsis: Pursuant to K.S.A. 1987 Supp. 19-101a(a)(11) and
19-101b, Kingman county may adopt a charter
resolution to avoid applicability of all or part of
K.S.A. 19-262. Cited herein: K.S.A. 10-1101 et
seq., K.S.A. 1987 Supp. 19-101a, 19-101b,
K.S.A. 19-262, 79-2925 et seq.

* * *

Dear Mr. Watkins:

As Kingman County Attorney you request our opinion on
whether K.S.A. 19-101a(a)(4) prohibits Kingman County from
levying a tax that exceeds the one mill authorized pursuant to
K.S.A. 19-262. We understand that this question results from
an increase in the amount charged for ambulance service for
the upcoming year, making the funds raised by a one mill levy
insufficient.

The limitation set forth under K.S.A. 1987 Supp. 19-101a(4)
mandates the applicability of all acts of the legislature
prescribing limits of indebtedness. These limitations insure

that counties carefully make and follow their budgets, thereby preventing deficits. See K.S.A. 10-1101 et seq. (cash-basis law), K.S.A. 79-2925 et seq. (budgetary laws). See also Shouse v. Cherokee County Commissioners, 155 Kan. 407 (1940). An increase in a tax levy to pay for an expected increase in expenditures helps to prevent deficits and therefore K.S.A. 10-101a(4) would not apply to a proposed levy increase.

K.S.A. 1987 Supp. 19-101a sets forth the extent of home rule powers enjoyed by counties. One important limitation contained therein states:

"(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties."

K.S.A. 1987 Supp. 19-101a(a)(11) allows a county to exempt itself from a non-uniform statute authorizing or requiring the levy of taxes, and provide substitute and additional provisions therefor, so long as the county's charter resolution specifies that a portion of the proceeds of such levy is to be used to pay a portion of the principal and interest on any bonds issued by cities under the authority of K.S.A. 12-1774 and amendments thereto. (See Attorney General Opinion No. 83-80). Thus, if K.S.A. 19-262 is non-uniform, the tax levy limitation contained therein may be changed by charter resolution.

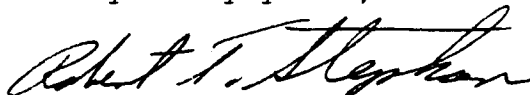
K.S.A. 19-262 provides in part:

"The board of county commissioners is authorized by resolution to levy a tax for ambulance service purposes and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 1979 Supp. 12-1774, and amendments thereto, by cities located in the county upon all taxable tangible property in such county not in excess of one mill on the dollar of assessed valuation on such property, except that in any county having a population of more than twenty-four thousand (24,000) and less than twenty-nine thousand (29,000) which has an assessed taxable tangible valuation of more than ninety million dollars (\$90,000,000) and less than one hundred

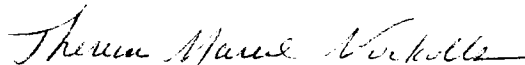
thirty million dollars (\$130,000,000) and in which there are located two cities of the second class, the board of county commissioners may fix the rate of such levy at not to exceed two mills."

Pursuant to K.S.A. 19-262, the allowable tax levy mill rate varies depending upon the population, the assessed property valuation and the number of second class cities. This exception makes K.S.A. 19-262 non-uniform. Thus, pursuant to K.S.A. 1987 Supp. 19-101a(a)(11) and 19-101b, Kingman county may adopt a charter resolution wherein it exempts itself from applicability of part of all of K.S.A. 19-262.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas