



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 88-136

Mr. Douglas F. Martin
Shawnee County Counselor
Courthouse, Room 203
Topeka, Kansas 66603-3922

Re: Agriculture -- State and Other Agricultural
Societies and Fairs; Shawnee County Fair
Association -- Tax Levy; Protest Petition and
Election

Taxation -- Limitation on Tax Levies -- Limit on
Levy for General Expenses

Synopsis: The Shawnee county board of county commissioners
may fund the Shawnee county fair association
pursuant to K.S.A. 1987 Supp. 2-162 or K.S.A.
79-1946. The correct procedure is dependent upon
the statutory authority employed. K.S.A. 1987
Supp. 2-162 procedures are not required unless a
tax levy is made pursuant to that authority. Cited
herein: Kan. Const., Art. 11, §§ 1 and 5;
K.S.A. 2-127, 2-128, 2-129; K.S.A. 2-130; K.S.A.
1987 Supp. 2-158; 2-162; K.S.A. 19-212; 79-1946 and
79-2934.

* * *

Dear Mr. Martin:

As Shawnee County Counselor you request our opinion regarding
the legality of using Shawnee county general fund moneys for
the purpose of supporting the Shawnee county fair
association. You specifically ask whether it is correct to
fund the reasonable and ordinary operating expenses of the

Shawnee county fair association from the Shawnee county general fund and whether levying for such expenditures first requires a resolution pursuant to K.S.A. 1987 Supp. 2-162.

"Local taxation involves two distinct acts of legislation, that by the state giving power to tax, and that by the local legislative authority levying the tax under the power given." 84 C.J.S., Taxation, § 352 (1954). Article 11, § 1 of the Kansas Constitution allows the state legislature to authorize tax levies. Power in the local authorities to levy a tax has been expressly conferred by the legislature pursuant to K.S.A. 1987 Supp. 2-162 and K.S.A. 79-1946. Thus, Shawnee county has the authority to levy a tax pursuant to the terms of those statutes. (Shawnee county also has authority to levy under other statutes not relevant to this discussion.)

K.S.A. 1987 Supp. 2-162 states in pertinent part:

"The board of county commissioners of Shawnee county may levy an annual tax of not to exceed 2/10 of one mill upon all the taxable tangible property within the county for the purpose of funding the budget of the Shawnee county fair association. . . . No levy shall be made for such purposes until a resolution authorizing the making of such levy has been adopted by the board of county commissioners and published for two consecutive issues in the official county paper. Whereupon, such levies may be made unless a petition in opposition thereto signed by not less than 5% of the qualified electors of the county. . . ."
(Emphasis added).

K.S.A. 79-1946 states:

"The board of county commissioners of each of the several counties is hereby authorized to fix a rate of levy annually to meet and defray the current general expenses of the county 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 any city located in such county, subject to limitations described according to the

assessed tangible valuation or a total population as follows:" (Emphasis added).

In construing statutes, courts assume that the legislature did not intend to enact useless or meaningless legislation. City of Olathe v. Board of Zoning Appeals, 10 Kan. App. 29, 218 (1985). Enactment of K.S.A. 1987 Supp. 2-158 et seq. gave Shawnee county special authority regarding its county fair association. This enactment does not contain limiting language dictating that henceforth this act shall be the sole source of authority concerning governmental interaction with the Shawnee county fair association. Rather, it appears to create additional authority by which to organize and fund this particular fair association. The choice to use other authority does not render this legislation useless; it remains a viable alternative available to Shawnee county. Local governments often have at their disposal alternate funding mechanisms by which to raise revenue. Again, K.S.A. 1987 Supp. 2-162 does not contain language specifically establishing this levy as the sole source for county funding of the Shawnee county fair. Unless contrary to law, where the legislature has provided more than one levy authority for a particular purpose or fund, the taxing entity may choose the authority under which to levy.

Shawnee county proposes to fund the Shawnee county fair association pursuant to the levy authorized by K.S.A. 79-1946. Article 11, § 5, of the Kansas Constitution limits the disposition of funds resulting from a tax levy:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied." (Emphasis added).

K.S.A. 79-2934 further limits the expenditure of moneys raised pursuant to a tax levy: "No part of any fund shall be diverted to any other fund. . . ." Where money is raised by a levy of taxes for a specific purpose, it may not be diverted to or spent for another purpose. See School District v. Clark County Comm'rs, 155 Kan. 636, 639 (1942); State ex rel. Scheider v. City of Topeka, 227 Kan. 115, 120 (1980). If a tax is levied, expenditures from the fund thus created must comply with the provisions of the constitution and applicable statutes. Barten v. Turkey Creek Watershed District No. 32, 200 Kan. 489, 506 (1968). See also 85

C.J.S., Taxation, § 1057 (1954). The issue thus becomes whether moneys raised pursuant to authority granted by K.S.A. 79-1496 may be properly expended for the purpose of funding the Shawnee county fair association.

Pursuant to K.S.A. 79-1946, counties may fix an annual rate of levy "to meet and defray the current general expenses of the county. . . ." Previous Attorney General opinions discuss county use of general funds. See e.g. 88-65, 85-181, 83-80, 81-168, 80-242, 79-257 and 76-277. These opinions evidence that the phrase "general fund" does not have a very definite or widely recognized meaning.

"Current expenses" is defined as "[the] ordinary, regular, recurring, and continuing expenditures for the maintenance of property, the carrying on of a business, an office, municipal government, etc." Blacks Law Dictionary 345 (5th ed. 1979). Kansas cases discussing current expense include: Smith v. Haney, 73 Kan. 506, 509 (1906) (Building a county courthouse is not a current expense); State ex rel. Faulkner v. Board of Com'rs of Cowley County, 86 Kan. 201, 212 (1911) (tax for a county road is not a current expense); State ex rel. v. Thomas County Comm'rs, 122 Kan. 850, 854 (1927) (Paying bounty on jack rabbits from general fund permissible); State ex rel. Jackson v. Board of County Comm'rs, 77 Kan. 527 (1908) (erecting courthouse allowed out of surplus general funds); See also Atchison, T & S.F. Ry. Co. v. City of Topeka, 95 Kan. 747 (1915). Cases from other jurisdictions discuss the meaning of current expense: Aaronson v. Smiley, 285 P. 59, 62 (Okl. 1929) (a library fund tax is a current expense); Sessler v. Portlow, 27 S.E. 2d 829, 832, (W.Va. 1943) (overdraft from county fund moneys spent in prior year is not a current expense); Taylor v. Mayo, 110 U.S. 330, 4 S.Ct. 147, 28 L.Ed. 163 (1883) (current expenses are ordinary expenses as the term is used in a contract); Central of Georgia Ry. Co. v. Wright, 139 S.E. 890, (Ga. 1927) (levy of tax by county for support of poor cannot be classified as current expenses which are absolutely necessary in carrying on government); and Mitchell v. City of St. Paul, 130 N.W. 66, 67 (Minn. 1911) (advertising the city is not a current expense). These and other cases do not provide a clear general rule as to what represents a "current expense" of the county. Thus, each situation must be determined based on its own particular facts.

K.S.A. 19-212 allows the board of county commissioners to determine county business. The Shawnee county fair

association is not an agency of Shawnee county. See Attorney General Opinion No. 88-48. However, it is an entity given statutory recognition and allowed to use county tax moneys. K.S.A. 1987 Supp. 2-158 et seq.

Attorney General Opinion No. 79-257 recognizes that general funds can be properly expended to provide a public service to county residents of the kind that the county could provide in the absence of the funded organization. The tendency of authority in more recent years has been to allow local authorities a wider range in undertaking to promote the public welfare or enjoyment. 56 Am. Jur. 2d, Municipal Corporations, § 202 (1971). It can be fairly argued by the county officials given the authority to make such decisions that this fair is a public service and that it represents a regular continuing expense of Shawnee county.

K.S.A. 2-130 permits expenditure from the general fund in order to support county fair associations:

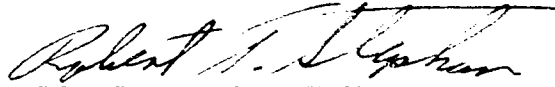
"In any county where the county commissioners prefer to pay the county aid provided herein from the general fund, no special levy shall be required."

Prior to enactment of K.S.A. 1987 Supp. 2-158 et seq., Shawnee county used general fund moneys pursuant to this statute to support the fair. We note that K.S.A. 2-130 allows expenditures to be made from the general fund as authorized by K.S.A. 2-129, which requires compliance with K.S.A. 2-127 and 2-128. While we may question the discretionary choice not to use the special legislation enacted for the benefit of Shawnee county, we find no statutory language or legislative history prohibiting such a decision. It is therefore our opinion that the Shawnee county board of county commissioners may levy a tax pursuant to either K.S.A. 1987 Supp. 2-162 or K.S.A. 79-1946 in order to fund the Shawnee county fair association.

The remaining question concerns the correct tax levy procedures. K.S.A. 1987 Supp. 2-162 provides for publication of the resolution authorizing a levy and allows a protest petition to be filed. K.S.A. 79-1946 allows a levy without publication or opportunity to protest unless there is a proposed increase in the mill levy. You question whether K.S.A. 1987 Supp. 2-162 procedures must be followed when funding the Shawnee county fair association pursuant to a K.S.A. 79-1946 levy.

Legislative history indicates that K.S.A. 1987 Supp. 2-158 et seq. was enacted to allow greater flexibility in the administration and funding of the Shawnee county fair association. Neither legislative history nor K.S.A. 1987 Supp. 2-158 et seq. indicate that procedures set forth under K.S.A. 1987 Supp. 2-162 are exclusive or mandatory. It is therefore our opinion that the correct levy procedure is dependent upon the statutory authority employed. K.S.A. 1987 Supp. 2-162 procedures are not required unless a tax levy is being made pursuant to that statute.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



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