



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 59

Frank E. White, Jr.
Chautauqua County Attorney
121 N. Chautauqua
P.O. Box 6
Sedan, Kansas 67361

Re: Taxation--Aggregate Tax Levy Limitations--New
Taxing Districts; Start-up Budget

Synopsis: A taxing subdivision which did not levy property taxes in 1988 may not levy in 1989 absent an election pursuant to K.S.A. 1988 Supp. 79-5029 or authorization from the state board of tax appeals pursuant to K.S.A. 1988 Supp. 79-5030. Cited herein: K.S.A. 19-3601; 19-3610; K.S.A. 1988 Supp. 79-5021; 79-5022; 79-5027; 79-5028; 79-5029; 79-5030.

* * *

Dear Mr. White:

You have requested our opinion regarding the ability of a newly created fire district to levy property taxes in the year of reappraisal. The fire district in question was created pursuant to K.S.A. 19-3601 et seq. It was anticipated that 2 mills would be levied for the fire district as authorized by K.S.A. 19-3610, the initial levy to be in 1989 for the 1990 budget. You question whether K.S.A. 1988 Supp. 79-5022 would prohibit this levy since no such levy was made in 1988 for the 1989 budget.

K.S.A. 1988 Supp. 79-5022 provides as follows:

"(a) In the reappraisal year and in each year thereafter, all existing statutory fund mill levy rate and aggregate levy limitations on taxing subdivisions are hereby suspended.

"(b) Except as otherwise provided in K.S.A. 1987 Supp. 79-5024 to 79-5027, inclusive, and amendments thereto, in the reappraisal year, no taxing subdivision shall certify to the county clerk of the county any tax levies upon tangible property, excluding levies specified in K.S.A. 1987 Supp. 79-5028, and amendments thereto, which in the aggregate will produce an amount in excess of the amount which was levied by such taxing subdivision in the prior year.

"(c) In each year after the reappraisal year, the fund levy limits shall be increased by multiplying the dollar amount produced by the levy limit for the year prior to the reappraisal year by the quotient determined by dividing the assessed tangible valuation amount of the current year by the assessed tangible valuation amount of the reappraisal year.

"(d) Except for adjustments described in K.S.A. 1987 Supp. 79-5024 to 79-5027, inclusive, and amendments thereto, in each year after the reappraisal year the aggregate levy limit for cities and counties shall be the authorized aggregate levy limit in effect for the year prior to the reappraisal year. All tax levies existing or authorized hereafter by law, except those levies specifically exempt pursuant to K.S.A. 1987 Supp. 79-5028, and amendments thereto, or levy authorizations exempted from the provisions of K.S.A. 1987 Supp. 79-5021 to 79-5027, inclusive, and amendments thereto, or levy authorizations exempted from the provisions of K.S.A. 79-5001 to 79-5016, inclusive, as existing prior to January 1,

1989, shall be subject to the aggregate limit prescribed hereunder."

As you have noted, subsection (b) prohibits all taxing subdivisions from certifying tax levies in excess of the amount levied in the year prior to the reappraisal year. While arguably this provision was not intended to apply to taxing subdivisions not in existence in the year prior to the reappraisal year, we find no authority to support this argument. The legislature specifically contemplated transferal of government functions or services, K.S.A. 1988 Supp. 79-5027, and the possibility of new expenditures being mandated by state or federal law, K.S.A. 1988 Supp. 79-5028(j). No such exemption or ability to increase the aggregate limit was enacted for taxing subdivisions to voluntarily provide new services or perform new functions. Further, since all statutory fund limitations have been suspended in the year of reappraisal, K.S.A. 1988 Supp. 79-5022(a), a taxing subdivision not subject to the aggregate limitation of K.S.A. 1988 Supp. 79-5022(b) would arguably have no limit in the year of reappraisal. This would be contrary to the intent of the aggregate tax levy limitation which is to prevent increases in taxes due to increased valuations. See Attorney General Opinion No. 89-20; Minutes of the House Committee on Taxation, March 25, 1988.

There are means of exempting certain funds from the aggregate tax levy limitation, suspending the applicability of the aggregate limitation to a particular taxing subdivision, or increasing the tax lid for specified purposes. K.S.A. 1988 Supp. 79-5029 authorizes taxing subdivisions to suspend the aggregate limitation in whole or in part "whenever a majority of the electors of such taxing subdivision voting on a proposition to suspend such limitation at an election provided for herein shall vote in favor thereof." Alternatively, if the cost of an election to approve the increase would be disproportionate to the amount of increase sought, the taxing subdivision may, in emergency situations, apply to the state board of tax appeals pursuant to K.S.A. 1988 Supp. 79-5030 for authority to levy taxes in excess of the aggregate amount permitted by K.S.A. 1988 Supp. 79-5021 et seq. The fire district in question, by pursuing one of these alternatives, may indeed be able to levy taxes in 1989.

It should be noted that in the year after reappraisal, the fund levy limits will revert back to the dollar amounts authorized to be levied (as opposed to actually levied) in the year prior to reappraisal (using pre-reappraisal values)

as increased by the formula set forth in K.S.A. 1988 Supp. 79-5022(c). The aggregate limitations, except in specified instances, will be those which were in effect in the year prior to reappraisal. Thus, a levy for the fire district will not be precluded by K.S.A. 1988 Supp. 79-5021 et seq. beginning in the year 1990 for budget year 1991.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm