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ATTORNEY GENERAL OPINION NO. 90- 11

Mr. Fred J. Logan, Jr., Chairman
Johnson County Library Board
Windsor Building
3500 W. 75th St., Suite 302
Prairie Village, Kansas 66208

Re: Taxation--Aggregate Tax Levy Limitations--
Procedure for Exemption from Aggregate Levy Limit

Synopsis: The board of directors of the Johnson county library, as the governing body of the library, may elect to exempt the library from the tax lid law (K.S.A. 79-5022 et seq.) pursuant to K.S.A. 79-5036(c). The provisions of K.S.A. 19-101b which apply to a five or seven member board of county commissioners also apply to the seven member board of directors of the Johnson county library and, upon successfully exempting out of K.S.A. 79-5021 et seq., the library will once again be subject to the levy limitations in existence prior to the reappraisal year. Cited herein: K.S.A. 12-1220; K.S.A. 1989 Supp. 12-1222; 12-1223; 12-1225a; 12-1225b; 12-1225c; 12-1226; K.S.A. 12-1669; 79-5022; 79-5036.

* * *

Dear Mr. Logan:

As counsel for the board of directors of the Johnson county library, you request our opinion regarding the board's authority to exempt the Johnson county library from the

provisions of K.S.A. 79-5021 et seq. Your questions are as follows:

"1. May the library board of Johnson County, as the governing board of the Johnson County Library, exempt the Johnson County Library from the provisions of K.S.A. 1988 Supp. 79-5021 to 79-5033, inclusive, pursuant to the terms of K.S.A. 1988 Supp. 79-5036(c)?

"2. If the 7-member library board of the Johnson County Library does have the authority to exempt the Johnson County Library from the terms of the aggregate tax levy limit law, must the vote be 2/3 in favor 'unless the board determines prior to passage it is to be submitted to a referendum'?

"3. Upon the proper exemption of the Johnson County Library from the aggregate tax levy limit law, would the mill levy for the Johnson County Library return to the 3.0 mill levy limitation established by a charter resolution adopted by the Board of County Commissioners of Johnson County on May 3, 1984? A copy of that charter resolution is attached to this opinion request."

K.S.A. 79-5036(c) states:

"(c) The governing body of any [taxing subdivision other than a city or county] subject to the provisions of K.S.A. 1985 Supp. 79-5021 to 79-5033, inclusive, in the year next following the year in which the valuations established under the program of statewide reappraisal are used as a basis for the levy of taxes or in any year thereafter, may elect, in the manner prescribed by and subject to the limitations of K.S.A. 19-101b, and amendments thereto, insofar as such section may be made applicable, to exempt such subdivision from the provisions of K.S.A. 1985 Supp. 79-5021 to 79-5033, inclusive."

In Attorney General Opinion No. 87-167 we concluded that a public library which can mandatorily require a city, county or township to levy a tax for library purposes is a taxing subdivision for purposes of K.S.A. 79-5022. It follows that such a public library would also be a taxing subdivision for purposes of K.S.A. 79-5036(c).

The Johnson county library was established pursuant to K.S.A. 12-1218 et seq. K.S.A. 12-1220 provides in part:

"the governing body [of the county] . . . 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. . . ." (Emphasis added.)

The emphasized language was the basis for our conclusion in Attorney General Opinion No. 82-193 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." Thus, it appears that libraries established under K.S.A. 12-1218 et seq. are taxing subdivisions for purposes of exempting out from under the tax lid law pursuant to K.S.A. 79-5036(c), and that the library board, as the governing body of the library, has the authority to take such action. See also Attorney General Opinions No. 89-129, 89-130.

We note that the Johnson county library is governed by some statutory provisions not applicable to other libraries established under K.S.A. 12-1218 et seq. See K.S.A. 1989 Supp. 12-1222; 12-1223(b); 12-1225a; 12-1225b; 12-1225c; 12-1226(b). The budget of the Johnson county library board is to be approved by the board of county commissioners (K.S.A. 1989 Supp. 12-1225b), and the chairperson of the board of county commissioners, along with the county clerk, is to sign off on library board expenditures. It might be argued that these provisions restrict the Johnson county library board's ability to direct the amount of taxes to be raised by county levy for library purposes. However, as you have indicated, while the county commission approves the budget, the final adoption of the budget and the authorizing of any tax levy are powers which remain with the library board as the governing body of the library. See K.S.A. 12-1669.

Your second question, regarding the vote necessary to take action under K.S.A. 79-5036(c), has been addressed previously by this office in Attorney General Opinion No. 89-130 with regard to library districts established pursuant to K.S.A. 12-1236 et seq.:

"Pursuant to K.S.A. 12-1238 the board of directors of a library district is to be composed of seven members. We therefore believe that the provision of K.S.A. 19-101b applying to counties with five or seven commissioners would apply, requiring a two-thirds vote of all directors 'unless the board [of directors] determines prior to passage it is to be submitted to a referendum . . . in which event such resolution shall require a majority vote of the board.'"

We believe the same reasoning applies to the Johnson county library board which also has seven members. K.S.A. 1989 Supp. 12-1222.

Your final question was also addressed in Attorney General Opinion No. 89-130:

"A successful action to exempt pursuant to K.S.A. 1988 Supp. 79-5036 exempts the taxing subdivision from the provisions of K.S.A. 1988 Supp. 79-5021 to 79-5033, inclusive. K.S.A. 1988 Supp. 79-5022 is the statute which suspends all existing statutory fund mill levy rates and aggregate levy limitations on taxing subdivisions. Once the taxing subdivision exempts itself from K.S.A. 1988 Supp. 79-5022, the suspension is lifted and the limits in existence prior to the year of reappraisal are back in force."

In conclusion, the board of directors of the Johnson county library, as the governing body of the library, may elect to exempt the library from the tax lid law (K.S.A. 79-502 et seq.) pursuant to K.S.A. 79-5036(c). The provisions of K.S.A. 19-101b which apply to a five or seven member board of county commissioners also apply to the seven member board of directors of the Johnson county library and, upon successfully exempting out of K.S.A. 79-5021 et seq., the library

will once again be subject to the levy limitations in
existence prior to the reappraisal year.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm