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April 10, 1991

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ATTORNEY GENERAL OPINION NO. 91- 37

The Honorable Don M. Rezac
State Representative, Sixty-First District
State Capitol, Room 278-W
Topeka, Kansas 66612

Re: Schools--School District Equalization and Related Acts; School District Equalization--Tax Levy for Operating Expenses; Disposition of Proceeds; 1991 Senate Bill No. 26, Section 8; Constitutionality

Synopsis: The tax proposed in 1991 Senate Bill No. 26, section 8, is to be levied for the purpose of financing a portion of the costs of maintaining operations of a unified school district and for the purpose of paying a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 1990 Supp. 12-1774. Diverting funds raised through the tax levy to the state board of education for deposit in the state general fund so that such funds may be appropriated by the legislature for allocation and distribution to school districts as general state aid under the provisions of the school district equalization act violates article 11, section 5, of the Kansas constitution. Cited herein: K.S.A. 1990 Supp. 12-1774; 72-7056; Kan. Cont., art. 11, § 5.

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Dear Representative Rezac:

As representative for the sixty-first district, you request our opinion regarding the constitutionality of an amendment to

K.S.A. 1990 Supp. 72-7056 contained in 1991 Senate Bill No. 26, section 8. The amendment states in part:

"(a) The board of any every district ~~may~~ shall levy an ad valorem tax on the taxable tangible property of the district in each school year for the purpose of financing ~~that a portion of the district's~~ legally adopted budget of operating expenses which is not financed from any other source provided by law costs of maintaining district operations and for the purpose of paying a portion of the principal and interest on bonds issued by cities under ~~the~~ authority of K.S.A. 12-1774, and amendments thereto, for the financing of redevelopment projects upon property located within the ~~school~~ district."

The amendment then requires that a tax of not less than 30 mills be levied. Those funds raised through the tax levy which are necessary to finance the district's legally adopted budget of operating expenses are to be deposited in the general fund of the district. Any funds not deposited in the district's general fund or levied for the purpose of paying a portion of the principal and interest on bonds issued pursuant to K.S.A. 1990 Supp. 12-1774 are to be remitted to the state board of education to be used for appropriations by the legislature for allocation and distribution to districts as general state aid under the provisions of the school district equalization act.

The entire matter of taxation is legislative and does not exist apart from statute. Masson, Inc. v. County Assessor of Wyandotte County, 222 Kan. 581, 584 (1977); In re Appeal of News Publishing Co., 12 Kan.App.2d 328, 332 (1987). The legislature is empowered to provide the means and agencies for carrying out its responsibilities in matters of taxation. Joseph v. McNeive, 215 Kan. 270, 271 (1974); In re Appeal of News Publishing Co., supra. There is authority in the legislature to control the finances not only of the state but also of its subdivisions, and to provide for the transfer of funds from one to the other unless prohibited by constitutional limitations. State ex rel. v. Saline County Commissioners, 128 Kan. 437, 439 (1929). One such

limitation is set forth in article 11, section 5, of the Kansas constitution.

"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."
Kan. Const., art. 11, § 5.

The purpose of this constitutional provision is to prevent the levy of a tax for one purpose and the use of the funds raised thereby for another purpose. State ex rel. Schneider v. City of Topeka, 227 Kan. 115, 120 (1980). The diversion of funds to a purpose other than that stated in the levy statute is prohibited by article 11, section 5. Id. The rule requiring a definite and specific statement should be enforced reasonably; it does not preclude the levying of a gross sum for several different purposes properly embraced within some general designation. Schnatterly v. Eslinger, 126 Kan. 9, 12 (1928). There is no language in article 11, section 5 which precludes a tax levy statute from having more than one object, so long as the legislature establishes a formula for the allocation of tax funds to each of the objects described in the tax levy statute. State ex rel. Schneider, supra, 227 Kan. at 122.

Two purposes are set forth in section 8 of 1991 Senate Bill No. 26 for levying the ad valorem tax on the taxable tangible property of the district. Those purposes are to finance a portion of the cost of maintaining district operations and to pay a portion of the principal and interest on bonds issued by cities under authority of K.S.A. 1990 Supp. 12-1774. Nowhere in the proposed amendment of K.S.A. 1990 Supp. 72-7056 is it stated that the purpose of the tax levy is to finance a portion of the costs of maintaining the operations of other unified school districts or to provide funds for allocation and distribution as general state aid under the provisions of the school district equalization act.

It appears that funds raised through a tax levy may properly be allocated to cover incidental costs incurred in pursuit of the purpose of the tax levy. See Schnatterly, supra, 126 Kan. at 11. However, providing funds for allocation and distribution as general state aid under the provisions of the school district equalization act is not incidental to either of the purposes expressed in 1991 Senate Bill No. 26, section

8, for the levying of the tax. The amendment, therefore,
violates article 11, section 5 of the Kansas constitution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Richard D. Smith
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