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ATTORNEY GENERAL OPINION NO. 91- 159

The Honorable Vincent K. Snowbarger  
State Representative, Twenty-Sixth District  
1451 Orleans Drive  
Olathe, Kansas 66062

Re: Constitution of the State of Kansas--Corporations--  
Cities' Powers of Home Rule

Taxation--Limitation on Tax Levies--Limitation on  
Certain Tax Levies in Cities Between 60,000 and  
130,000

Synopsis: Under article 12, section 5 of the Kansas constitution a charter ordinance may be repealed or amended only by charter ordinance or enactments of the legislature applicable to all cities. Accordingly, where the city of Olathe exempts itself by charter ordinance from the provisions of K.S.A. 79-1951 and establishes substitute limitations on certain tax levies, such limitations are not repealed or amended when a population increase causes the city to come within the parameters of another tax levy limitation statute (K.S.A. 79-1950). Such statute is not applicable to all cities (only those between 60,000 and 130,000 in population), and under article 12, section 5 of the Kansas constitution the charter ordinance must control where there is conflict between the statute and the ordinance. Cited herein: K.S.A. 12-1220; 79-1950; 79-1951; Kan. Const., Art. 12, § 5.

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Dear Representative Snowbarger:

You request our interpretation of K.S.A. 79-1950, K.S.A. 79-1951 and charter ordinance no. 38 of the city of Olathe. You lay out the following scenario for our consideration:

"The public library in the City of Olathe is operated by a Library Board appointed by the City Council of the City of Olathe. Pursuant to K.S.A. 79-1951, funding of the library was through a mill levy imposed by the city and capped at 2.0 mills. The City then adopted a Charter Ordinance 38 which raised that limit to 2.5 mills. K.S.A. 12-1220 requires the City to levy the tax in the sum determined by the board and within the limits fixed by law.

"The City's population currently exceeds the 60,000 limit under K.S.A. 79-1951. There is therefore confusion as to the current levy limit for the Olathe Public Library."

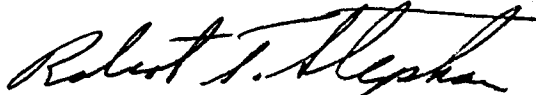
You pose six questions for our consideration. Our response to your first and second questions will make it unnecessary to address the final four questions set forth in your letter. Your first two questions, taken together, are whether the tax levy limitation for library purposes is now controlled by K.S.A. 79-1950 or whether the limitation prescribed by charter ordinance no. 38 controls.


K.S.A. 79-1951 prescribes certain tax levy limitations for cities having a population of less than 50,000, including a limit of 2.00 mills for a library. By charter ordinances no. 32 and 38, the city of Olathe exempted itself from the library tax levy limit set forth in K.S.A. 79-1951, and prescribed a 2.50 mill limitation for a library. A population increase has caused the city's population to come within the parameters of K.S.A. 79-1950 (i.e. between 60,000 and 130,000), which statute prescribes no levy limitation for library purposes. Article 12, section 5 of the Kansas constitution provides, in part, as follows:

"Each charter ordinance enacted shall control and prevail over any prior or subsequent act of the governing body of the city and may be repealed or amended only by charter ordinance or by enactments of the legislature applicable to all cities." (Emphasis added).

In accordance with the underscored portion of the above-quoted constitutional provision, a charter ordinance may be repealed or amended only by charter ordinance or enactments of the legislature applicable to all cities. Therefore, in our opinion, where the city of Olathe exempts itself by charter ordinance from the provisions of K.S.A. 79-1951 and establishes substitute limitations on certain tax levies, such limitations are not repealed or amended when a population increase causes the city to come within the parameters of another tax levy limitation statute (K.S.A. 79-1950). Such statute is not applicable to all cities, and under article 12, section 5 of the Kansas constitution the charter ordinance must control where there is conflict between the statute and the ordinance.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
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RTS:JLM:TRH:jm