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ATTORNEY GENERAL OPINION NO. 92- 112

William M. Tuley
General Counsel
Johnson County Park and Recreation District
8655 College Blvd.
P.O. Box 25866
Overland Park, Kansas 66225

Re: Counties and County Officers -- Parks, Museums,
Lakes and Recreational Grounds; Johnson County Park
and Recreation District -- Use of Tax Levy Proceeds

Synopsis: The Johnson county board of county commissioners is prohibited from diverting money from one fund to another, in the absence of a budget amendment, or spending tax levy revenues for a purpose that is not in accordance with the levy. The Johnson county park and recreation district mill levy will not increase the aggregate levy of Johnson county for purposes of K.S.A. 79-5021 et seq. Cited herein: K.S.A. 12-1218; 12-1678a; 19-506; 19-2862; 19-2868; 19-2876; 28-175; 79-2934; K.S.A. 1991 Supp. 79-5022; 79-5032; 79-5036; Kan. Const., art. 11, § 5.

* * *

Dear Mr. Tuley:

As general counsel for the Johnson county park and recreation district you request our opinion on the following questions:

"1. Does the Board of County Commissioners of Johnson County, Kansas, by resolution number 010-92, or otherwise, have the legal authority to encumber or utilize the general fund tax revenues raised pursuant to K.S.A. 19-2876 for the Johnson County Park and Recreation District for "administrative service charges" or for purposes other than those specifically approved by the Board of Commissioners of the Johnson County Park and Recreation District?

"2. Is the Johnson County Treasurer prohibited by K.S.A. 19-2876 from transferring or distributing the tax revenues collected by his office for the Johnson County Park and Recreation District to the Johnson County Finance Office or to any agency, office, person or entity other than the Treasurer of the Johnson County Park and Recreation District and at what point after the collection of tax revenues for the Johnson County Park and Recreation District are those tax revenues required to be turned over to the Treasurer of the Johnson County Park and Recreation District for utilization by the District?

"3. If the Johnson County Park and Recreation District has not exempted out from under the tax lid law pursuant to K.S.A. 79-5036(c), does the Board of County Commissioners of Johnson County, Kansas, have the legal power or authority to include the Johnson County Park and Recreation District general fund tax levy authorized by K.S.A. 19-2876 as a part of and within the total aggregate levy lid of the Johnson County budget or should the Johnson County Park and Recreation District general tax fund levy be considered separate and apart from the county levy lid for purposes of complying with the tax lid law?"

The Johnson county park and recreation district has the statutory authority to levy taxes pursuant to K.S.A. 19-2862 and 19-2868(d). The "tax money collected by the county treasurer for the district shall be paid to the treasurer of the district and notice of such action, showing the amount, proper fund credit and the date, shall be sent to the secretary of the board." K.S.A. 19-2876. The county treasurer shall distribute the tax money belonging to the Johnson county park and recreation as set out in K.S.A. 12-1678a.

Even though the board of county commissioners has to approve the final budget of the park and recreation district, general statutes have given specific direction on how these funds can be spent.

"In general, money raised pursuant to a specific tax levy can only be used for the purposes set forth in the resolution. K.S.A. 79-2934. Furthermore, K.S.A. 79-2934 prohibits diverting money from one fund to another fund except as provided by law. See Attorney General Opinions No. 88-65, 91-70; Gridley v. Woodson County Commissioners, 155 Kan. 407, 411 (1942); State ex rel. Schneider v. City of Topeka, 227 Kan. 115, 120 (1980). . . . Therefore, the board of county commissioners cannot authorize the transfer of funds through the process of passing a resolution, if such resolution violates state statutes. Since the money has been raised for the purpose of providing library services such money cannot be diverted to the general fund to be used for other purposes." Attorney General Opinion No. 92-47.

Furthermore, as we stated in Attorney General Opinion No. 92-47:

"K.S.A. 19-506 states, '[i]t shall be the duty of the county treasurer to receive all moneys belonging to the county, from whatsoever source they may be derived, and all other moneys which are by law directed to be paid to him or her.' 'County officers and employees shall receive no compensation, tips, fees, mileage or salaries, which compensation, tips, fees, mileage or salaries are or shall be paid to such officer or employee directly or indirectly by reason of his or her performance of the duties or obligations of such county office or employment, unless such compensation, tips, fees, mileage or salaries are specifically allowed to them by law.' K.S.A. 28-175.

"Because it is the county treasurer's duty to receive and administer the moneys received pursuant to the [park and recreation district] tax levy, neither the treasurer or the board of county

commissioners can charge extra for the performance of a statutory duty of the treasurer."

The county treasurer can only pay out money on the order of the board of county commissioners. K.S.A. 19-506. However, the county commissioners are restricted on how they order the county treasurer to handle money based on the general rule that they cannot divert money from one fund to another (K.S.A. 79-2934) or spend tax levy monies for a purpose that is not in accordance with the levy (Kan. Const., art. 11, § 5).

In Attorney General Opinion No. 90-11 we opined that the Johnson county library is a taxing subdivision for the purposes of exempting out from under the tax lid law pursuant to K.S.A. 79-5036(c) based on the fact 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."

Pursuant to K.S.A. 79-5032:

"Whenever any taxing subdivision of this state shall be required by law to levy taxes for the financing of the budget of any political or governmental subdivision of this state which is not authorized by law to levy taxes in its own behalf, and the governing body of such taxing subdivision is not authorized or empowered to modify or reduce the amount of taxes levied therefor, the tax levies of such political or governmental subdivision shall not be included in or considered in computing the aggregate limitations upon the property tax levies of the taxing subdivisions levying taxes for such political or governmental subdivision."

The question you raise regarding whether the park and recreation district tax levy should be counted in the county's aggregate amount was answered in Attorney General Opinion No. 87-167:

"Under this provision, any taxing subdivision which is required by law to

levy taxes for a library and is not empowered to modify or reduce the amount of those taxes shall not include or consider those taxes in computing aggregate limitations. This provision does not, however, exclude political or governmental subdivisions for which taxes are levied by another taxing subdivision from the provisions of K.S.A. 1986 Supp. 79-5022. (Compare K.S.A. 79-5015). The library's aggregate levy will be subject to the limitations, though its levy will not increase the aggregate of the taxing subdivision which actually levies the tax."

Based on this same analysis we opine that the park and recreation district mill levy would not increase the aggregate levy of Johnson county.

In conclusion, we opine that the Johnson county board of county commissioners is prohibited from diverting moneys from one fund to another, except pursuant to statutory procedures, or spending tax levy proceeds for a purpose that is not in accordance with the levy. The Johnson county park and recreation district mill levy will not increase the aggregate levy of Johnson county.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelma
Assistant Attorney General

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