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April 30, 2020

ATTORNEY GENERAL OPINION NO. 2020- 5

Karen Larson  
Brad Marcuson  
Stanley A. McEvoy  
Board of Commissioners  
of Decatur County, Kansas  
P.O. Box 28  
Oberlin, Kansas 67749-0028

Re: Taxation—Miscellaneous Provisions—Tax Lid, Cities and Counties;  
Exceptions; Elections; When Required

Synopsis: K.S.A. 2019 Supp. 79-2925c allows a city or county to maintain a consistent level of funding in constant or real dollars. Any increase above that level, however, is subject to approval by the electorate, unless the increase falls within the provisions of subsection (b) of K.S.A. 2019 Supp. 79-2925c. Cited herein: K.S.A. 2019 Supp. 79-2925c.

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Dear Commissioners Larson, Marcuson and McElvoy:

As the Board of Commissioners of Decatur County, you request our opinion regarding whether a county commission must conduct an election pursuant to K.S.A. 2019 Supp. 79-2925c before raising the mill levy for hospital maintenance to the level authorized by electors in 2016.

In 2016, the electors of Decatur County authorized the Board of Commissioners to levy a tax pursuant to K.S.A. 19-4606 for the purpose of maintaining a hospital. The electors authorized a levy of up to 13 mills. It appears the Commission initially levied the full 13 mills. “Over the course of several budget years the county’s valuation has increased and the county now is levying just less than 10 mills – keeping the total tax dollars static from

year to year.”<sup>1</sup> The hospital board has asked the Board of Commissioners to levy the full 13 mills authorized by the electors.

The Kansas Legislature has enacted a tax lid for cities and counties. K.S.A. 2019 Supp. 79-2925c states:

(a)(1) On and after January 1, 2017, the governing body of any city or county shall not approve any appropriation or budget which provides for funding by property tax revenues in an amount exceeding that of the next preceding year as adjusted to reflect the average changes in the consumer price index for all urban consumers as published by the United States department of labor for the preceding five calendar years, which shall not be less than zero, unless the city or county approves the appropriation or budget with the adoption of a resolution and such resolution has been submitted to and approved by a majority of the qualified electors of the city or county voting at an election called and held thereon, except as otherwise provided.

K.S.A. 2019 Supp. 79-2925c(b) lists exceptions to the election requirement. An election is not required if, for example, the increased property tax revenues are produced and attributable to the taxation of new construction or increased personal property valuation, the increased property tax revenues will be spent on payment of certain bonds or notes or increased costs above the consumer price index for law enforcement, fire protection or emergency medical services, or the tax levy is, by law, assessed on behalf of another governmental entity and the city or county is not authorized to modify the levy.<sup>2</sup>

In determining whether the Board of Commissioners is required by K.S.A. 2019 Supp. 79-2925c to conduct an election before increasing the tax levy to 13 mills, we resort to the rules of statutory interpretation.

The fundamental rule of statutory interpretation is that legislative intent governs if it can be discerned. We begin this inquiry with the plain language of the statute. Indeed, statutory language is an appellate court's paramount consideration because the best and only safe rule for ascertaining the intention of the makers of any written law is to abide by the language they have used. When . . . a statute is plain and unambiguous, th[e] court does not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it.<sup>3</sup>

The plain language of the statute bases the election requirement initially on whether the revenues to be derived from the increased levy exceed the revenues received the next preceding year as adjusted to reflect the average changes in the consumer price index (CPI) for all urban consumers as published by the United States department of labor for

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<sup>1</sup> County of Decatur, Correspondence, December 31, 2019.

<sup>2</sup> K.S.A. 2019 Supp. 79-2925c(b).

<sup>3</sup> *In the Interest of T.S.*, 308 Kan. 306, 309-10 (2018) (internal citations and quotation marks omitted).

the preceding five calendar years. “The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services.”<sup>4</sup> By tying the increase in an appropriation or budget to the CPI, K.S.A. 2019 Supp. 79-2925c allows the city or county to maintain a consistent level of funding in constant or real dollars.<sup>5</sup> Essentially, if each area of real property within the city or county is used for the same purpose as in preceding years and no new construction or improvements have been undertaken thereon, any additional tax revenues received from the increased valuation of the real property may be retained by the governing entity without an election, provided the increase falls below the CPI-adjusted amount allowed by the statute. Any increase above that level is subject to approval by the electorate, unless the increase falls within the provisions of subsection (b) of K.S.A. 2019 Supp. 79-2925c.

The only information we have regarding the tax levy in Decatur County is that it is for hospital maintenance and that as the County’s valuation increased, the tax levy was decreased to keep total tax dollars static from year to year. We do not know whether the total was adjusted by the CPI or if any of the provisions of K.S.A. 2019 Supp. 79-2925c(b) apply. To determine whether Decatur County must conduct an election in order to increase the hospital maintenance tax levy to 13 mills, the County will need to determine whether the increased budget exceeds the previous budget adjusted by the CPI and whether any of the provisions of K.S.A. 2019 Supp. 79-2925c(b) are applicable.

Sincerely,

Derek Schmidt  
Kansas Attorney General

Richard D. Smith  
Assistant Attorney General

DS:AA:RDS:sb

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<sup>4</sup> United States Bureau of Labor Statistics, <https://www.bls.gov/cpi/>, accessed April 20, 2020.

<sup>5</sup> See United States Census Bureau, <https://www.census.gov/topics/income-poverty/income/guidance/current-vs-constant-dollars.html>, accessed April 20, 2020 (“Constant-dollar value (also called real-dollar value) is a value expressed in dollars adjusted for purchasing power. Constant-dollar values represent an effort to remove the effects of price changes from statistical series reported in dollar terms. The result is a series as it would presumably exist if prices were the same throughout as they were in the base year—in other words, as if the dollar had constant purchasing power.”)