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ATTORNEY GENERAL OPINION NO. 2025-24

Jeffrey Chubb  
Sedan City Attorney  
204 E. Laurel  
P.O. Box 747  
Independence, Kansas 67301

Re: Taxation—Miscellaneous Provisions—Budgets of Taxing Subdivisions

Synopsis: K.S.A. 79-2988(b)'s use of the word "shall" is mandatory. K.S.A. 79-2988(b)(2) states a governing body seeking to exceed the revenue neutral rate shall notify the county clerk about the date, time, and location of the public hearing on or before July 20. Because the Sedan City Clerk notified the Chautauqua County Clerk of a new hearing date less than 10 days before September 2, 2025, this statutory requirement was not met. Thus, the county clerk lacked statutory authority to send out a second notice. But, in a situation where a public hearing is rescheduled and the governing body notifies the county clerk on or before July 20, nothing prevents the county clerk from sending out a notice with the new hearing date. Cited herein: K.S.A. 79-2988.

\* \* \*

Dear Mr. Chubb:

As the Sedan City Attorney, you ask whether K.S.A. 79-2988 permits a county clerk to send out a second notice letter when a governing body alters the hearing date on a proposal to exceed the revenue neutral rate after the clerk has already mailed notice of the original date.

Specific to your question, the City of Sedan scheduled a public hearing on its proposal to exceed the revenue neutral rate for September 2, 2025. The Chautauqua County Clerk mailed out the required notice to taxpayers indicating a September 2, 2025, public hearing date. The Sedan City Counsel, however, missed its deadline to publish notice in the newspaper as required by K.S.A. 79-2988(b)(1)(B). As a result, the Sedan City Clerk requested that the Chautauqua County Clerk issue a second notice for a rescheduled hearing on September 16, 2025. The Chautauqua County Clerk refused, stating that there was no statutory authority to do so.

We conclude that, because K.S.A. 79-2988(b)(2) requires the governing body to notify the county clerk of the date of the hearing on or before July 20 of that year, and the City of Sedan failed to publish notice of the public hearing at least ten days before September 2, the Chautauqua County Clerk lacked statutory authority to send out the subsequently requested notice. The City provided notice of the rescheduled public hearing date to the Clerk too late.

At the outset, we note your specific question is moot, as the statutorily-designated timeframe for a hearing has passed for this year.<sup>1</sup> However, given this issue's importance, we provide an opinion on whether K.S.A. 79-2988(b) prevents a county clerk from issuing a second notice if the date of a public hearing is changed.

Statutory interpretation begins with the statutory text, giving words their ordinary, everyday meaning.<sup>2</sup> Only when the language is ambiguous are canons of statutory construction, legislative history, or other background information utilized to discern the statute's meaning.<sup>3</sup>

K.S.A. 79-2988(b) permits a governing body of a taxing subdivision to exceed the revenue neutral rate<sup>4</sup> only if certain enumerated conditions are met: (1) the governing body must publish notice of its proposed intent to exceed the revenue neutral rate on its website, if it has one, and in a weekly or daily newspaper of the county at least 10 days before the public hearing; (2) on or before July 20, the governing body shall notify the county clerk of its proposed intent to exceed the revenue neutral rate and provide the date, time, and location of the public hearing; and the county clerk shall notify each taxpayer at least 10 days before the public hearing; (3) a public hearing shall be held between August 20 and September 20 with an opportunity for interested taxpayers to comment; and (4) the ordinance or resolution to exceed the revenue neutral rate must pass by a majority vote.<sup>5</sup>

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<sup>1</sup> K.S.A. 79-2988(b)(3) requires a governing body seeking to exceed the revenue neutral rate hold a public hearing between August 20 and September 20.

<sup>2</sup> *Midwest Crane & Rigging, LLC v. Kan. Corp. Comm.*, 306 Kan. 845, 850, 397 P.3d 1205 (2017).

<sup>3</sup> *Nauheim v. City of Topeka*, 309 Kan. 145, 149-50, 432 P.3d 647 (2019).

<sup>4</sup> A "revenue neutral rate" is "the tax rate for the current tax year that would generate the same property tax revenue as levied the previous tax year using the current tax year's total assessed valuation." K.S.A. 79-2988(f).

<sup>5</sup> K.S.A. 79-2988(b)(1)-(4).

Kansas Attorney General Opinion No. 2023-8 previously interpreted K.S.A. 79-2988(b)'s use of the word "shall." There, we concluded that the notice requirement in K.S.A. 79-2988(b) was mandatory, and thus, "the failure by the county clerk to provide statutorily sufficient notice results in failure of all the procedures in subsection (b) being met."<sup>6</sup> And, if all the provisions of subsection (b) are not met, a jurisdiction cannot exceed the revenue neutral rate. The unambiguous language of the statute and Opinion 2023-8 guide our analysis.

As stated in Opinion 2023-8, the use of the word "shall" is mandatory in K.S.A. 79-2988(b).<sup>7</sup> The Legislature uses both "shall" and "may" throughout K.S.A. 79-2988, differentiating between mandatory and discretionary duties in the statute.<sup>8</sup> K.S.A. 79-2988(b)(2) states that the county clerk "shall" notify each taxpayer of the public hearing but "may" do so electronically if the taxpayer and county clerk have both consented in writing. Additionally, K.S.A. 79-2988(b)(3) states that the public hearing "shall" be held between August 20 and September 20 and "shall" provide interested taxpayers with the opportunity to be heard; but the governing body "may" conduct the public hearing with the proposed budget hearing if all other requirements in K.S.A. 79-2988 are met. The statute also contains a consequence/penalty for the governing body of the taxing subdivision for noncompliance with subsection (b), stating that the governing body "shall refund to taxpayers any property taxes over-collected based on the amount of the levy that was in excess of the revenue neutral rate."<sup>9</sup>

The mandatory nature of the use of the word "shall" in K.S.A. 79-2988 is important to answering your question. K.S.A. 79-2988(b)(2) begins with: "On or before July 20, the governing body *shall* notify the county clerk of its proposed intent to exceed the revenue neutral rate and provide the date, time and location of the public hearing and its proposed tax rate."<sup>10</sup> In other words, K.S.A. 79-2988(b)(2) requires the governing body to provide the county clerk with notice of the date, time, and location of a public hearing on or before July 20. Given that the City of Sedan missed the statutory deadline to publish notice in the local newspaper at least ten days before the September 2, 2025, hearing date, the city clerk did not notify the Chautauqua County Clerk on or before July 20 of the rescheduled hearing date. As such, the clerk lacked statutory authority to send out a notice for the rescheduled hearing.

Other canons of construction support this interpretation as well. Applicable here, "statutes that impose the tax are to be construed strictly in favor of the taxpayer."<sup>11</sup>

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<sup>6</sup> Att'y Gen. Op. No. 2023-8, at \*3.

<sup>7</sup> *Id.* at \*2; Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 114 (2012) ("[W]hen the word shall can reasonably be read as mandatory, it ought to be so read.").

<sup>8</sup> Att'y Gen. Op. No. 2023-8, at \*2.

<sup>9</sup> K.S.A. 79-2988(c)(1); see Att'y Gen. Op. No. 2023-8, at \*2.

<sup>10</sup> Emphasis added.

<sup>11</sup> *In re BHCMC, L.L.C.*, 307 Kan. 154, 161, 408 P.3d 103 (2017).

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Under this canon, the use of “shall” in K.S.A. 79-2988(b) should be construed in favor of the taxpayer, meaning “shall” should be read as mandatory, rather than discretionary, because failure to comply with the statute would run in the taxpayer’s favor under the disgorgement requirement of subsection (c)(1).<sup>12</sup>

Additionally, this statutory construction makes sense as a matter of policy. A July 20 deadline to notify the county clerk ensures that the clerk can send out a single notice of all revenue neutral hearings, thus avoiding any voter confusion that could occur if taxing subdivisions changed their hearing dates after the deadline, leading to voters receiving multiple notifications with different hearing dates.

That being said, though unlikely to occur as a practical matter, nothing in the statute prevents a public hearing from being rescheduled on or before the July 20 deadline, and nothing prevents the county clerk from sending a notice with the new hearing date.

Thus, K.S.A. 79-2988(b) requires the notice of the hearing date to be transmitted to the county clerk on or before July 20. A county clerk lacks the statutory authority to send out a notice that is received after the statutory deadline.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach  
Attorney General

/s/ Ryan J. Ott

Ryan J. Ott  
Assistant Solicitor General

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<sup>12</sup> See Att’y Gen. Op. 2023-8, at \*3.