

MINUTES OF THE Senate COMMITTEE ON Local Government

The meeting was called to order by Senator Gaar at
Chairperson

9:00 a.m./~~p.m.~~ on January 20, 1982 in room 531-N of the Capitol.

All members were present except: Senator Mulich

Committee staff present: Mike Heim, Thereas Kiernan, Emalene Correll and
Joan Mullins

Conferees appearing before the committee: Rod Bieker, Office of the Attorney General
Joe Krohn, Department of Transportation
Dan Carroll, Department of Administration
Glen Cogswell, North Topeka Drainage District

Rod Bieker, Assistant Attorney General, appeared before the committee to request introduction of certain legislative changes to clarify and make uniform the statutes with respect to distribution of taxes by county treasurers to taxing subdivisions (See Attachment I). Senator Montgomery moved the committee introduce the legislation. The motion was seconded by Senator Ehrlich and carried by unanimous vote.

Senator Gaar opened the hearing on S.B. 9, relating to drainage districts. Joe Krohn, Kansas Department of Transportation, and Dan Carroll, Department of Administration, appeared to express concern that the bill would be interpreted to mean that state-owned property within a benefit district will be subject to mandatory special assessment regardless of whether such property is benefited by an improvement. Senator Gaar and committee members responded that their interpretation is that the state is only subject to assessment when its property is benefited by an improvement and that the state has the same legal remedy as other property owners to protest any assessment; however, Senator Gaar directed the committee members and staff to review the language of the bill with Mr. Krohn's and Mr. Carroll's comments in mind. Glen Cogswell, North Topeka Drainage District, expressed to the committee his feeling that the provisions of the bill relating to publication of notice of meetings were unnecessarily expensive and burdensome. Alternatives, such as an annual publication of all meetings, were discussed.

Senator Parrish moved the introduction of a bill which would give governing bodies of municipalities authority to levy taxes for employee benefit funds. Senator Ehrlich seconded the motion, and it carried by unanimous vote.

Senator Allen moved the minutes of the January 12, 1983, meeting be approved as distributed. Senator Montgomery seconded the motion and it carried.

Senator Gaar adjourned the meeting to January 25, 1983.

Recorded - J. Mullins

SUGGESTED LEGISLATION

- (1) Add this sentence to K.S.A. 1982 Supp. 12-1678a(c)(2):

If a properly certified request is made, the county treasurer shall honor the request within 15 days of the date of receiving such request, except that no payment shall be made under the provisions of this paragraph between December 1 of any year and January 1 of the next succeeding year, or between June 1 and July 1 of any year.

- (2) Repeal K.S.A. 72-1018 (Covered by 12-1678a, 72-8202d(a) and 72-8204b.)

- (3) Amend K.S.A. 79-2934 (last sentence of last ¶,) thusly:

The county treasurer shall not credit the funds of any taxing subdivision or municipality having a budget year beginning January 1 and ending December 31 with any portion of the taxes due and payable November 1 prior to the first day of January next succeeding: Provided, however, in the case of school districts whose budget year is from July 1 to June 30, the county treasurers are directed to credit and distribute to such school districts the taxes available in November and December upon written request distribute the taxes of each taxing subdivision in accordance with the provisions of K.S.A. 1982 Supp. 12-1678a and amendments thereto.

- (4) Amend K.S.A. 1982 Supp. 79-1801 as follows:

The governing body of any city, the trustees of any township, the board of education of any school district and the governing bodies of all other taxing subdivisions shall certify, on or before August 25, to the proper county clerk the amount of ad valorem tax to be levied. Thereupon, the county clerk shall place the same tax upon the tax roll of the county, in the manner prescribed by law, and the tax shall be collected by the county treasurer as other taxes, and when collected shall be paid to or for the credit of the city, school district, or other taxing subdivision entitled thereto, as provided by this act. The amount of ad valorem tax levied shall be certified to the county clerk on or before August-25. The county treasurer shall distribute the taxes of each taxing subdivision in accordance with the provisions of K.S.A. 1982 Supp. 12-1678a and amendments thereto.

PHILLIP M FROMME
COFFEY COUNTY ATTORNEY
910 North Fourth Street
P.O. Box 416
BURLINGTON, KANSAS 66839
December 21, 1982

RECEIVED

SEAL OF KANSAS

Phone (316) 364-2655

DEC 27 10 48 AM '82

ATTORNEY GENERAL

Bicker

Mr. Robert Stephan
Attorney General
2nd Floor, Judicial Center
Topeka, Kansas 66611

RE: Request for an opinion interpreting provisions of K.S.A.
79-2934 and K.S.A. 12-1678a.

Dear Attorney General:

I am involved in a controversy which I have decided to refer to you and ask your opinion. I have enclosed for your review a copy of a letter which I received from the Coffey County Treasurer, Dorothy Ellis. The letter is from School District No. 244 in which they are asking that she give them all funds due to be distributed to their account for the months of November and December, and that the money be released to them no later than December 24, 1982.

K.S.A. ¹²~~21~~-1678a provides for the investment of undistributed taxes, and sets out that the normal distribution date would be January 20 on taxes collected for November and December of the previous year. Sub-section (f) of K.S.A. 12-1678a states that the County can keep all interest on investments of the undistributed taxes which are not paid to taxing subdivisions as provided or authorized otherwise.

K.S.A. ⁷~~29~~-2934 in part provides that school districts whose budget year is from July 1 to June 30 may make written request to the County Treasurer who is then directed to credit and distribute to the school district the taxes available in November and December.

As you can see we have a controversy here between the County and the school district. Coffey County receives considerable tax payment from Kansas Gas and Electric around December 20, and I am told that the school district's share will be somewhere in the neighborhood of 1.5 million dollars. The interest that can be drawn on this money for a period of one month may amount to several thousand dollars. The school district wants the money as soon as possible. The County wants to draw what interest they can off the money prior to releasing it.

Mr. Robert Stephan
December 21, 1982
Page Two

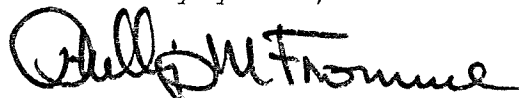
The County Treasurer advises me that it is physically impossible for her to distribute tax monies collected for November and December for U.S.D. #244 by December 24. First of all, she states that the money is not paid until December 19 or 20 since K.G. & E. waits until the last date to make payment. After that she says it takes approximately ten (10) days to make sure that the check clears the bank. Thereafter she says it requires additional time in manpower to determine what money has actually been received, and what money is due the school district. She tells me that it is about all she can do to meet the January 20 distribution deadline. She only has four women working in her office, and December/January is a busy time for them. They have all the other functions of their office to continue and can't drop everything to figure for the school district. The County Treasurer further states that she does not feel that the school district has properly documented their need for the money, and that they are not entitled to the money without showing that the money is necessary in order to meet the physical need of the school district certified by their chief financial officer or governing body in accordance with what is stated in K.S.A. 12-1678a(c)(2).

I don't know what the other counties are doing about this kind of problem, nor do I know if this matter has come up somewhere else. The school district has threatened suit against the county if the matter is not resolved.

The County Treasurer has advised me that she would be willing to release some monies to the school district in accordance with their documented needs. She is not willing to release all the money unless the Court orders her to. I have been told by the attorney for the school district that part of the school district's reason for wanting the money, is that they have a several million dollar bond issue for construction which anticipated that the school district would be able to utilize the additional interest money which could be accumulated from approximately December 24 thru January 20.

I would appreciate your assistance in this matter. We would like to have an opinion from you as soon as possible; however, I don't expect you will be able to tell us much by the 24th. If you have done some preliminary work by that time and have drawn any conclusions, I would appreciate having you let me know.

Sincerely yours,



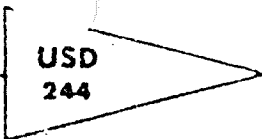
Phillip M Fromme

PMF:aw

Enclosures

Gene Koester

Burlington Un. d School District No. 244



District Office
P.O. Box D
Burlington, Kansas 66839
316-364-5631

October 13, 1982

Mrs. Dorothy Ellis, County Treasurer
Coffey County Courthouse
Burlington, Kansas 66839

Dear Dorothy:

In order to maintain the cash balances in our budgeted funds it is necessary for us to request distribution of all taxes due us in November and December. We therefore request that all funds due us be distributed to our account by December 24, 1982 in order that the school district treasurer can pick up the money at that time.

We refer you to KSA 79-2934 as our authorization for making this request. A copy of the statute is included with this letter.

Thank you for your cooperation.

Very sincerely yours,

Harold F. Scharff
Superintendent of Schools

HFS/c11

Encl:

79-2932.

History: L. 1933, ch. 316, § 8; L. 1941, ch. 377, § 7; Repealed, L. 1969, ch. 317, § 9; April 25.

79-2933. Time for budget hearing; adoption; validity of levies. The hearing herein required to be held upon all budgets by all taxing subdivisions or municipalities of the state shall be held not less than ten (10) days prior to the date on which they shall certify their annual levies to the county clerk as required by law. After such hearing the budget shall be adopted or amended and adopted as amended, but no levy shall be made until and unless a budget is prepared, published and filed, but no levy of taxes shall be invalidated because of any insufficiency, informality, or delay in preparing, publishing and filing said budget.

History: L. 1933, ch. 316, § 9; L. 1941, ch. 377, § 8; L. 1970, ch. 387, § 4; March 13.

CASE ANNOTATIONS

1. Mentioned; budgets adopted under 2-610 not subject to later change. State, *ex rel.*, v. Belt, 175 K. 330, 331, 333, 264 P.2d 883.

2. Mentioned in action involving collective negotiations of teachers' association with school board; budget timetable discussed. National Education Association v. Board of Education, 212 K. 741, 754, 512 P.2d 426.

79-2934. Funds appropriated by budget; balances; duties of clerks and officers. The budget as approved and filed with the county clerk for each year shall constitute and shall hereafter be declared to be an appropriation for each fund, and the appropriation thus made shall not be used for any other purpose. No money in any fund shall be used to pay for any indebtedness created in excess of the total amount of the adopted budget of expenditures for such fund, and any balance remaining in such fund at the end of the current budget year shall be carried forward to the credit of said fund for the ensuing budget year. The clerk or secretary of each taxing subdivision or municipality shall open and keep an account of each fund, showing the total amount appropriated for each fund, and shall charge such appropriation with the amount of any indebtedness created at the time such indebtedness is incurred: *Provided*, That if any of such indebtedness is reimbursed during the current budget year and such reimbursement is in excess of the amount

which was shown as reimbursed expense in the budget of revenues for the current budget year the charge so made shall be reduced by the amount of the reimbursement.

No part of any fund shall be diverted to any other fund, whether before or after the distribution of taxes by the county treasurer, except as provided by law. The county treasurer shall not credit the funds of any taxing subdivision or municipality having a budget year beginning January 1 and ending December 31 with any portion of the taxes due and payable November 1 prior to the first day of January next succeeding: *Provided, however, in the case of school districts whose budget year is from July 1 to June 30, the county treasurers are directed to credit and distribute to such school districts the taxes available in November and December upon written request.*

History: L. 1933, ch. 316, § 10; L. 1941, ch. 377, § 9; L. 1945, ch. 363, § 1; L. 1970, ch. 387, § 5; March 13.

Research and Practice Aids:

Hatcher's Digest, Cash-Basis Law §§ 1 to 3; Counties § 49; School Districts § 61; Taxes §§ 90, 101.

Law Review and Bar Journal References:

Amendment of 1941 mentioned, Fred E. Gulick, 14 J.B.A.K. 100, 103 (1945).

Discussed in 7 K.L.R. 234, 235 (1958), which quotes a 1958 opinion of the attorney general that a county, acting as self-insurer under workmen's compensation act, can create a reserve fund with which to pay future compensation claims.

CASE ANNOTATIONS

Annotations to L. 1933, ch. 316, § 10:

1. Drainage district budget held irregular; failure to credit balances. Hawkins v. Gregory, 138 K. 477, 484, 26 P.2d 247.

2. Balances carried over; effect on budget for succeeding year discussed. Voshell v. Peterson, 142 K. 448, 451, 50 P.2d 941.

3. School-district treasurer and his bondsmen liable for expenditure for purposes outside budget. Superior Grade School District No. 110 v. Rhodes, 147 K. 29, 30, 75 P.2d 251.

4. Purpose of act discussed; budgeted items are separate and distinct. Shouse v. Cherokee County Comm'rs, 151 K. 458, 462, 463, 465, 99 P.2d 779. Affirmed: 152 K. 41, 102 P.2d 1043.

5. Act applies to liabilities created by statutes. Gridley High School Dist. v. Woodson County Comm'rs, 155 K. 407, 408, 409, 410, 411, 125 P.2d 383.

6. School district's tuition claim against county not in county budget; claim cannot be paid. Gridley High School Dist. v. Woodson County Comm'rs, 155 K. 407, 408, 409, 410, 411, 125 P.2d 383.

Annotation to L. 1941, ch. 377, § 9:

✕ Payments to teachers under oral contracts for

extra work held valid. Johnson, 166 K. 636.

Annotation to L. 1945,

8. Mentioned; count change during budget year. *rel.*, v. Board of County 174, 302 P.2d 542.

Annotation to L. 1970,

9. Applied; board of traffic safety program of County Commission 102.

79-2935. Creation of excess of budget shall be unlawful for any taxing subdivision any budget year to any manner or in indebtedness created shall equal the total budget of expenditures that budget year. Authorized by the governing officers of such taxing municipality in excess of as against such taxing municipality: *Provided*, be created in excess the adopted budget current budget year been authorized by ity, or when provided payment by the issuer provision has been issuance of warrant mission in accordance K.S.A. 79-2938, 79-

History: L. 1933, ch. 377, § 10; June

Research and Practice

Counties § 150(1); Districts § 92(3).

Hatcher's Digest, Cash § 49; School Districts § C.J.S. Counties § 223, § 345.

Law Review and Bar Journal

Mentioned in comment district act, 7 K.L.R. 376, 377.

CASE ANNOTATIONS

Annotations to L. 1933,

1. School-district treasurer for expenditure for prior Grade School District 30, 75 P.2d 251.

2. Petitions for county equivalent to an election v. Republic County Commission 82 P.2d 84.

CHAPTER 73

Senate Bill No. 764

AN ACT concerning the distribution of certain funds by the county treasurer; amending K.S.A. 72-8204b and K.S.A. 1981 Supp. 12-1678a and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1981 Supp. 12-1678a is hereby amended to read as follows: 12-1678a. (a) For the purposes of this section, taxes shall include ad valorem property taxes, intangibles property taxes, special assessments and all other taxes and fees collected with or at the same time as ad valorem property taxes.

(b) The board of county commissioners of any county may invest the undistributed taxes of any taxing subdivision in the ~~hands~~ possession of the county treasurer pursuant to the provisions of this section. The moneys shall be invested pursuant to K.S.A. ~~1980~~ 1981 Supp. 12-1675 and 12-1676, and any amendments thereto.

(c) Effective January 1, 1982, The county treasurer shall distribute the taxes collected for the several taxing subdivisions within or partially within the county as follows:

(1) On or before the ~~20th day of January and~~ 20, July 20 and the ~~31st day of October 31,~~ the actual or estimated amount collected for and owed to such taxing subdivision, and on or before the last business day before March 5, May 20 and September 5, not less than 95% of the actual or estimated amount collected for and owed to such taxing subdivisions. No payments of any interest earned on the investment of such tax collections shall be paid to such taxing subdivisions.

(2) To those taxing subdivisions which request special payment in advance of the dates provided by subsection paragraph (1) of this section subsection, in order to meet the fiscal needs of the taxing subdivisions as certified by the chief financial officer or governing body thereof, as follows: The amount so requested, but not to exceed the amount actually collected for and owed to such taxing subdivision.

(d) Prior to the effective date of this act, all interest earned by the county from taxes held for the state or other taxing subdivisions shall be paid to the county general fund, unless the board of county commissioners has provided, prior to the effective date of this act, for the distribution of some or all such interest earnings to the several taxing subdivisions.

(e) The board of county commissioners and the governing body of any taxing subdivision within or partially within the county may enter into agreements providing for the distribution of taxes and any interest earnings thereon in a manner alternative to the methods herein provided, and any such agreements now in existence shall not be deemed to be invalidated by this enactment.

(f) (e) All moneys received by the county as interest upon the investment of undistributed taxes, and not paid to taxing subdivisions as provided or authorized shall be retained by the county treasurer and shall be paid into the general fund of the county.

3. Liability on bonds joint and several; when demand not necessary. *Jenks v. School District*, 18 K. 356.

4. Action on bond; what allegations admitted unless denied under oath. *Wands v. School District*, 19 K. 204.

Annotations to L. 1879, ch. 156, § 1:

5. Failure to give bond within prescribed time; when vacancy exists. *Horneman v. Harlan*, 47 K. 413, 28 P. 177.

6. Prosecution of action by householder when director fails to prosecute. *School District v. Brand*, 71 K. 728, 730, 81 P. 473.

7. Effect of failure of treasurer to qualify within twenty days. *The State, ex rel., v. Stewart*, 90 K. 778, 135 P. 1182.

8. Deposit in bank not authorized; no liability on bond exacted from bank. *School District v. Roanoke State Bank*, 126 K. 122, 125, 267 P. 35.

Annotations to L. 1943, ch. 248, § 23:

9. Voter may maintain suit if director refuses; director cannot dismiss suit. *Joint Consolidated School Dist. No. 2 v. Johnson*, 163 K. 202, 206, 207, 209, 211, 212, 181 P.2d 504.

10. Mentioned in discussing action to recover funds for the benefit of a city. *Fransham v. McDowell*, 202 K. 604, 606, 451 P.2d 131.

72-1017.

History: L. 1876, ch. 122, art. 4, § 15; R.S. 1923, 72-1017; L. 1943, ch. 248, § 24; Repealed, L. 1969, ch. 312, § 6; May 10.

Source or prior law:

L. 1861, ch. 76, art. 3, § 20; G.S. 1868, ch. 92, § 38; 72-1020.

CASE ANNOTATIONS

1. Provisions herein not abrogated or modified by 72-1005. *Faulk v. McCartney*, 42 K. 695, 697, 22 P. 712.

2. Section not applicable to sinking fund for retirement of bonds. *State, ex rel., v. Lewis*, 138 K. 725, 727, 728, 27 P.2d 250.

3. School treasurer without right to issue warrant except for lawful claim. *Joint Consolidated School Dist. No. 2 v. Johnson*, 163 K. 202, 210, 181 P.2d 504.

72-1018. County treasurers to pay moneys to school district treasurers; notice district treasurers bond filed. The county treasurer shall pay to each school district treasurer in the county all school moneys in the county treasury belonging to the district, upon the order of the treasurer of the district countersigned by the district clerk except as otherwise provided by law. The county treasurer shall not pay to any school district treasurer any moneys unless and until he has been notified by the clerk of the school district that the school district treasurer has filed his bond as provided by law.

History: L. 1876, ch. 122, art. 4, § 16; R.S. 1923, 72-1018; L. 1943, ch. 248, § 25; L. 1945, ch. 288, § 2; L. 1968, ch. 21, § 1; July 1.

Source or prior law:

L. 1861, ch. 76, art. 3, § 20; L. 1867, ch. 123, § 4; G.S. 1868, ch. 92, P. 936, § 4; G.S. 1868, ch. 92, § 38.

Research and Practice Aids:

Hatcher's Digest, School Districts §§ 58, 69, 72.

CASE ANNOTATIONS

1. Cited in determining diligence required in presenting check for payment. *School Dist. v. Ottawa County Comm'rs*, 133 K. 528, 534, 1 P.2d 88.

2. Section not applicable to sinking fund for retirement of bonds. *State, ex rel., v. Lewis*, 138 K. 725, 727, 728, 27 P.2d 250.

72-1019.

History: L. 1876, ch. 122, art. 4, § 17; R.S. 1923, 72-1019; Repealed, L. 1943, ch. 248, § 42; June 30.

Source or prior law:

L. 1861, ch. 76, art. 3, § 20; L. 1864, ch. 100, § 2; G.S. 1868, ch. 92, p. 934, § 2; G.S. 1868, ch. 92, § 38.

72-1020.

History: L. 1876, ch. 122, art. 4, § 18; R.S. 1923, 72-1020; Repealed, L. 1943, ch. 248, § 42; June 30.

Source or prior law:

L. 1861, ch. 76, art. 3, § 23; G.S. 1868, ch. 92, § 41; L. 1872, ch. 186, § 1; L. 1874, ch. 122, § 4.

CASE ANNOTATIONS

1. Private account kept by treasurer not admissible; examination of books. *Hinton v. School District*, 12 K. 573.

2. Books and reports not conclusive evidence; accounts explained and controverted. *Saville v. School District*, 22 K. 529.

3. Treasurer is legal custodian of funds liable to district therefor. *School District v. Hand*, 124 K. 121, 257 P. 931; *School District v. Roanoke State Bank*, 126 K. 122, 125, 267 P. 35.

4. Treasurer's report held only prima facie evidence in action against surety. *School District v. Randall*, 141 K. 547, 548, 42 P.2d 562.

72-1020a to 72-1020d.

History: L. 1927, ch. 273, §§ 1 to 4; Repealed, L. 1943, ch. 248, § 42; June 30.

72-1021.

History: L. 1876, ch. 122, art. 4, § 19; R.S. 1923, 72-1021; Repealed, L. 1943, ch. 248, § 42; June 30.

Source or prior law:

L. 1861, ch. 76, art. 3, § 21; G.S. 1868, ch. 92, § 39.

CASE ANNOTATIONS

1. Action on treasurer's bond must be in name of district. *Coffman v. Parker, Treasurer*, 11 K. 9, 12.

2. Action must be in name of district, not in alternative. *Armstrong v. Durland, Treasurer*, 11 K. 15.

3. No defense for treasurer that funds deposited in failed bank. *School District v. Roanoke State Bank*, 126 K. 122, 125, 267 P. 35.