

Approved: March 18, 1996
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 5:15 p.m. on March 14, 1996 in Room 521--S of the Capitol.

Members present: Senator Langworthy, Senator Martin,
Senator Bond, Senator Clark, Senator Feleciano, Jr.,
Senator Hardenburger, Senator Lee, Senator Ranson,
Senator Sallee and Senator Wisdom.

Committee staff present: Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Don Hayward, Revisor of Statutes
Elizabeth Carlson, Secretary to the Committee

Conferees appearing before the committee: None

Others attending: See attached list

Senator Langworthy announced the Senate Assessment and Taxation Committee will meet tomorrow, March 15, 1996 at 11:00 a.m. in Room 527-S.

SB 527--SCHOOL DISTRICT FINANCE, REAUTHORIZE AD VALOREM TAX LEVY

Senator Bond had a proposal to put before the committee. (Attachment 1) He said the revisor had determined that statewide real property tax legislation could be imposed for no longer than two years--this is not true of any other type of taxation. It is obvious that future legislatures can redo what has been done this year. He gave a brief review of his proposed amendment. As appraisals continue to go up, the state realizes a hidden tax increase. He said if this amendment is passed, it would have to be addressed again in 1998. Whatever is done here will expire in 1998.

Senator Bond explained the School Property Tax Model. (Attachment 2) This plan will stop the creeping of the 35 mill levy. He said the state is no longer going to profit from this creep. It would freeze the proposed property tax at \$571 million. Senator Bond said he had this drafted by staff the first week of the Legislative Session.

Senator Martin said he appreciated the Chairman getting together before holding a hearing tomorrow. He said what he sees otherwise is an eventual gridlock with the House if something is not done. There are several people who have plans they would like to bring forward.

Senator Langworthy said it was not her intent to hold a hearing tomorrow, but to only have committee discussion. She hoped the members of the committee would bring any ideas and thoughts to be discussed.

Senator Ranson said she was a member of the Governor's Tax Equity Task Force and one of the recommendations from the Task Force was to reduce the 35 mill levy over time without tax shifts.

Senator Lee asked if this idea was discussed in the House last year. Senator Bond said "Yes, this is not new". She asked if the Chairman was going to allow the different ideas be brought before the committee in a hearing.

Senator Langworthy said she hoped people would present their ideas to members of the committee.

Senator Martin said he had talked to several House Representatives who had plans and he would be willing to present their plans to the committee.

The meeting was adjourned at 5:25 p.m.

The next meeting will be held Friday, March 15, 1996 at 11:00 a.m. in Room 527-S

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: March 14, 1996

NAME	REPRESENTING
G. Johnson	WEAFL
Dr. Sicilian	KDOR
Mike Taylor	City of Wichita
Denise Ayl	USA
ALAN STEPPAT	PETE McGOILL & ASSOC.
Jacque Daker	SQE
Bob Corkins	KCCI
Kosin Lehman	Oliver USD 237
Les Baker	4th Enrollment USD's
Shawn Dinn	KCP
HELENE SMITH	USA
Christy Bailey	Senator Kaul
Mary E. Turkington	Ks. Motor Carriers Assn.
Christy Caldwell	Topeka Chamber of Commerce
Jim Spucally	USD #510
Rraig Trout	KWEA
Mark Tallman	KASB
Helen Stephens	BU USD 229
Karen France	Ks. Assoc of REALTORS

MEMORANDUM

TO: Senator Dick Bond
FROM: Norman J. Furse, Revisor of Statutes
DATE: March 7, 1996
RE: Time Limitations on Imposition of State Property Tax by Statute

I. Background. I understand several questions have arisen concerning the power of the legislature to impose by statute a statewide property tax. Among these questions concern the length of time such a tax may be imposed, whether such a tax may be imposed in the second year of a biennial legislative session for two years and whether such a tax enacted for more than one year would be binding upon subsequent legislatures.

II. Length of Time for Imposition of State Property Tax.

A. Kansas Constitution. Article 11, § 4 of the Kansas Constitution provides:

The legislature shall provide, at each regular session, for raising sufficient revenue to defray the current expenses of the state for two years.

B. The State ex rel. v Bailey. The Kansas Supreme Court in *The State ex rel. v. Bailey*, 56 Kan. 81 (1895) considered the constitutionality of a state property tax for the year 1891, and each year thereafter, construed the above quoted section of the constitution and determined that the "section imposes on the legislature at each biennial session the duty to levy taxes for the ensuing two years. That duty must be fully performed by the legislature at each regular session, and one body of legislators cannot, by making a continuing levy, encroach on the province of a succeeding one. The act of 1889 was valid as a levy for two years only." (56 Kan. at 82-83) It should be noted that both current provisions of the Kansas Constitution authorizing "permanent" taxes were adopted after this decision. The state institutions of higher education section, section 6 of article 6 of the Kansas Constitution in 1918 and the charitable and benevolent

Senate Assessment + Tax

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attach 1-1

institution section, section 6 of article 7 of the Kansas Constitution, in 1952.

- C. School District Finance 1992. During the 1992 legislative session, the legislature enacted the school district finance quality and performance act (K.S.A. 72-6405 et seq.) Within a few months subsequent to the enactment of the new legislation, 17 school districts and a total of 97 plaintiffs sought determination that the new school finance legislation was unconstitutional. Among the plethora of legal issues raised was whether the new act violated article 11, § 4 of the Kansas Constitution. Section 27 of the new act provided that boards of each district would levy an ad valorem tax at the rate of 32 mills for the 1992-93 school year, at a rate of 33 mills in the 1993-94 school year and at a rate of 35 mills in the 1994-95 school year and each year thereafter.
- D. District Court Decision. The Shawnee County district court citing the *Bailey* case held that the school district levy provision violated article 11, § 4 of the Kansas Constitution. The district court severed all provisions relating to revenue beyond the two-year period (that is, the levy for 1994-1995 and thereafter). The district court, relying on the logic in *Bailey*, stated: "In this case the provision relating to the mill rate in the 1994-95 school year is not valid and will need to be separately enacted." The district court's order in the case directed the legislature to "enact a mill levy for the 1994-95 school year and at least biennially thereafter." (Order and Summary Decision, p. 5)
- E. Kansas Supreme Court. Various rulings of the district court were appealed to the Kansas Supreme Court which rendered its decision in the case *U.S.D. No. 229 v. State*, 256 Kan. 232 (1994). The issue concerning the provision of the act that set the school district's mill levy for a period in excess of two years was not appealed. However, the Kansas Supreme Court stated: "Additionally, the district court held that a provision of the Act that set the school district's mill levy for a period in excess of two years was constitutionally impermissible but was severable. However, that infirmity has been corrected by the 1994 legislature and is not before us." (p. 236)

- F. Conclusion. Based on the *Bailey* case, the Shawnee County district court school finance case and the *U.S.D. No. 229* case, legislation which imposes a state property tax for a period in excess of two years is unconstitutional as being in violation of article 11, § 4 of the Kansas Constitution.

III. Biennial Enactment.

- A. Issue. The question has been raised as to whether the state property tax levy must be for the two years of the legislative biennium (an odd-numbered year and an even-numbered year). There is no case law directly on this point.
- B. Case Law. The Kansas constitutional provision (article 11, § 4) does not refer to a biennium period but says that the legislature shall provide at each regular session "for raising sufficient revenue to defray the current expenses of the state for two years." The *Bailey* court, at a time when the legislature met only once each biennium, states that the constitutional section "imposes on the legislature at each biennial session a duty to levy taxes for the ensuing two years." The Shawnee County district court's order in the district court case directed the legislature to "enact a mill levy for the 1994-95 school year and at least biennially thereafter." (Order and Summary Decision, p. 5) In the *U.S.D. No. 229* case the Kansas Supreme Court stated that the "infirmity" of the mill levy for a period in excess of two years was corrected by the 1994 legislature. In 1994, the legislature had amended the statute to provide for a mill levy in 1994-95 and 1995-96 only. (L. 1994, ch. 7, § 1)
- C. Conclusion. As is apparent, the salient factor in determining the constitutionality of a state property tax levy is the two-year constitutional limitation not the combination of years in which the property tax levy is authorized. Of course, since this issue has not been specifically decided it could be raised in litigation challenging the constitutionality of a two-year enactment which is effective first in an even-numbered year.

IV. Binding Subsequent Legislatures.

- A. Basic Rule. A prior legislature does not have the constitutional authority to enact a law which denies to a subsequent legislature the power to change that law.

(*Board of Education v. Phillips*, 67 Kan. 549 (1903)) Stated another way, one legislature cannot bind another legislature. (*State ex rel. Stephan v. Williams*, 246 Kan. 681 (1990)) The power of any legislature to make laws is subject only to the restrictions imposed by the provisions of the Kansas Constitution and the provisions of the United States Constitution. (*State ex rel. Fadley*, 180 Kan. 652 (1957))

- B. Analysis. Article 11, section 4 of the Kansas Constitution provides on its face for legislative action "at each regular session" and the *Bailey* case specifically provides that "one body of legislators cannot, by making a continuing levy, encroach on the province of a succeeding one." (56 Kan. at 83) Neither the constitutional provision nor the *Bailey* case cuts off the power of subsequent legislatures to legislate. As the *Bailey* case specifically states, one legislature cannot encroach on a succeeding legislature.
- C. Conclusion. The lawmaking power of subsequent legislatures is not limited by the laws made by previous legislatures.

School Property Tax Model

Mill Levy Set at 35 Mills for 1996-97 School Year

Mill Levy Set Reduced for 1997-98 School Year Based on 1995-96 Assessed Value Growth

Assumption: Language Used to Take Out Growth Would Be Reenacted Every Two Years by Future Legislatures

Calendar Year	Current Assessed Value	Proposed Assessed Value	Current Mills	Proposed Mills
1994	\$15,502,087,375	\$15,502,087,375	35.0	35.0
1995	16,150,000,000	16,150,000,000	35.0	35.0
1996	16,658,725,000	16,658,725,000	35.0	35.00
1997	17,183,474,838	17,183,474,838	35.0	33.93 (a)
1998	17,724,754,295	17,724,754,295	35.0	32.89 (a), (b)
1999	18,283,084,055	18,283,084,055	35.0	31.89 (a), (b)
2000	18,859,001,203	18,859,001,203	35.0	30.92 (a), (b)
2001	19,453,059,741	19,453,059,741	35.0	29.97 (a), (b)
2002	20,065,831,123	20,065,831,123	35.0	29.06 (a), (b)
2003	20,697,904,803	20,697,904,803	35.0	28.17 (a), (b)
2004	21,349,888,804	21,349,888,804	35.0	27.31 (a), (b)
2005	22,022,410,302	22,022,410,302	35.0	26.48 (a), (b)
2006	22,716,116,226	22,716,116,226	35.0	25.67 (a), (b)

Fiscal Year	Current Law Property Tax	Proposal Property Tax	Change in Local effort by year	Change in Local effort (cumulative)
1996	\$516,030,748	\$516,030,748	--	--
1997	561,180,192	561,180,192	--	--
1998	581,912,368	571,394,268	(10,518,100)	(10,518,100)
1999	600,242,607	571,394,268	(28,848,339)	(39,366,439)
2000	619,150,249	571,394,268	(47,755,979)	(87,122,418)
2001	638,653,482	571,394,268	(67,259,215)	(154,381,633)
2002	658,771,067	571,394,267	(87,376,799)	(241,758,432)
2003	679,522,356	571,394,267	(108,128,088)	(349,886,520)
2004	700,927,310	571,394,267	(129,533,042)	(479,419,562)
2005	723,006,520	571,394,267	(151,612,252)	(631,031,814)

(a) Computed based on assumed 3.15 percent growth in statewide assessed valuation.

(b) The courts have ruled and the Revisor has opined that the school finance levy may not be set for more than two years at a time.

NOTE: A technical amendment will be necessary to hold the car tax law harmless with respect to the tax changes enacted in 1995.

Dick Bond

*Sen. Ousey + Sax
3-14-96
Attach 2-1*