Fire District Tax Levy Issue

The Issue: Fire Districts in Kansas are limited by KSA 19-3610 to 5 mills unless an election is held and then the mill levy may go up to 7 mills. All levies are set by the Board of County Commissioners.

Background: When reappraisal and classification of property occurred in the mid 1980's the legislature suspended ~~are~~ our fund levy limitations and instituted an aggregate dollar limit for all taxing subdivisions. When KSA 79-5040 was adopted in 1999, suspending all mill levy limitations and doing away with the aggregate dollar limit, it was generally believed that this also affected KSA 19-3610. Attorney General Morrision, however, opined in Opinion No. 2007-34 that KSA 79-5040 did not suspend the 5 mill limit since the language of KSA 19-3610 was more specific than some fund levy limitations in that it required an election for the Board of Commissioners to move the levy beyond 5 mills. Many fire districts, especially those with a small tax base, those that are attempting to build up equipment funds, or those that are making plans for full time personnel, find that the 5 mill levy limit is very limiting.

Proposal: Amend KSA 19-3610 to remove the levy limitation, leaving the levy determination up to the discretion of the Board of County Commissioners.

Note: This restriction only affects fire districts. It does not affect city or township fire departments, nor several other specialized statutes covering the establishment of a fire department.

SENATE RESOLUTION No. 1836

By Committee on Assessment and Taxation

3-24

A RESOLUTION requesting the Secretary of Revenue to seek a declaratory judgment from a court of competent jurisdiction as to whether the Tax Reform and Relief Act of 1999 and K.S.A. 79-5040 suspended procedural limitation requirements such as election requirements when the Legislature suspended levy limitations for special taxing districts across the State of Kansas.

WHEREAS, The tax lid enacted as K.S.A. 79-5021 et seq. was considered an important component of the statewide program of reappraisal implemented in 1989 to assure that local units of government could not reap a windfall by holding mill levies constant while enjoying increased valuations resulting from the implementation of the statewide reappraisal program; and

WHEREAS, In 1999, as a part of the Tax Reform and Relief Act of 1999, the Legislature of the State of Kansas allowed the tax lid to sunset and enacted K.S.A. 79-5040, which suspended all existing statutory mill levy rate and aggregate levy rate limitations and other procedural limitation requirements associated therewith for special taxing districts across the State of Kansas; and

WHEREAS, The legislature intended that when such legislation suspended such levy limitations, the procedural limitations associated therewith such as election requirements were to be suspended as well in order to assure the desired result expressed through such legislation and such election requirements were replaced with the "Truth in Taxation" requirement regarding acknowledgment resolutions that must be passed by certain local units of government when property taxes are increased from one year to the next year; and

WHEREAS, Special taxing districts across the state have operated under the belief that when the existing statutory mill levy rate and aggregate levy sale limitations were suspended so to suspended were the procedural limitation requirements associated therewith; and

WHEREAS, Special taxing districts across the state have exceeded the suspended statutory levy limitations without elections under the correct belief that such elections were suspended as well; and

WHEREAS, Since the enactment of K.S.A. 79-5040, legislation has been introduced to impose election requirements on special taxing subdivisions with clear statements from proponents and opponents expressing the understanding that K.S.A. 79-5040 suspended the election provisions in the statutory fund mill levy provisions for taxing subdivisions; and

WHEREAS, Attorney General Opinion 2002-36 and other opinions have held that K.S.A. 79-5040 did not suspend the election requirements contradicting the Legislative intent and nearly 10 years of practice by special taxing districts across the State of Kansas; and

WHEREAS, Several persuasive arguments were not addressed in the Attorney General Opinions that would compel a different conclusion which would be consistent with the Legislative intent of the Tax Reform and Relief Act of 1999 and K.S.A. 79-5040; and

WHEREAS, The Attorney General Opinions should have distinguished between a front end election requirement and an election that must be held as a result of a protest petition. A front end election to exceed suspended levy limitations is as much a limitation as the levy limitations were in the first place and in effect reimposes the suspended statutory levy limitation and nullifies the Legislature's clear intent to suspend such levy limitations; and

WHEREAS, The Attorney General Opinions did not analyze the "Truth in Taxation" provision of the legislation enacting K.S.A. 79-5040 which substituted the requirement to hold a front end election with a requirement for the taxing subdivision to adopt a resolution or ordinance to exceed the preceding year's budget, and then the electorate could respond to the tax increase with a petition calling for an election. This "Truth in Taxation" requirement coupled with a front end election requirement as determined by the Attorney General Opinions is inconsistent and counter intuitive; and

WHEREAS, K.S.A. 79-5040 suspends statutory levy limitations and the meaning of the term limitations has not been specifically determined in the Attorney General Opinions. The term limitations as used in that statute was broadly intended to include both levy limitations and any other procedural limitation requirements such as an election requirement. To ignore this interpretation of the term limitations frustrates the clear Legislative intent behind the Tax Reform and Relief Act of 1999 and reimposes the levy limitations on special taxing districts; and

WHEREAS, This information and these arguments related to the Legislative intent behind the passage of the Tax Reform and Relief Act of 1999 and K.S.A. 79-5040 in particular need to be fully considered to carry out the clear intent of the Legislature in those enactments, and judicial analysis and consideration is necessary to provide a more appropriate and consistent interpretation of the law: Now, therefore, *Be it resolved by the Senate of the State of Kansas:* That we request the Secretary of Revenue to seek a declaratory judgment from a court of competent jurisdiction based on the information and arguments expressed herein and on other relevant sources as to whether the Tax Reform and Relief Act of 1999 and K.S.A. 79-5040 suspended procedural limitation requirements such as election requirements associated when the Legislature suspended levy limitations for special taxing districts across the State of Kansas. A determination by the court that the election requirements were suspended with the levy limitations would carry out the intent of the Legislature behind those enactments and bring a consistent and common sense interpretation of the law; and

Be it further resolved: That the Secretary of the Senate shall send an enrolled copy of this resolution to the Secretary of Revenue.