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January 10, 2020

ATTORNEY GENERAL OPINION NO. 2020- 1

Martin W. Mishler
City Attorney, City of Sabetha
805 Main
P.O. Box 187
Sabetha, KS 66534

Re: Cities and Municipalities—General Provisions—Countywide and City Retailer’s Sales Taxes; Procedure for Imposition; Election Required; Rate; Use of Revenue; Apportionment of Revenue from Countywide Retailers’ Sales Tax Between County and Cities Located Therein

Synopsis: If a county imposes a countywide retailers’ sales tax to finance designated health care services, and a city within the county has not previously exercised its authority to impose a city retailers’ sales tax to finance health care services, no statutory provision authorizes remitting to a city that portion of the countywide tax revenue collected by retailers within such city. A county shall not use the sales tax revenues for any purpose other than the purpose specifically stated in the ballot proposition. Cited herein: K.S.A. 2019 Supp. 12-187; 12-192; L. 2007, Ch. 158, Sec. 6.

* * *

Dear Mr. Mishler:

As the attorney for the City of Sabetha, you ask for our opinion on whether K.S.A. 2019 Supp. 12-187(b)(5) would require a county to remit a portion of the proceeds of a proposed countywide retailers’ sales tax for health care services to a city for its hospital. For the reasons stated below, we conclude that the answer to your question is no.

To better understand the question, we present the scenario. The city is comprised of territory in two counties. The city's hospital is located in County A, which has imposed an ad valorem tax to provide funding for its hospital. The city has not imposed a city retailers' sales tax that provides funding for healthcare services. County B has proposed imposing a retailers' sales tax that would support health care services provided in two designated health care facilities located in County B, neither of which is located in the city.

To answer your question, we must interpret K.S.A. 2019 Supp. 12-187(b)(5) and K.S.A. 2019 Supp. 12-192(d)(2). To do so, we follow the rules used by the courts. The most fundamental rule of statutory interpretation is that legislative intent governs if it can be ascertained.¹ To determine legislative intent, the words in the statutes are given their ordinary, everyday meanings.² If there is no ambiguity in the meaning, there is no need to resort to canons of construction.³ When interpreting statutes to determine legislative intent, we must consider various provisions of an act *in pari materia* with a view of reconciling and bringing the provisions into workable harmony if possible.⁴

The authority to levy countywide retailers' sales taxes is granted in K.S.A. 2019 Supp. 12-187(b)(5), which states in pertinent part:

The board of county commissioners of any county may submit the question of imposing a retailers' sales tax . . . and pledging the revenue received therefrom for the purpose of financing the provision of health care services,⁵ as enumerated in the question, to the electors. . . . Whenever any county imposes a tax pursuant to this paragraph, any tax imposed pursuant to subsection (a)(2)⁶ by any city located within such county shall expire upon the effective date of the imposition of the countywide tax, and thereafter the state treasurer shall remit to each such city that portion of the countywide tax revenue collected by retailers within such city.

In turn, K.S.A. 2019 Supp. 12-192(d)(2) governs the disposition of the revenues collected from a countywide retailers' sales tax. It states: "Except as otherwise provided in K.S.A. 12-187(b)(5), and amendments thereto, all revenues received from a countywide retailers' sales tax imposed pursuant to K.S.A. 12-187(b)(5), and amendments thereto, shall be remitted to and shall be retained by the county."

When K.S.A. 2019 Supp. 12-187(b)(5) and K.S.A. 2019 Supp. 12-192(d)(2) are considered *in pari materia*, the remission of a portion of the revenue from the countywide

¹ *State v. Pulliam*, 308 Kan. 1354, 1364 (2018).

² *Id.*

³ *Id.*

⁴ *State ex rel. Topeka Police Dept. v. \$895.00 U.S. Currency*, 281 Kan. 819, 827 (2006).

⁵ "[H]ealthcare services" includes city or county hospitals. K.S.A. 2019 Supp. 12-187(b)(5).

⁶ The reference to subsection (a)(2) is apparently a reference to subsection (a)(2) as it existed prior to its repeal in 2007. See L. 2007, Ch. 158, Sec. 6. This reference is tied to the grandfather provision enacted in subsection K.S.A. 12-192(d)(2). Therefore, if a city adopted a city retailers' sales tax prior to 2007, the provision would have effect and the city would be entitled to remissions of proceeds to such city.

retailers' sales tax to cities within the county applies only if the city had a retailers' sales tax in place at the time the countywide tax was imposed.⁷

In the scenario presented, the city had not imposed a city retailers' sales tax pursuant to subsection (a)(2) of K.S.A. 2006 Supp. 12-187, prior to its repeal from the statute. The plain language of K.S.A. 2019 Supp. 12-187(b)(5) allows for remission of proceeds to a city when there has been "any tax imposed pursuant to subsection (a)(2) by any city located in such county." Because there was no city retailers' sales tax in place that was compelled to expire at the time the countywide tax was imposed, the provision in K.S.A. 2019 Supp. 12-187(b)(5) does not apply. Therefore, pursuant to K.S.A. 2019 Supp. 12-192(d)(2), all revenue from the countywide tax "shall be remitted to and shall be retained by the county," and the city is not entitled to any portion of the revenue.

This conclusion is compelled by a second requirement imposed by K.S.A. 2019 Supp. 12-192(d)(2)—that the tax revenue be expended "only for the purpose for which the revenue received from the tax was pledged." The purpose for the revenue was explicitly stated in the scenario for imposing the countywide retailers' sales tax. The funds raised through the tax may be used only for support of the two designated health care facilities in County B. Support of the city hospital is not one of the enumerated purposes of the proposed tax,⁸ so the city is not entitled to any portion of the revenue.

In conclusion, it is our opinion that a city is not entitled to any portion of tax revenue collected from a countywide retailers' sales tax to finance designated health care services unless the countywide retailers' sales tax supplants and causes to expire a pre-existing city retailers' sales tax to finance health care services.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/s/Charles W. Macheers

Charles W. Macheers
Assistant Attorney General

DS:AA:CWM:sb

⁷ K.S.A. 12-187(a) grants cities the authority to impose a retailers' sales tax.

⁸ As we observed in Attorney General Opinion No. 2007-4, "no statutory mechanism exists whereby the electorate or a governing body can modify the purpose for which local retailers' sales tax proceeds can be used."