

## **Employee Benefits Fund**

Question: Hi. Got another question. Our hospital in the past has done two budgets, the General Budget and Employee Benefit Budget. Our county clerk says that we no longer need to do the Employee Benefit Budget. So we have opted not to do one for 2013. My question is do we still need to fill in the Fund Page of the budget for the Current Year Estimate for 2012? Also, will any of this be a problem for our auditors? Thanks

Answer: Good morning. As a general rule, the county clerk advice is pretty sound and is in line with current accounting guidance concerning limiting the number of funds used by an entity to those that are just needed. However, in this particular case, we would recommend keeping the funds separate based on the provisions of K.S.A. 80-2516.

That statute reads in part that no levy in excess of two mills (or amount specified in a previous resolution) shall be made for your general fund unless the board adopts a resolution authorizing a levy in excess thereof. If the only action required by the board was a resolution to increase the general fund levy, we would agree that moving the employee benefits into the general fund and increasing the levy for the general fund (by resolution) would be fine. However, the statute goes on to state that such resolution is subject to a protest petition. If 5% of the voters sign the petition, then the increase asked for in the resolution is subject to an election. There are several Attorney General opinions that state that although the mill levy limitations found in statutes are suspended (see K.S.A 79-5040), if there is a procedure requirement in the statute to increase the levy, the requirement is still valid and has to be followed. It is interesting in this case that there is no time period given for the protest period, so we would guess that there is a general statute that covers this requirement.

Our opinion would be that in this case moving the employee benefits expenses to the general fund would likely cause a mill levy increase in the general fund and might subject the hospital district to the resolution/procedural requirement that must be followed to increase the mill levy for the general fund.

However, K.S.A. 80-2516 reads that the tax discussed above (for our purposes, the general fund), is in addition to all other taxes allowed by law. A separate tax levy for employee benefits is allowed under the provision of K.S.A. 12-16,102. Subsection (d) of that statute reads, “[t]he governing body of any taxing subdivision having established employee benefits funds . . . is hereby authorized to levy an annual tax . . . in an amount determined by the governing body to be necessary for the purposes for which the funds were created. . . .” In short, unlike what we find with your particular general fund, there is no levy limitation for the levy which results from a separate, employee benefits fund.

So, although the employee benefit expenses could be moved to the general fund, in your particular circumstance we would recommend that the fund remain separate due to the additional

procedures that might need to take place to move the employee benefit expenses to the general fund, and the possibility of having to apply these procedures each time an increase in expenditures to the general fund is needed. As you are probably aware, employee benefit costs can sometimes rise dramatically and, if these costs continue to be in a separate employee benefits fund, your governing body can increase the tax levy in this fund more easily without the procedural requirement of K.S.A. 80-2516.

This is also an issue that the hospital legal counsel should also review.

We hope this information helps. If you have additional questions or comments, please do not hesitate to contact us.

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