

Libraries

Question: Is there a minimum mill levy rate to qualify for the Library Grant? For example does a city need to have a Levy Rate above 2.0 to qualify?

If the city does in fact qualify, is there any other application process to be considered for the Library Grant or is the submission of the Budget all that is required? Thanks

Answer: Very good questions. There is no minimum mill levy rate that the library fund needs to hit for the local library to qualify for the State Library grant. What the State Library personnel do each year is to compare the current year (in this case, 2012) tax receipt estimates to the budget year (2013) tax receipt estimates (ad valorem, delinquent AV, MV, RV, and 16/20). If the 2013 estimates exceed those of 2012, the local library qualifies for the grant. If the 2013 estimates are lower than the 2012 estimates, then the State Library personnel look at the second test to determine qualification, the mill rate comparison. As we were advised, and as we have set up in the new budget forms, if the projected 2013 mill rate for the library fund equals or exceeds the mill rate for the 2012 library fund, the local library qualifies for the grant.

The local library only has to qualify under one of the two tests.

If the local library fails to qualify under both tests then the past practice of the State Library personnel has been to contact the sponsoring municipality to see if support from other sources might be added in to show increased support and, thus, qualification for the grant. In the past they really do seem to have worked hard to try to qualify as many local libraries as possible.

To my knowledge there is no application process for the State Library grant. Each year we work closely with the State Library as they access budgets for review and determination of grant qualification.

We hope that all of this helps.

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Question: Our city has an ordinance limiting its mill levy to the library to 4.0 mills. Previously, we followed the practice of preparing and publishing the library budget with a mill levy of approximately 4.25 mills. Then, when remitting the approved budget to the County, instructed that they not allow disbursing ad valorem taxes in excess of 4.0 mils for the budgeted year.

Our objective was to make sure that the library received 4.0 mills of ad valorem tax income in the instance of a declining assessed valuation. The end result is the mill levy ended up not exceeding or being below 4.0 mills.

My question is can we prepare a budget and publish it with a mill levy that is higher than what our ordinance allows, i.e. 4.0 mills?

Answer: We would not recommend continuing this practice due to the provisions of K.S.A. 79-2930(c), which reads in part:

The governing body of each taxing subdivision **shall not certify** [to the county clerk] an amount of ad valorem taxes to be levied that is **in excess of any tax levy rate or amount limitations** or any aggregate tax levy limitation. (Emphasis added.)

Since the mill levy is based on fixed dollars and final total assessed valuation, the city cannot have a sliding tax dollar amount in which to base the mill levy. So at this point we don't see any work around on this issue. Maybe the solution is for the city to pass a new ordinance which limits the amount of the library levy by dollars rather than mills.

In addition, the County Clerk's office probably needs to be reminded of the city ordinance concerning the library not exceeding 4.0 mills.

We hope that this information helps. If you have additional questions or comments, please let us know.

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Question: When a library board increases its annual budget requiring an increase in the library mill levy must the library pass a resolution of intent to increase local tax income? Or is a letter to the city administration asking the city to raise its mill levy sufficient?

Please give me the statute # or regulation # describing that resolution. I have seen it, but now I can't find it. Thanks so much.

Answer: The budget law statute that mandates a resolution be adopted in the event a *taxing subdivision* (such as a local library; *see*, AGO 1999-27) proposes to adopt a budget funded by property tax dollars exceeding the property tax funding of the preceding year (as adjusted for property added, changed in use, etc.) is K.S.A. 79-2925b. So, if the library board will be proposing an adjusted property tax increase over what was adopted last year it must first pass a resolution proposing to do so. (If the city in question has, pursuant to its home rule authority, passed an ordinance capping the number of mills that may be levied each year in support of the

library, it is arguable that the library does not constitute a *taxing subdivision* and would not then be required to adopt such a resolution. *See*, AGO 2002-44.)

The budget law statute which mandates this resolution is K.S.A. 79-2925b, which provides in pertinent part as follows:

(a) Without adoption of a resolution . . . so providing, the governing body of any taxing subdivision shall not approve any appropriation or budget . . . which may be funded by revenue produced from property taxes, and which provides for funding with such revenue in an amount exceeding that of the next preceding year, except with regard to

In addition, the resolution must be adopted prior to adoption of the budget. The statute (K.S.A. 79-2925b) does not specify by what date the resolution must be adopted, just that it needs to be done prior to adoption of the budget. Adoption of the resolution might take place at the hearing in which the board plans to adopt its budget, and immediately prior thereto.

Attached to this note is AGO 1999-27. The questions raised in the AGO came from Duane Johnson, former head of the Kansas State Library and, as you will note, one of the questions deals directly with whether a local library must adopt a resolution (cities adopt ordinances in this instance) in the event the local library's budget will be funded by tax dollars exceeding those of the year preceding.

The following is the conclusion reached in the AGO.

In conclusion, 1999 Senate Bill No. 45 [K.S.A. 79-2925b] does not alter the ability of libraries created under K.S.A. 12-1218 *et seq.* to determine the amount of property taxes to be levied for library purposes, subject to any "limitations fixed by law," nor does it alter the authority of certain libraries to levy on their own behalf. While all statutory limitations are suspended by Section 72 of the Bill, any other limits properly established by local legislative bodies are not. Libraries having the power . . . to require another taxing body to levy on its behalf is a "taxing subdivision" for purposes of Section 21 [K.S.A. 79-2925b] of the Bill, requiring adoption of a resolution prior to approving any appropriation or budget "which provides for funding with [property tax] revenue in an amount exceeding that of the next preceding year," with certain stated exceptions.

So, even though your local library relies on another entity to levy for it, since it has the statutory authority to require the city to levy what it needs to function it is considered, per the above opinion, a "taxing subdivision." And, a "taxing subdivision" is subject to the requirements set forth in K.S.A. 79-2925b.

As to the city and its budget, if the city's proposed levy exceeds that of the preceding year (as adjusted for property added, etc.) then the city, yes, would be required to adopt an ordinance under K.S.A. 79-2925b in advance of adopting its budget.

We do note from the information provided that the city in question may have set a mill rate cap on assistance to the library. If this is the case then – due to the control exerted by the city over

the library's funding - there is a question as to whether the library maintains its otherwise status as a "taxing subdivision." See, AGO 2002-44.

We hope that this helps.

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Question: I have a 3rd class city levying for a library. They are asking me if there is a levy limit for libraries and once a levy has been set, can it be changed the following year or is it a permanent levy? Can you help me with this?

Answer: Good afternoon. Assuming the library was created pursuant to K.S.A. 12-1220, the city has to levy an amount for the maintenance of such library in such sum as determined by the library board within the limitation fixed by law. There is no state limitation on how much a library board can levy, because of the mill levy suspension found in K.S.A. 79-5040. So, then the question becomes is there a local limitation? If the ballot question concerning the establishment of the library or if the city fixed the mill levy rate by ordinance or charter resolution, then there may be a limitation. However, if there is no local limitation, then the library board is free to ask for and the city is obligated to levy the amount asked for by the library board.

Now if the amount of levy increases, the library board is obligated under the provisions of K.S.A. 79-2925b to pass a resolution, which basically states they are increasing the amount of tax levied over that of the previous year, with some exceptions (please see K.S.A. 2925b). In Attorney General's Opinion 1999-27, Attorney General Stovall opined that K.S.A. 79-2925b was applicable to local library boards even though the city actually levies the tax.

I hope this addresses your questions. Again, this answer is dependent upon the library being created under K.S.A. 12-1220. If the library was created under another provision our response may change. Please feel free to share this information with the city, but since we cannot provide legal advice, the issue should also be reviewed by the city's legal counsel. The League of Kansas Municipalities may also be able to provide some guidance on this issue.

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Question: I work with one of the library systems and they are wanting to set up a capital improvement fund. Would the same statute for public libraries (KSA 12-1258) allow the system library to set up a capital improvement fund? I could not find a separate statute.

Answer: K.S.A. 12-1258 provides authority for a “public library” to create and utilize a non-budgeted capital improvements fund, but such authority does not appear to extend under this statute to regional library systems, the general authority for which can be found at K.S.A. 75-2547 *et seq.*

We’ve reviewed the statutes that relate directly to the regional library systems and fail to find any that explicitly or by inference provide authority for a capital improvements fund and, under Dillon’s Rule, failing to appreciate how such a fund might be essential or indispensable to the system, do not believe that authority exists for such a fund.

We hope that this helps. Thank you for your question.

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Question: Per our phone conversation, did you get a chance to check into our ability to set regional library levies with July estimated valuation? I am having a number of counties call to inquire. Thanks so much,

Answer: Good morning. As to whether you should use the final valuation numbers or the July estimated valuation numbers K.S.A. 75-2551 provides in pertinent part as follows:

. . . The tax levy made pursuant to the budget shall be based upon the certified preliminary abstract of property values submitted to the director of property valuation pursuant to K.S.A. 79-1604 [abstract of assessment rolls prepared and submitted to PVD on or before July 15] . . . and shall be certified to the county clerks of each county in the territory of the regional system of cooperating libraries.

So, in the case of the regional library systems Kansas law directs usage of the July estimates for determination of the tax levy. This was confirmed by Vicki Lignitz of Property Valuation Division, KDOR.

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Question: What does the State Library look at in our budget to determine if our library is eligible for the annual library grant?

Answer: Good question. K.S.A. 75-2556, the state aid statute, includes a maintenance of effort clause that essentially says a municipality must budget as much or more for the budget year as it

projects to receive in the current year. Annually, State Library representatives collect from municipal budgets the following information:

1. Current year and budget year assessed valuation
2. Current year and budget year library fund mill rate
3. Current year and budget year delinquent tax
4. Current year and budget year ad valorem property tax
5. Current year and budget year MV, RV, and 16/20M tax

When determining initial eligibility:

1. State Library representatives examine the respective totals of current year and budget year ad valorem, delinquent, and all MV taxes; if the budget year total is *equal to or greater than* the current year total the library is eligible for the State Library grant. No further examination of the budget is required.
2. If the budget year tax dollar total is *less than* the current year tax dollar total, State Library representatives compare the total assessed valuation and fund mill rates for the current and budget years; if the budget year fund mill rate is equal to or greater than the current year fund mill rate, and the budget year total assessed valuation is lower than the current year total assessed valuation, the library is eligible for the grant. However, if the budget year total assessed valuation increases and the fund mill rate is lower than in the current year, the library is ineligible for the grant.

(In essence, for a local library to achieve eligibility under this second test, so long as the fund mill rate in the budget year is equal to or greater than the current year fund mill rate – regardless of the comparative total assessed valuation amounts – the library will be eligible for the State Library grant.)

3. State Library representatives advise that they usually place more emphasis on ad valorem property tax for the reason that the municipality has, in comparison to MV taxes, more control over the amount this tax.
4. If, initially, a library is determined to be ineligible, State Library representatives consult with the library/municipality to obtain certification from the municipality that the maintenance of effort is being met with municipal government tax dollars. Thus, the State Librarian has the authority - if satisfied by municipality certification - to determine that a library is eligible for the State grant even though there is a failure to meet the two tests, above.

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Question: . Are city public libraries required by State statute to submit budgets? I know they prepare budgets for the City in which they are a component unit, but I'm wondering if they are required to have a budget and if going over budget on expenditures qualifies as a statute violation.

Thanks for any help!

Answer: Thank you for writing. The attached is a link to an Attorney General opinion concluding as indicated below. The opinion is well-written, short, and on point. We'll simply copy and paste the summary and let you read the text at your leisure.

The cash basis and budget laws apply only to subdivisions of the state authorized by law to raise money by taxation. A board of directors of a city library established pursuant to K.S.A. 12-1219 *et seq.* has no authority to raise money by tax; therefore, the fiscal affairs of such board are not subject to either the cash basis or budget laws. Cited herein: K.S.A. 10-1101; 10-1102; 10-1103; 10-1113; 12-1219; 12-1220; 12-1225; 79-2925.

<http://ksag.washburnlaw.edu/opinions/1993/1993-045.htm>

So, in the absence of applicability of the budget law to the city public library, there is no requirement that the budget be submitted in accordance with the budget law, and there can be no violation of KSA 79-2935.

We hope that this helps.

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