

Recreation Commission Budgets

Question: In the presentation on your website it mentions you can have a mill levy outside the general fund to collect employee benefits, insurance, and petty cash. Is this correct? Can we have these three funds outside of the general fund?

Answer: Under Recreation Commissions corporate powers (K.S.A. 12-1928), a recreation commission can create an insurance and employee benefits fund(s), with an aggregate mill levy limit of one mill without USD or city approvals. For ease of administration, we would recommend creating one fund for such purpose, but two different funds could be established if desired (just be sure, in the absence of authority to go higher, to keep the aggregate mill levy for both at one mill or under).

Subsection (k) of K.S.A. 12-1938 allows for the creation of a petty cash fund, but does not authorize a levy of such. We believe that in this instance the legislation means a petty cash fund can be established, but it is not meant to be a separate fund for budget purposes (generally, the petty cash fund would have general fund monies in cash, and pay those minor expenses from that fund, then when the fund is replenished, record the expenses to the general fund).

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

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Question: One of the entities for which we are responsible has written and told us that they will not have an adopted budget to us until August 28th. Can you point me to any online statutes pertaining to this request? It would be appreciated. I spent some time searching for an appropriate response prior to coming to you.

Answer: The budget law contains a couple of statutes relevant to the request from the city in question. Excerpts follow:

79-2930. Submission of adopted budgets and additional information pertaining thereto to county clerk; electronic filing; duties of county clerk; limitation on taxes levied, exception. (a) Two copies of the budget certificate giving the amount of ad valorem tax to be levied and the total amount of the adopted budget of expenditures by fund, along with itemized budget forms for each and every fund and proof of publication of the notice of budget hearing containing the budget summary shall be presented to the county clerk [on or before August 25]. . . .

79-2933. Time for budget hearing; adoption; validity of levies. The hearing herein required to be held upon all budgets by all taxing subdivisions or municipalities of the state shall be held not less than ten . . . days prior to [August 25]. After such hearing the budget shall be adopted or amended and adopted as amended, but no levy shall be made until and unless a budget is prepared, published and filed, but no levy of taxes shall be invalidated because of any insufficiency, informality, or delay in preparing, publishing and filing said budget.

The budget law clearly provides that the city should deliver to you, on or before August 25th, a complete, adopted budget. However, the budget law also provides that a levy of taxes in support of that budget will not be held invalid due to a delay in filing the adopted budget with your office. Finally, the Kansas Supreme Court has actually weighed in on this issue and, in a 1940 case (relied upon in a 1986 Attorney General opinion), the Court held that the August 25th deadline found in the budget law is one that is “directory” rather than “mandatory” due to the lack of penalty associated with non-compliance. In other words, in cases like the one you have the phrase “shall be presented” is interpreted to mean “should be presented.”

In short, a budget filed a few days late, as anticipated in your case, is still a valid budget. You are perfectly OK to accept a late-filed budget; and, conversely, we do not believe that it would be within your authority - in this instance – to refuse delivery of the city’s adopted budget (not that that was a consideration for you).

We always encourage folks to meet the August 25th deadline, but if unable to do so to communicate with the county clerk to let the clerk know what’s going on; the city is doing the right thing by providing to you ample heads up on their particular situation.

We hope that all of this helps.

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Question: Do I need to submit my recreation commission budget to anyone other than the county clerk and the entity I get my taxes through?

Answer: Good question. You need only submit your adopted budget to your sponsoring agency (USD or City, or taxing district in the case of a jointly-sponsored recreation commission) and the county clerk.

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Question: If a City levies the tax for a Recreation Commission and includes a fund in the City's budget (just for the levy), is the Rec Comm still required to prepare and publish a budget? They receive a separate "County Clerk's Budget Information for the 2013 Budget" from the County and have always prepared and published a budget (that included all of their revenues and expenses, not just the City levy portion), but we were wondering if they needed to?

Answer: A good question. Yes, the recreation commission is required to prepare and publish a proposed budget (same minimum 10-day rule for hearing following publication) and hold a budget hearing, just like the sponsoring city. A significant difference for the recreation commissions is that is supposed to have everything done by August 1, which means in many cases they have to plug in a dollar amount for the budget year property tax receipts which is based upon *an estimate* of preliminary total assessed valuation.

The statute that requires all of this is K.S.A. 12-1927(a), which provides as pertinent here:

The recreation commission shall prepare an annual budget for the operation of the recreation system. Prior to the certification of its budget to the city or school district, the recreation commission shall meet for the purpose of answering and hearing objections of taxpayers relating to the proposed budget and for the purpose of considering amendments to such proposed budget. The recreation commission shall give at least 10 days' notice of the time and place of the meeting by publication in a weekly or daily newspaper having a general circulation in the taxing district. Such notice shall include the proposed budget and shall set out all essential items in the budget except such groupings as designated by the director of accounts and reports on a special publication form prescribed by the director of accounts and reports and furnished with the regular budget form. The public hearing required to be held herein shall be held not less than 10 days prior to [August 1]. After such hearing the budget shall be adopted or amended and adopted by the recreation commission.

As an FYI, this same section of the recreation commission statutes provides that the adopted budget also be submitted by the recreation commission to the county clerk.

We hope that this helps.

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Question: Good Morning! Will one of you take the time to visit with me about an Employee Benefit Fund question. I think that you answered my question on page 47 of your presentation but I need to make sure that I understand it clearly.

This is my story: in past years I have requested amounts in excess of one mill for my employee benefit fund and it has always been approved. The new city manager reads the levy law as he only has to provide up to one mill, although in past years during the budget they have increased

the budget limitations. Is the city obligated or required to pay up to the maximum amount levied in past years per request of the approval of the Recreation Commission?

Thanks

Answer: Good morning. In this particular case, we would probably be in agreement with the city based on the statute, K.S.A. 12-1928, which, in regard to recreation commission powers, provides that the commission may:

(j) create and establish employee benefits contribution funds The city or school district to which is certified the budget of any recreation commission which has established employee benefits contribution funds . . . shall levy an annual tax . . . in an amount determined by the recreation commission to be necessary for the purposes for which such funds were created . . . except that no levy shall be made under this subsection which, when coupled with any levy made pursuant to subsection (e), is in excess of one mill without the approval of the city or school district. . . .

While the statute reads “in an amount determined by the recreation commission to be necessary,” it does place a limitation on the levy to one mill unless the city or school district approves a levy exceeding one mill. Based on our reading of the statute, it would appear that this limitation would have to be examined on a year-by-year basis, and the city would approve the mill levy in excess of one mill on a yearly basis.

With that said, we also see the recreation commission’s position. You are facing increased costs for employee benefits, and you have a history of increasing the levy beyond one mill. It does not make much sense for the city to start limiting the levy to one mill at this point, but based on the statute (with no formal action increasing the levy) we believe the city has the authority to do so.

This is probably an issue where the parties need to work in cooperation to reach some type of agreement so that an adversarial relationship is not developed.

Hope this information helps. If you have additional questions or comments, or additional facts that were not considered, please let us know.

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Question: We have a question for one of you regarding a possible rec commission beginning here. They are just starting the process and are looking at an election next year to get it approved. They keep asking when is the soonest they can start seeing revenue from that mill (wanting to do one mill on the school for rec commission based on statute 12-1925a).

I’ve told them that they need to have a budget first. Correct? Thanks

Answer: The election would have to occur first and, yes, they would need a budget prior to receiving the tax levy (without an adopted budget there would be no levy). If they hold an election during the first half of next year they would adopt a budget in August, and the first mill levy revenue they would see would be the following January.

Hope this information helps.

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Question: We published our general fund and employee benefit fund proposed expenditures for fiscal year 2011-2012. Insurance premiums are yet to be in, so I estimated. Can I exceed my published employee benefits fund expenses this fiscal year (if premiums are higher than estimated) if TOTAL expenses do not exceed the amount published for both employee benefits plus general fund expenses? If no, what is the process if later we find we may exceed our expenses in that fund? Republish? Thanks.

Answer: Good morning. Unfortunately, when you adopt the budget you are telling the taxpayers this is the maximum amount of expenditures for the recreation commission, by fund. This dollar amount may be the same as what you published, or it may be less than what you published, but it cannot be more than what you published. So, the general answer is that anytime you increase the amount of expenditures in a fund to more than what was adopted, the budget for that fund needs to be amended. If either of your two funds exceeds its budgeted amount, regardless of whether the two added together are less than the total budget amounts of the two funds, you are looking at a budget law violation.

One option to consider is to amend your employee benefits fund in order to increase the fund budget authority.

Another option to consider, since it appears that total expenditures for both the general and employee benefits fund will be less than the total amount adopted for the two funds (we are assuming the general fund has some flexibility) is to first pay all employee benefit expenses out of the employee benefits fund (to the amount of budgeted expenditures) and to pay any remaining expenditures directly from the general fund (as long as you don't exceed the adopted budget for the general fund). Although you cannot transfer monies from the general fund to the employee benefit fund, you can pay any legal obligation of the recreation commission directly from the general fund.

We hope that this information helps.

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Question: Do you have a record of the X Recreation Commission that has their mill levy go through the City of X? I spoke with their Mayor during the League of Municipalities trade show this past weekend about that. The Mayor said they have a Recreation Commission that submits a budget amount to them each year to be included in their city budget. I couldn't find them listed on your website for Recreation Commissions:

Answer: Good morning. We cannot tell you with absolute certainty that they are a recreation commission, since this is an issue at the local level and we are not notified when creation of a recreation commission occurs. However, we can tell you that for the current budget year the "X Recreation Commission" created a budget in accordance with K.S.A. 12-1927 in which it is asking for a disbursement from the city in the amount of \$12,200. Likewise, the City's budget is providing them an appropriation of \$12,200.

So, while we cannot be sure (the mayor should be asking the city clerk and recreation commission questions concerning formation), it appears that X Recreation Commission is not a city department, but rather a stand-alone commission created under the provisions of K.S.A. 12-1922 *et seq.*

Hope this information helps.

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Question: The City of X wants to verify if they have a Recreation Commission? I couldn't find them listed by city or USD on your list.

Answer: Good afternoon. While we cannot verify absolutely, since formation of recreation commissions are local issues that do not usually involve this office, the review of transactions appears to support the recreation activity as being a department of the city. We reached this opinion by not seeing a separate budget for a recreation commission as required by K.S.A. 12-1927. In addition, if there was a separate recreation commission, and not a city department, the mill levy should be in a separate fund (which it is not) in the City's budget. In this case, the park and recreation budget is part of the City's general fund, which is indicative of a city department.

Hope this information helps.

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Question: Good afternoon. I had an attorney tell me that the Recreation Commissions' mill levy limitation was revoked in an attorney general's opinion when the tax lid was taken off.

Is this true, and if so how would that work? If they have a charter ordinance, I am supposing that they would have to revoke that and then the Recreation Commission could tell the school or the city what they want levied?

Any insight you have in this would be great. Thank you.

Answer: Good afternoon. The attorney is correct that K.S.A. 79-5040 suspended all statutory mill levy rate limitations. The exact language reads as follows:

In 1999, and in each year thereafter, all existing statutory fund mill levy rate and aggregate levy rate limitation on taxing subdivisions are hereby suspended. (Emphasis added.)

In AGO 2002-44 the Attorney General opined that K.S.A. 79-5040 was applicable to the mill levy rate limitation found in K.S.A. 12-1927 (which only allowed an increase of one mill per year to a total of four mills). It is important to note that while the mill levy limitation found in the statute, as well as the statute's aggregate limit, is covered by K.S.A. 79-5040, the Attorney General has also opined that procedural requirements found in statutes to increase the mill levy and aggregate limit still need to be followed. The following is a link to AGO 2002-44: <http://ksag.washburnlaw.edu/opinions/2002/2002-044.htm>

The attorney may wish to review the following AGO's - 2002-44 (Recreation Commissions) 2002-36 (County Hospitals) and 2007-34 (Fire Districts). Please find attached links to the AGOs:

<http://ksag.washburnlaw.edu/opinions/2002/2002-044.htm>

<http://ksag.washburnlaw.edu/opinions/2002/2002-036.htm>

<http://ksag.washburnlaw.edu/opinions/2007/2007-034.htm>

However, you make an interesting comment when discussing that the city might have a charter ordinance. We would probably wish to learn more about the ordinance, but our guess is that the ordinance – if one is in place - was done by the city under its home rule power, and limits the amount of levy by the recreation commission to a certain mill rate. If our assumption is correct, K.S.A. 79-5040 would only apply to mill levy limitations found in state statute; it would not apply to a limitation at the local level. An additional consideration here: if a charter ordinance is involved we would very much like to see the ordinance inasmuch as the statute concerning recreation commissions does not appear to be non-uniform in its application to cities, calling into question the ability of the city in question to charter out of its provisions.

Finally, assuming that a limit has been imposed by virtue of a legally adopted charter ordinance, in that case the ordinance would likely need to be repealed or another charter ordinance would need to be done to increase the mill levy. In the absence of a legally adopted charter ordinance

limiting the amount of levy support to the recreation commission any increase over the existing mill levy would need to follow the procedural requirements found in K.S.A. 12-1927.

Hope this information helps.

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Question: I was approached by an attorney that wants a school district to start a recreation commission and she reads the levy as having been terminated and the procedural limitations are gone as well. Is this true?

Answer: If they are trying to establish a recreation commission under the provisions of K.S.A. 12-1925, we believe that in the petition and ballot question concerning the establishment, the recreation commission can ask for any mill levy they wish instead of the one mill limitation found in statute. However, once established and they wish to increase the mill levy (other than the establishment of a employee benefit fund) over the amount stated in the ballot question, the recreation commission would have to follow the procedure discussed in K.S.A. 12-1927.

Hope this information helps.

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Question: We have another question for you on behalf of a group that is trying to form a recreation commission.

They have questions about the 1 mill levy that can be levied for an employee benefits fund. They need to know if it would have to be shown separate from their general fund mill levy on the ballot? For example, they want to start with a 4 mill levy. Should they show 3 mills for the general fund, and 1 mill for the employee benefits fund? They would like to know if there is a state statute that applies to that issue.

Answer: Good afternoon. K.S.A. 12-1925 discusses the creation of a recreation system by petition and election, and states that the mill levy would be limited to one mill. We are assuming that the mill levy suspension statute (K.S.A. 79-5040) is being used to ask for more than one mill in the petition and election. The mill levy found in K.S.A. 12-1925 is for the operation of recreation system, and is separate from the mill levy found for employee benefits under K.S.A. 12-1928. Under that statute (the Powers of Recreation Commission) the commission on its own accord can seek a mill levy up to one mill for employee benefits. And, such a levy would be in addition to any other levy allowed by law.

This question is interesting, since it is trying to place both statutes into the petition, and there is no provision of state law to our knowledge covering formation in this manner. If the group is wanting a mill levy of four mills we would advise starting with the four mills, all of which would be going to the general fund. In addition, all expenditures (including employee benefits) would be paid from the general fund. If, at a later date, the four mills cannot cover the costs of the recreation commission, the recreation commission board can consider on their own action the establishment of an employee benefits fund, with a mill levy of one mill. If a mill levy of greater than one mill is needed for employee benefits, they would need the approval of the sponsoring city or USD.

Hope this information helps.

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