Resolution or Ordinance Required?

Questions: I have a couple of questions regarding tax levy issues for a hospital district. In the Special District budget forms package, there is an example resolution for the district to use if they have determined that they need to increase that tax levy over and above the amount of the prior year levy, even after taking into account new improvements, etc.

Is approving this resolution and attaching it to the budget when certified to the County Clerk all that is required under statute?

Does the resolution need to be published in newspaper prior to budget hearing and if so what is the publication requirements?

Answers: We require that a copy of the resolution be submitted to the county clerk along with the complete budget, and that the county clerk then submit all to our office. An adopted resolution, as in your case, need not be published. Ordinances adopted by cities under the same circumstances are controlled by a statute of general application which requires that all city ordinances be published. So, for your client all that is required is that the district board adopt the resolution and attach it to the budget when certified to the county clerk.

Also, the budget law merely requires that the resolution be adopted prior to approval of the budget. We advise that adoption of the resolution may occur two weeks in advance of the budget approval, or 10 minutes in advance, so long as the resolution is adopted prior to approval of the budget.

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Question: Hello. I predict that we will have a mil increase in this year's budget computation from 41.37 to approximately 44.50. Can you tell me if this increase will necessitate an ordinance before we adopt the budget?

Answer: Maybe, but we are unable to answer your question without the current valuation numbers in front of us. When you complete our budget forms you will want to review the "computation" tab (which is in aggregate dollars, not mills). This computation will take into account last year's levy in dollars, subtract out debt service, make adjustments for property that has changed in use, certain personal property increases, territory added, and improvements. This amount is then added to debt service needs for the budget year. The resulting amount is your limit in property tax dollars for the proposed budget.

Once you have completed all of the tax levy fund pages the total tax dollars necessary to fund your budget will be compared to the computed limit. If the total dollars needed exceeds the computed limit, an ordinance is required. If the total dollars needed is equal to or less than the computed limit, no ordinance is required.

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Question: A question has come up about how the resolution requirement determination is made on the Certification page. Is it based on the mill levy limit of 11.5 or some other variable? We keep getting a "Yes" even if we lower our mill levy. Our fire district has a 15 mill limit in the statute that formed it. Can you provide some insight?

Answer: A great question. The variable on whether or not a resolution is required comes down to a dollar comparison (vs. mill rate) of the amount of tax dollars levied for the 2012 budget in comparison to the amount of tax dollars proposed to be levied in the 2013 budget. Mill rate is not a factor at all.

It is important to note that certain variables may result in adjustments to the amount used in the 2013 budget for comparison (e.g. increased tax dollars resulting from new improvements, or annexation, or change in use of the property are not counted toward the 2013 budget total).

The following is the budget law statute that provides the framework for the determination of whether or not a resolution might be required:

> **79-2925b. Approval of budgets by taxing subdivisions; requirement of separate resolution or ordinance, when.** (a) Without adoption of a resolution or ordinance so providing, the governing body of any taxing subdivision shall not approve any appropriation or budget, as the case requires, 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 revenue produced and attributable to the taxation of:
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> (1) New improvements to real property;
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> (2) increased personal property valuation, other than increased valuation of oil and gas leaseholds and mobile homes;
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> (3) property located within added jurisdictional territory; and
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> (4) property which has changed in use.
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> . . . .

(d) The provisions of this section shall not apply to revenue received from property tax levied for the sole purpose of repayment of the principal of and interest upon bonded indebtedness, temporary notes and no-fund warrants.

We hope that this helps.

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Question: I always ask for a list of new construction from the county appraiser to check my numbers that I receive from the County Clerk's office. In reviewing our building permits we found that a MAJOR item was omitted. My appraiser said she cannot go back and change the report but she can give me written verification of this additional new construction to include with our budget documentation to show this is new construction and should have been included. As you know that is all new tax revenue and we really need that. Is this sufficient to just put the letter with the info from the County Clerk and then increase my new construction amount on the computation page in order to get the benefit of these new tax dollars. I'm not sure what the value is the County put on them - but they were two very large storage bins at our Co-op that were valued at $600,000 in the building permit so I am expecting a decent increase from these.

Answer: Yes, once you have a good number you can use the valuation amount attributable to new improvements in computing the dollar amount of levy for the 2013 budget beyond which an ordinance would be required, despite the fact that this particular information was not included on the County Clerk's budget information form provided to you previously.

The controlling statute, K.S.A. 79-2925b, lays out the general rule necessitating the adoption of an ordinance prior to exceeding the levy from the budget adopted last summer, along with the categories (including "[n]ew improvements to real property") from which increased property tax dollars are excepted from the total in making the year-to-year comparison. The statute does not dictate that the valuation information used in making the computation come to you via the County Clerk's budget information, or in any other particular form.

And, before considering an adjustment to your *total* valuation figure you will want to determine whether any of this new valuation was already included in the total amount.

We hope that this helps.

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Question: I am preparing township and special district budgets for a county here in Kansas. A new fire district was formed in 2012. I am preparing a budget for 2013. The levy computation is indicating that a budget resolution is required because the levy limit is exceeded. The maximum levy amount is zero because no levy existed until 2013. Is the budget resolution required? Thank you.

Answer: Because the budget law (K.S.A. 79-2925b) requires adoption of a resolution when the proposed budget tax levy dollar amount exceeds that of the preceding year budget (after accounting for allowed adjustments) and, in your case, there did not exist a preceding year budget, it is arguable that no resolution is required for the very first budget of this new taxing entity.

However, inasmuch as there is no statutory requirement, at this time, that the resolution be published it is our recommendation that a resolution be adopted by the governing body. In this instance the resolution simply needs to be passed by the governing body prior to adoption of the budget.

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Question: I have a quick question regarding the tax limit computation. Our city does not have a tax levy for our bond and interest fund, and instead covers debt service via transfers from other funds. Several years ago I discussed this situation with Municipal Accounting. I was told at that time to use the amount we transfer from the property tax supported funds (general, fire and stormwater) as the tax levy amount in the computation (lines 2 and 14). However, line 14 is actually labeled “Debt Service in this budget.” Therefore, should I be using the actual GO debt service amount, which is significantly higher due to other funding sources for debt (non-tax levy fund transfers), or should I only be using the tax-levy fund’s transfer amounts, which is what I have used previously?

What is the statute that discusses the purpose of the calculation and what should be included in the calculation? Thanks!

Answer: Thanks for the good question and good historical explanation. The statute that describes whether or not an ordinance must be passed in advance of budget adoption due to an increase in property tax to be levied is K.S.A. 79-2925b. The adjusting factors are also set forth in that statute.

To directly address your question you will want to use in your 2013 computation the amount which, in total, represents transfer amounts from your property tax levy funds - as you have in the past - as opposed to using the amount of GO debt service. Lines 2 and 14 on the computation form are intended to address subsection (d) of K.S.A. 79-2925b which provides that “[t]he provisions of this section shall not apply to revenue received from property tax levied for the sole purpose of repayment of the principal of and interest upon bonded indebtedness, temporary notes and no-fund warrants.”

We hope that this helps.

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Question: On the County Clerk's budget information sheet I received there is a dollar amount for "territory added." What is "territory added?"

Answer: "Territory added" on the clerk's budget information sheet represents the assessed valuation of land added to your taxing unit; typically, annexation.

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Question: Hello. I predict that we will have a mill increase in this year's budget computation from 41.37 to approximately 44.5. Can you tell me if this increase necessitates a specific Ordinance?

Thank you for your time.

Answer: Good Morning. We really cannot tell you that information since we don't have the valuations in front of us. When you complete our budget forms you will want to review the computed limit tab (which is in aggregate dollars not mills). That computation will take into account last year's levy in dollars, subtracts out debt service, makes adjustments for property that has changed in use, certain personal property increases, territory added, and improvements. This amount is then added to debt service needs for the projected year. This amount is your limit in dollars.

Once you have completed all the fund pages for the tax levy funds, the total dollars you ask for will be compared to the computed limit. If the total dollars asked for are over the computed limit, an ordinance is needed. If the total dollars asked for are equal to or under the computed limit, no ordinance is needed.

Hope this information helps. If you have additional question, 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 couple of questions regarding tax levy issues for a hospital district as follows:

First, in the Special District budget forms package there is an example resolution for the district to use if they have determined that they need to increase that tax levy over and above the amount of the prior year levy, even after taking into account new improvements, etc. Is approving this resolution and attaching it to the budget when certified to the County Clerk all that is required under statute?

And, does the resolution need to be published in the newspaper prior to budget hearing and if so what is the publication requirements?

Answer: Good questions. We require that a copy of the resolution be submitted to the county clerk along with the complete budget, and that the county clerk then submit all to our office. An adopted resolution, as in your case, need not be published. Ordinances adopted by cities under the same circumstances are controlled by a statute of general application which requires that all city ordinances be published. So, for your client all that is required is that the district board adopt the resolution and attach it to the budget when certified to the county clerk.

Also, the budget law merely requires that the resolution be adopted prior to approval of the budget; we advise that adoption of the resolution might occur two weeks in advance of the budget approval, or 10 minutes in advance, so long as the resolution is adopted prior to approval of the budget.

We hope that this helps.

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Question: I have a not-for-profit hospital that completes a special district budget because it receives tax funds. Do they have to publish the resolution if they want to exceed their established mill levy rate?

Answer: Good afternoon. It is not so much the rate, but the amount of dollars they ask for. The computation page of the budget will need to be completed, and if the amount of ad valorem taxes asked for is greater that the computed limit, then a resolution will be needed. If the amount of ad valorem taxes is less than the computed limit, no resolution is needed.

And, if a resolution is required it will need to be passed by the governing body in advance of adopting the budget, but it does not need to be published. Only city ordinances are required to be published and that is because there is a statute of general application that requires cities to publish all ordinances passed (K.S.A. 12-3007).

Hope this information helps.

If you have additional questions or comments, please let me know.

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