

## Submitting an Adopted Budget

Question: Can you please tell me how I submit our budget to Topeka? Thank You!

Answer: Actually, you do not need to submit your budget to us. You do, however, need to submit a complete budget to the clerk of your sponsoring agency (City or USD), as well as one to your county clerk. Ultimately, your county clerk will gather up and submit to us all of the adopted budgets of your county, including yours.

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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: 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 mils?

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: Is it pertinent that there be 10 days between when the budget is adopted and August 25th when it is due to the county clerk. I know there has to be 10 days from the notice of the public hearing to when you can hold the public hearing but not sure about the other.

Any help is appreciated. Thanks!

Answer: Good question. There is nothing in the budget law that requires that you *adopt* your budget at least 10 days prior to August 25, or that you wait 10 days following adoption before submitting to the county clerk.

The budget law does require, however, that *the public hearing* be held on or before August 15. (K.S.A. 79-2933.) The law further provides that after the hearing the budget may be adopted, or changed and adopted. Some municipalities hold the public hearing on one date, and adopt the budget on another, while some do both at the same meeting.

Once the budget is adopted it may be delivered to the county clerk; the August 25th date is merely one by which the budget is required to be adopted and submitted.

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Question: Good morning! Our tentative budget schedule is to have the budget hearing on August 7 and adopt the budget on the 21<sup>st</sup> of August. Am I correct that we can do it this way so long as the budget hearing is on or before August 15? If we have to do so, can we do our budget hearing on the 21<sup>st</sup>, as well (instead of doing it on the 7<sup>th</sup>)?

Thank you.

Answer: As to your first question, you are correct. Your proposed schedule is in compliance with the budget law.

Regarding your second question, while the budget law requires that the public hearing take place on or before August 15th, this deadline - as with the August 25th deadline - would likely be found directory rather than mandatory if the issue would be litigated in a court of law; meaning that if you miss the August 15th public hearing deadline your budget would still be valid. Notice, also, K.S.A. 79-2933, in which it is provided that “no levy . . . shall be invalidated because of . . . delay in preparing, publishing and filing said budget.”

Of course, we suggest that you do your best to meet all budget-related deadlines.

We hope that this helps.

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Question: We sponsor a recreation commission. Do we send the recreation budget to 900 SW Jackson, Suite 315S? Also, do we need to send a copy to our County Clerk?

Answer: You only need to send the recreation commission’s complete budget to the your county clerk. Their office will gather up all of the adopted budgets, including your recreation commission budget, and send them all in to us.

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Question: When I send to you the budgets from our county can the proof of publication be a copy of the publication with the publish date at the top? Getting a proof of publication affidavit is next to impossible from our paper. They send them all at once, once or twice a year.

Answer: Great question. Yes, a copy of the publication on which is shown the date of publication will work just fine.

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Question: Hi! With the 25th of August on a Saturday, is the deadline for the adoption of the final budget when? I couldn't find it on the website? Thanks!

Answer: The normal rule is that when a statutory deadline falls on a weekend or holiday, the deadline is extended to the next business day, in this case Monday, August 27.

We searched the statutes for anything that might dictate a delivery deadline of August 24; finding nothing it left us with a statute of general application that calls for extension of the deadline to the following business day, August 27.

We hope that this helps. Thanks for writing.

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Question: Hi. I have a question for you on a City budget. Their published notice has different totals than their adopted budget. The overall total levied is less, but they moved amounts to different funds.

For their library and cemetery funds the adopted budget has budget authority and ad valorem tax amounts lower than what was published, but for the general and debt service funds the budget authority amounts, as well as the tax levy amounts, are higher than what was published. Overall totals for budget authority and ad valorem taxes are lower than what was published.

They want to use the adopted budget amounts.

I guess I need confirmation that I can only levy by fund what is published in the paper and tell them that their budget is what is published? Should I recommend that they republish?

Answer: Good morning. You are absolutely correct. The city's proposed expenditures *and* ad valorem tax levy are limited *by fund* to what they published. Although overall expenditures and ad valorem taxes are less in the adopted budget, the budget law sets the appropriation and tax levy at the fund level. It appears that the adopted budget for the city increased expenses and taxes for the general and debt service funds.

K.S.A. 79-29309(c) is the guidance on this issue and reads as follows:

Each fund of the adopted budget certified to the county clerk in no event shall exceed the amount of ad valorem tax to be levied and the proposed expenditures of such fund in the proposed budget as originally published. . . .

At this point, if the adopted budget reflects what is needed in the way of expenditures and tax levy for the general and debt service funds, we would strongly recommend they republish and hold another hearing after 10 days. This is assuming that your office is okay with the delay, since they obviously will not meet the August 25<sup>th</sup> deadline. Otherwise, their expenditure authority and levy amounts will be limited to no more than what was published. They could amend the budget next year to increase expenditure authority for the general and debt service funds, but the amendment process will not address the tax levy issue.

Hope this helps.

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Question: Hi! I'm working on a city audit and I have a question. Per the KMAG Compliance Checklist Item #26 for cities, it states that "the public hearing should be held at least 10 days prior to the date the municipality shall certify their annual levies to the county clerk." Can you tell me the Ks Statute that dictates that? I found the one regarding the "no sooner than 10 days after giving notice of hearing," but I can't find a statute to support the first part. Before I tell the city clerk they failed to meet the requirement, I'd like to find the actual statute. Thanks!

Answer: The statute in question is K.S.A. 79-2933 (below, in pertinent part). As an FYI, inasmuch as no penalty attaches to the failure to meet the August 15 deadline called for in K.S.A. 79-2933, we consider that statutory deadline to be directory in nature and not mandatory.

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 (10) days prior to the date on which they shall certify their annual levies to the county clerk as required by law [August 25]. . . .

We can see where use of the word "should" in the KMAG checklist can make compliance sound mandatory, and agree, too, with not citing the city for a statutory violation.

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Question: I am just curious on County budget requirements. They have a requirement to submit their budget to A&R by December 1, do they still follow the requirement of certifying the County's budget by August 25<sup>th</sup> or is that requirement for the Cities to have theirs certified by the 25<sup>th</sup>?

I have worked a lot in the past with Cities and am working more and more with Counties and want to make sure I understand County requirements. Thanks again

Answer: Good question. The statute in question is K.S.A. 79-1801(a) which provides in pertinent part as follows:

. . . each year the governing body of any city, the trustees of any township, the board of education of any school district and the governing bodies of all other taxing subdivisions shall certify, on or before August 25, to the proper county clerk the amount of ad valorem tax to be levied. . . .

A county is a “taxing subdivision” (see AGO 1998-039) and, therefore, its governing body is subject to the same August 25 deadline as other municipalities.

We hope that this helps.

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