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November 13, 2012

ATTORNEY GENERAL OPINION NO. 2012-30

Jared Holste, County Attorney
Rawlins County
509 Main St.
Atwood, KS 67730

Re: Agriculture—County Extension—Extension Districts; Agreement for Establishment; Tax Levy Limitations

Synopsis: The governing body of an extension district is bound by a property tax limit contained in the agreement establishing the district. Cited herein: K.S.A. 2-623; 2-625; K.S.A. 2011 Supp. 79-5040.

* * *

Dear Mr. Holste:

As County Attorney for Rawlins County, you ask whether the governing body of an extension district is bound by a term in the agreement establishing the district. Specifically, you note that the Rawlins County Commission is considering a proposed agreement to combine the Rawlins and Thomas County extension programs into a single extension district in accordance with K.S.A. 2-623. The proposed agreement provides that the governing body of the extension district may establish a property tax levy not to exceed the greater of (1) 2.5 mills or (2) the rate that will yield \$150,000.¹ The agreement also provides that any change to this property tax cap must be approved by the governing body of the extension district, both the Rawlins and Thomas County boards of county commissioners, and Kansas State University. You inform us that the Rawlins County Commission's approval of the proposed agreement hinges on

¹ We note that this provision mirrors the mill levy limit found in K.S.A. 2-625(c); however, that statutory limit has been suspended by K.S.A. 2011 Supp. 79-5040 ("In 1999 and in each year thereafter, all existing statutory fund mill levy rate and aggregate levy rate limitations on taxing subdivisions are hereby suspended.").

setting a permanent property tax cap and that the Commissioners are concerned the governing body of the proposed extension district might not be bound by the agreement's cap.

The statutes that govern the formation and operation of extension districts² do not explicitly address whether the governing body of an extension district is bound by a mill levy limit contained in the agreement forming the district, and we have been unable to find any authorities on point. However, several features of the extension district statutes cause us to opine that the governing body of an extension district is bound by such a term.

The first of these features is the process by which an agreement to form an extension district must be approved. K.S.A. 2-623(a) provides:

No [agreement to form an extension district] shall be effective unless such agreement has received the prior approval of (1) the board of county commissioners of each county included in the proposed extension district . . . ; (2) the executive board of the extension council of each county included in the proposed extension district and the director of extension of Kansas state university of agriculture and applied science, or the director's authorized representative, acting together as a body; and (3) the attorney general

This approval process would be rendered meaningless if the governing body of the extension district could unilaterally modify or violate the terms of the agreement after approval by all of the relevant parties.

Similarly, the protest provision found in K.S.A. 2-623(i) supports our conclusion that a tax levy limit contained in an extension district agreement is binding. This provision requires a board of county commissioners, before approving any agreement to form an extension district, to publish a resolution stating its intent to do so. If at least 5% of the voters in the county sign a protest petition opposing the proposed agreement, the county commissioners may not approve the agreement unless and until the agreement is put to a public vote and approved by a majority of the voters. The fact that a tax levy limit may influence the voters' decision whether to protest or support a proposed agreement suggests that such a term should be binding on the governing body of the resulting extension district.

The final statutory provision supporting our conclusion is K.S.A. 2-623(d), which states that upon the formation of an extension district "all of the personnel and property of each of the extension programs which are combined into the new district extension programs shall be transferred to the new extension district and shall be subject to the authority of the governing body of the extension district *in accordance with the agreement to establish the extension district.*"³ Although this provision does not

² K.S.A. 2-623 *et seq.*

³ Emphasis added.

address property tax limitations, it supports the broader proposition that the governing body of an extension district is bound by the terms of the agreement establishing the district.

Viewing the extension district statutes as a whole, we opine that the governing body of an extension district is bound by a property tax limit contained in the agreement establishing the extension district. If the proposed agreement to combine the Rawlins and Thomas County extension programs is adopted in accordance with K.S.A. 2-623, any change to the property tax limit contained in that agreement must be approved by the governing body of the resulting extension district, both the Rawlins County and Thomas County boards of county commissioners, and Kansas State University.

Sincerely,

Derek Schmidt
Attorney General

Dwight Carswell
Assistant Attorney General

DS:AA:DC:sb