STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

KRIS W. KOBACH
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

May 19, 2025

ATTORNEY GENERAL OPINION NO. 2025-9

David A. Thompson
Morton County Counselor
737 Vilymaca Street
P.O. Box 1131
Elkhart, Kansas 67950

Re: Cities and Municipalities—General Provisions—Countywide and City Retailers' Sales Taxes

Cities and Municipalities—General Provisions—Apportionment of Revenue from Countywide Retailers' Sales Tax Between County and Cities Located Therein

Counties and County Officers—General Provisions—Home Rule Powers

Elections—Official Ballots—Ballot Language, Phrasing

Synopsis: The Morton County Board of Commissioners adopted a resolution placing a ballot measure before the electors regarding a countywide 1% retailers' sales tax to fund the county hospital. The resolution cited K.S.A. 2014 Supp. 12-187(b)(1), a general tax provision, rather than K.S.A. 2014 Supp. 12-187(b)(5), which specifically addresses funding health care services. The voters approved the measure. After the voters approved the measure, but before adopting the tax, the Board passed and published an amended resolution correcting the authorizing provision to be K.S.A. 2014 Supp. 12-187(b)(5). But the Kansas Department of Revenue (KDOR) informed the Board that it would divide the revenue between the County and the county municipalities,

per the requirements of K.S.A. 2014 Supp. 12-187(b)(1) and K.S.A. 2014 Supp. 12-192(a).

It is apparent the Board intended to implement this tax under K.S.A. 2014 Supp. 12-187(b)(5), and any citation to K.S.A. 2014 Supp. 12-187(b)(1) was a clerical error that should not defeat this intent. K.S.A. 2014 Supp. 12-187 does not require the authorizing statutory subsection to be listed. K.S.A. 2014 Supp. 12-187(g) lists the required information to be placed on the ballot measure. The statutory subsection is not included. K.S.A. 25-605a requires all ballot questions to be written in such a way that electors understand a "yes" vote indicates approval of the matter. Here, the ballot question was phrased in such a way that the electors understood a "yes" vote was a vote to approve a countywide 1% retailers' sales tax to fund the county hospital. Under K.S.A. 2014 Supp. 12-192(d)(2), revenue raised from a retailers' sales tax for health care services is remitted to the county, rather than divided between the county and the county municipalities.

The sales tax approved by the electors was to fund the county hospital. KDOR should remit all revenue collected from the tax to the County to fund the county hospital. Cited herein: K.S.A. 12-187; K.S.A. 12-192; K.S.A. 19-101a; K.S.A. 25-605a.

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Dear Mr. Thompson:

On behalf of the Morton County Board of Commissioners, you ask whether the Board properly cured an erroneous statutory citation on a written resolution creating a county sales tax to fund the county hospital.

Given its lengthy and complex nature, a brief history of the matter will help in analyzing your question. On January 26, 2015, the Board adopted Resolution 2015-3 to levy a county sales tax to fund the Morton County Hospital. Resolution 2015-3 cited K.S.A. 2014 Supp. 12-187(b)(1), a general tax provision, as the authority for the tax, but the published notice cited K.S.A. 2014 Supp. 12-187(b)(5), which specifically addresses funding health care services.[1] On February 23, 2015, the Board adopted Amended Resolution 2015-3 to correct the tax's effective date from August 1, 2015, to July 1, 2015.[2] It did not correct the authorizing statutory

[1] Morton County Resolution No. 2015-3; Elkhart Tri-State News January 29, 2015, Notice of Special Question (on file with Attorney General's Office).
[2] Morton County Amended Resolution No. 2015-3, §1.

subsection, and the published notice cited K.S.A. 2014 Supp. 12-187(b)(1).[3] The question was presented to the voters on April 7, 2015, without any mention on the ballot of the statutory authority.[4] The voters approved the measure. On April 20, 2015, in correspondence with the county clerk, a Kansas Department of Revenue (KDOR) agent stated KDOR would likely distribute the tax revenue to the county municipalities and the County. On May 18, 2015, the Board adopted Resolution 2015-4 to provide the correct statutory subsection.[5] The resolution was published in the County's official newspaper on May 21, 2015.[6] On July 27, 2015, the Board adopted Resolution 2015-5 to collect a countywide 1% retailers sales tax in the County to support the hospital under K.S.A. 2014 Supp. 12-187(b)(5). In 2024, in correspondence with KDOR, the Board learned that, over the previous nine years, KDOR had divided the tax revenue between the County and the county municipalities.

In your opinion request, you assert the citation to K.S.A. 2014 Supp. 12-187(b)(1) was a mistake, and the intended authorizing subsection was K.S.A. 2014 Supp. 12-187(b)(5). You ask whether the Board's subsequent remedial measures rectified this error, so that KDOR should remit all revenue collected from the tax to the County rather than split it between the County and the three county municipalities.

Resolving your question requires statutory interpretation. Statutory interpretation begins with the statutory text, giving words their ordinary and everyday meanings.[7] Only when the statutory language is ambiguous do Kansas courts turn to canons of construction or legislative history.[8]

At issue here are two provisions of K.S.A. 2014 Supp. 12-187(b). K.S.A. 2014 Supp. 12-187(b)(1) authorizes a board of county commissioners to put a general question of a countywide retailers' sales tax to the electors. K.S.A. 2014 Supp. 12-187(b)(5) authorizes a board of county commissioners to submit a question to the electors of imposing a countywide retailers' sales tax to finance health care services, including county hospitals.

Subsection (b)(1) is a general provision, while (b)(5) pertains only to health care services. The other difference between the two subsections is how they direct the collected tax revenue to be distributed. Revenue collected from sales taxes established under (b)(1) "shall be apportioned among the county and each city located in such county" in the prescribed manner.[9] For taxes under (b)(5), all

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[3] *Id.*; Elkhart Tri-State News February 26, 2015, Published Notice (on file with Attorney General's Office).
[4] Sample Official Ballot (on file with Attorney General's Office).
[5] Morton County Resolution 2015-4 (Amending Resolution No. 2015-3).
[6] Elkhart Tri-State News May 21, 2015, Published Notice (on file with Attorney General's Office).
[7] *Bruce v. Kelly*, 316 Kan. 218, 224, 514 P.3d 1007 (2002).
[8] *State v. Smith*, 311 Kan. 109, 113, 456 P.3d 1004 (2020).
[9] K.S.A. 2014 Supp. 12-192(a).

revenue "shall be remitted to and shall be retained by the county and expended only for the purpose for which the revenue received from the tax was pledged."[10]

Another statute plays a role in answering this question. K.S.A. 19-101a(a)(7) limits how a county may adopt, amend, or appeal countywide retailers' sales taxes to those methods prescribed in K.S.A. 12-187 through 12-195 and amendments thereto.[11] If a county adopts a resolution which conflicts with those statutes, it is "null and void."[12]

K.S.A. 2014 Supp. 12-187(e) requires a board proposing a retailers' sales tax to give notice of its intent to submit the proposed tax for approval by the electors. "The notice shall state the time of the election and the rate and effective date of the proposed tax. . . ."[13] The governing body proposing to levy a retailers' sales tax must "specify the purpose or purposes for which the revenue would be used, and a statement generally describing such purpose or purposes shall be included as a part of the ballot proposition."[14] The text of K.S.A. 12-187 does not require the published notice or the ballot proposition to include the statutory authority for the retailers' sales tax.[15]

If K.S.A. 2014 Supp. 12-187 did not require the Board to list K.S.A. 2014 Supp. 12-187(b)(5) as the authority for the proposed retailers' sales tax, neither does our State's general "ballot question" law. Every question a county places on the ballot for the voters must be "cast and phrased in such language that a 'yes' vote shall indicate approval of the matter or course of action proposed."[16] Further, ballot questions promoting a new course of action must be "cast and phrased in such language that a 'yes' vote will approve the new course of action."[17] Ballot questions must clearly state the substance of a question submitted to the voters, and if the question is stated in such a way that it may mislead the electors, that election is void.[18] Both the election notices and the ballots themselves must "clearly inform the

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[10] K.S.A. 2014 Supp. 12-192(d)(2).
[11] K.S.A. 19-101a(a)(7); Att'y Gen. Op. No. 2012-17, at *2.
[12] K.S.A. 19-101a(c); Att'y Gen. Op. No. 2012-17, at *2.
[13] K.S.A. 2014 Supp. 12-187(e).
[14] K.S.A. 2014 Supp. 12-187(a).
[15] The Legislature amended K.S.A. 12-187 in 2021, six years after the implementation of this tax, to add requirements that the ballot proposition also include whether "(A) The apportionment formula provided in K.S.A. 12-192, and amendments thereto, will apply to the revenue; (B) an interlocal agreement was entered whereby the county will retain either all or part of the revenue; or (C) pursuant to law, the county retains the revenue in its entirety." K.S.A. 2021 Supp. 12-187(g)(2). While these requirements did not apply when this tax was approved, it is notable that, when the Legislature decided to create additional requirements to be included in ballot propositions, it did not see necessary to require the correct statutory subsection be listed.
[16] K.S.A. 25-605a.
[17] K.S.A. 25-605a.
[18] *Wycoff v. Bd. of Cnty. Com'rs of Logan Cnty.*, 189 Kan. 557, 559-60, 370 P.2d 138 (1962).

voters as to the question submitted" and must "be informative of the whole and not of a part."[19]

The question here is whether the electors of Morton County understood what their vote meant on the ballot proposal. We believe they did. Although the original resolution proposing this retailers' sales tax cited K.S.A. 2014 Supp. 12-187(b)(1), it provided the tax would be used to finance the Morton County Hospital's costs.[20] The original published notice correctly cited K.S.A. 2014 Supp. 12-187(b)(5) and stated the countywide 1% retailers' sales tax was to fund the operations of the Morton County Hospital.[21] The amended resolution and notice of amended resolution both cited subsection (b)(1) but again informed the electors that the special question was for a countywide retailers' sales tax to fund the operating costs of Morton County Hospital.[22] Finally, the ballot question itself, which the County's electors approved, stated: "Shall a retailer's sales tax in the amount of one percent (1%) to be levied in Morton County, Kansas, for the purpose of funding the operations of the Morton County Hospital and continue as provided by law?"[23]

It is apparent from the resolutions, notices, and ballot question, that the County's electors were aware they were voting on a 1% countywide retailers' sales tax to fund the Morton County Hospital. The electors were clearly able to understand what a "yes" vote on that question would mean.

It is equally apparent that the Board intended to implement this tax under K.S.A. 2014 Supp. 12-187(b)(5), and any citation to K.S.A. 2014 Supp. 12-187(b)(1) was a clerical error.[24] First, K.S.A. 2014 Supp. 12-187(b)(5) specifically authorizes a countywide retailers' sales tax to fund health care such as county hospitals, while (b)(1) is a general provision. Second, the original published notice cited to K.S.A. 2014 Supp. 12-187(b)(5). Third, once the Board learned of its incorrect statutory citation, it passed and published an amended resolution, correcting the citation under which the tax was authorized. Finally, the resolution implementing the sales tax also cited to K.S.A. 2014 Supp. 12-187(b)(5).

The Board intended to implement a countywide retailers' sales tax to fund the county hospital under K.S.A. 2014 Supp. 12-187(b)(5). The Board acted to correct its mistake before implementing the tax. The electors understood the countywide 1% retailers' sales tax they approved was to fund the county hospital. Any revenue

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[19] *Heller v. Rounkles*, 171 Kan. 323, 329, 232 P.2d 225 (1951).
[20] Resolution No. 2015-3, §1.
[21] Elkhart Tri-State News January 29, 2015, Notice of Special Question.
[22] Amended Resolution No. 2015-3, §1; Elkhart Tri-State News February 26, 2015, Published Notice.
[23] Sample Official Ballot.
[24] A clerical error (also known as a "scrivener's error") is "[a]n error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination; esp[ecially], a drafter's or typist's technical error that can be rectified without serious doubt about the correct reading." Black's Law Dictionary 683 (11th ed. 2019).

raised under this sales tax should be distributed to the County, not divided between the County and the county municipalities.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Ryan J. Ott

Ryan J. Ott
Assistant Solicitor General