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July 21, 2025

ATTORNEY GENERAL OPINION NO. 2025-13

The Honorable Mike Thompson
State Senator, 10th District
State Capitol, Room 136-E
300 SW 10th St.
Topeka, Kansas 66612

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

Counties and County Officers—General Provisions—Home Rule
Powers; Limitations, Restrictions and Prohibitions; Procedure

Synopsis: The Board of County Commissioners of Johnson County recently enacted a resolution that purports to place the renewal of an existing sales tax under K.S.A. 12-187(b)(21)—which authorizes a tax to fund the construction and operation of public safety projects—on the November 2025 ballot. The resolution seeks to fund, among other things, mental health services and emergency medical services. Because the resolution tries to fund measures that do not qualify as public safety projects and it would fund different projects than that for which the existing tax was enacted, a court would find that the Board has exceeded its authority and that the resolution is null and void. Cited herein: K.S.A. 12-187; K.S.A. 19-101a.

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Dear Senator Thompson:

As State Senator for the 10th District, you ask four questions stemming from the Board of County Commissioners of Johnson County's recent adoption of Resolution No. 052-25.¹ This Resolution proposes to renew a countywide retailers' sales tax of one-fourth of one cent for ten years to finance costs and expenses for certain public safety projects. The Resolution seeks to do so through the following proposition on the November 2025 general election ballot:

Shall the Board of County Commissioners of Johnson County, Kansas, adopt, *renew*, and impose for a period of ten (10) years a one-fourth (1/4) of one-cent countywide retailers' sales tax in Johnson County, Kansas, commencing April 1, 2027, with proceeds from the tax to be distributed as required by law to the County and the cities in Johnson County, with the county share to be used for the purpose of financing *the costs of construction, renovation, repair, maintenance, operation and personnel expenses of public safety projects, facilities, and programs, including but not limited to emergency/ambulance/911 services, Sheriff's Office, mental health crisis intervention, emergency preparedness/disaster response, and criminal justice system?*²

The Board passed this Resolution pursuant to—and seeks to impose the tax under—K.S.A. 12-187(b)(21), which provides:

The board of county commissioners of Johnson county may submit the question of imposing a countywide retailers' sales tax at the rate of 0.25% and pledging the revenue received therefrom for the purpose of financing *the construction and operation costs of public safety projects, including, but not limited to, a jail, detention center, sheriff's resource center, crime lab or other county administrative or operational facility dedicated to public safety*, to the electors at an election called and held thereon. The tax imposed pursuant to this paragraph shall expire after 10 years from the date such tax is first collected. The countywide retailers' sales tax imposed pursuant to this subsection *may be extended or reenacted* for additional periods not exceeding 10 years upon the board of county commissioners of Johnson county submitting *such question* to the electors at an election called and held thereon for each additional ten-year period as provided by law.³

The existing tax that the proposition purports to renew was passed at the November 2016 general election, during which the ballot informed voters that “the

¹ Your questions are rephrased below.

² Johnson County, Kan., Resol. No. 052-25 (May 8, 2025) (emphases added).

³ (emphases added).

County share of the revenue [would] be dedicated to the capital, operational, and financing costs for the public safety projects and administration of justice programs associated with and necessary for the construction of a new Courthouse, demolition of the existing courthouse, and the construction of a coroner facility.”⁴ This existing tax expires on March 31, 2027.

The answers to your questions primarily turn on the text of K.S.A. 12-187(b)(21). As always, statutory interpretation is bound by the statute’s “plain and unambiguous” meaning.⁵ One can neither “speculate” nor “read into the statute language not readily found there.”⁶ And one must strive, “as far as practicable, to reconcile the different [statutory] provisions so as to make them consistent, harmonious, and sensible.”⁷ Because this is a statute that permits taxation, one must “strictly” construe it “in favor of the taxpayer,” *i.e.*, against taxation.⁸

As explained below, my office has concluded the Board has exceeded its authority through the Resolution and ballot proposition.⁹

I. Does K.S.A. 12-187(b)(21) require the Board to pledge and use revenue from the resulting sales tax for both the construction and the operation costs of public safety projects?

Revenue from a tax imposed under K.S.A. 12-187(b)(21) must be pledged and used for both the construction *and* the operation of public safety projects.

K.S.A. 12-187(b)(21) requires that revenue from a tax enacted pursuant to it be “pledg[ed] . . . for the purpose of financing the construction *and* operation costs of public safety projects.”¹⁰ By using “and” the statute employs a conjunctive term, which requires both items be satisfied.¹¹ In other words, the revenue must be both for the construction and for the operation of a qualifying project. For example, when the current sales tax was passed in 2016, the money was to be used for both the

⁴ Johnson County, Kan., Resol. No. 042-16 (May 26, 2016).

⁵ *In re Est. of Strader*, 301 Kan. 50, 55, 339 P.3d 769 (2014) (internal quotation marks omitted).

⁶ *Id.* (internal quotation marks omitted).

⁷ *In re Marriage of Ross*, 245 Kan. 591, 584, 783 P.2d 331 (1989).

⁸ *See In re Genesis Health Clubs*, 42 Kan. App. 2d 239, 242, 210 P.3d 663 (2009)

⁹ To be clear, this opinion is merely advisory. Only a court with competent jurisdiction could grant relief related to the Resolution and ballot proposition.

¹⁰ (emphasis added); *see also* K.S.A. 12-187(g)(1) (requiring the Board “specify the purpose or purposes for which the revenue would be *used*” (emphasis added)). The Board must use any revenue as it has pledged.

¹¹ *In re Dir. of Prop. Valuation*, 284 Kan. 592, 602, 161 P.3d 755 (2007) (noting that “[t]he most logical and realistic interpretation of the statute is to interpret the plain language exactly as it is written” while recognizing the conjunctive effect of “and”); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 116 (2012) (recognizing that “*and* combines items while *or* creates alternatives”).

construction and the operation of a courthouse and coroner facility, along with necessary related projects (like the demolition of the existing courthouse).

In certain limited circumstances, courts have held that “and” is used as a disjunctive term.¹² But nothing indicates that the Legislature meant to use it in a disjunctive sense in K.S.A. 12-187(b)(21). To the contrary, the statute lists public safety projects—like a jail and a crime lab—that are physical structures to be constructed. Indeed, its catchall example is any “other county administrative or operational *facility* dedicated to public safety.”¹³ This is strong evidence that the Legislature contemplated that the projects for which the revenue would be used would be facilities, with the tax providing necessary funding for the operation of these facilities and related programs.

The Board may only impose a tax under K.S.A. 12-187(b)(21) if the revenue is for both the construction *and* the operation of qualifying projects.

II. Do mental health services and emergency medical services constitute “public safety projects” under K.S.A. 12-187(b)(21)?

Mental health services and emergency medical services,¹⁴ standing alone, do not qualify as “public safety projects” that may be funded through a tax imposed under K.S.A. 12-187(b)(21).

K.S.A. 12-187(b)(21) provides that the County’s share of revenue from a sales tax must be pledged for “public safety projects, including, but not limited to, a jail, detention center, sheriff’s resource center, crime lab or other county administrative or operational facility dedicated to public safety.” The statute does not define “public safety projects,” and this term is not defined elsewhere in the legislative code. The Legislature has used and defined “public safety” in other contexts. For example, in the same Chapter, “public safety agency” is defined as “any municipal fire department, law enforcement office, sheriff’s department, volunteer and nonvolunteer fire protection associations, emergency management department, public works department or other similar public or private agency.”¹⁵ This definition casts a wide net, and non-statutory definitions are similarly broad. For example,

¹² See, e.g., *McMechan v. Everly Roofing, Heating & Air Conditioning, Inc.*, 8 Kan. App. 2d 349, 351, 656 P.2d 797 (1983).

¹³ K.S.A. 12-187(b)(21) (emphasis added).

¹⁴ We assume that in asking about these services, you are referring to “mental health crisis intervention” and “emergency/ambulance/911 services,” respectively, which are referenced in the ballot proposition. And although you do not mention “emergency preparedness/disaster response” (another referenced project), this category would also likely fall outside the scope of permissible public safety projects for substantially the same reasons as mental health services and emergency medical services.

¹⁵ K.S.A. 12-16,117(a)(2); see also K.S.A. 75-5073(e) (similar).

Black's Law Dictionary defines “public safety” as “[t]he welfare and protection of the general public.”¹⁶

Importantly, the statute provides examples of qualifying projects. And under the interpretative canon of *noscitur a sociis*—which recognizes the import of associated words—these examples bear on the meaning of “public safety projects.”¹⁷

The listed examples, as the statute notes, are not exclusive. Indeed, the existing tax was passed for, among other things, constructing and operating a new courthouse and coroner facility, neither of which is listed in the statute. Because “public safety” is a broad term, the list is the best evidence of what qualifies as a “public safety project.”¹⁸ And the examples are different types of physical structures that traditionally relate to the law-enforcement aspect of public safety, like a jail and a crime lab. It follows, then, that public safety projects for which a tax may be imposed under K.S.A. 12-187(b)(21) must be similar, *i.e.*, physical facilities that are directly related to law enforcement.

Mental health services and emergency medical services are not physical structures directly related to law enforcement. To be sure, these services may fairly be considered as advancing public safety in other contexts. And there may be situations where these services could be facilitated through a tax under K.S.A. 12-187(b)(21), such as if the Board wanted to provide necessary mental health services for detainees in jail. But these services alone do not qualify as “public safety projects.”¹⁹

K.S.A. 12-187(b)(21) permits the Board to seek a sales tax that funds certain public safety projects—physical facilities directly related to law enforcement (and necessary related programs). While certainly important to the County, mental health services and emergency medical services, standing alone, do not qualify.

¹⁶ *Public Safety*, *Black's Law Dictionary* 1488 (11th ed. 2019). The Kansas Supreme Court, citing the Ninth Edition of *Black's*, noted this broad definition in *City of Lincoln Center v. Farmway Co-Op, Inc.*, 298 Kan. 540, 552, 316 P.3d 707 (2013). However, because the court there was interpreting the meaning of a materially different term—“public health, safety or welfare”—its analysis is not persuasive here. *See id.* at 550, 552–53 (quotation marks omitted).

¹⁷ *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 307 (1961) (“The maxim *noscitur a sociis*, that a word is known by the company it keeps, while not an inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to [statutes].”); Scalia & Garner, *supra*, at 195 (“Associated words bear on one another’s meaning.”).

¹⁸ *See Jarecki*, 367 U.S. at 307.

¹⁹ Our conclusion is bolstered by a separate statute, K.S.A. 12-187(b)(5), which authorizes the Board to seek to impose a sales tax specifically for “health care services,” including “mental health services” and “emergency medical services.” *See In re Marriage of Ross*, 245 Kan. at 584.

III. Is the description of the ballot proposition as a “renewal” of an existing countywide retailers’ sales tax proper, and if it is not, is this description fatal?

It is not appropriate for the Board to characterize the proposition as a renewal of the existing tax. The proposition does not present voters with the required question, and it does not seek to continue the existing tax for the same purpose.

Counties possess only those powers that have been “expressly granted” to them by the Legislature and that are necessary to effectuate the express powers.²⁰ The Legislature has authorized counties to impose sales taxes in certain situations; their authority is subject to statutory “limitations and prohibitions,” including those in K.S.A. 12-187.²¹ And “[a]ny resolution adopted by a county which conflicts with the restrictions . . . is null and void.”²² Thus, the Board must strictly follow K.S.A. 12-187(b)(21).

A tax enacted under K.S.A. 12-187(b)(21) “may be extended or reenacted for additional periods not exceeding 10 years upon the board . . . submitting such question to the electors.” The Board is strictly limited to seeking only to “extend” or “reenact” the existing tax; there is no option to “renew” it. Indeed, the statute itself only permits the tax to be extended if “such question”—*i.e.*, whether to “extend[] or reenact[]” the existing tax—is submitted to the voters. Because the proposition does not ask for an extension or reenactment, the proposition is unlawful and the Board has exceeded its authority.²³

The exact language aside, the proposition is also improper because it would neither extend nor reenact the existing tax, which are the only two actions that can be taken. The statute does not define the relevant terms, but *Black’s* defines “reenactment” as “passing a statute again for some purpose (such as codification) in substantially the same form as it has previously been given effect”²⁴ and “extension” as “[t]he continuation of the same contract for a specified period.”²⁵ In other words, the statute allows the Board to ask voters to continue the same tax for the same

²⁰ *Cap. Elec. Line Builders, Inc. v. Lennen*, 232 Kan. 379, 382, 654 P.2d 464 (1982), *modified on denial of reh’g*, 232 Kan. 652, 658 P.2d 365 (1983).

²¹ K.S.A. 19-101a(a)(7).

²² K.S.A. 19-101a(c).

²³ Although statutory text is always paramount, its importance is magnified here because the Legislature has expressly limited the Board’s ability to impose and continue sales taxes.

²⁴ *Reenactment, supra*, at 1532.

²⁵ *Extension, supra*, at 728. Although the definition speaks of a contract, it ultimately requires a continuation of the same governing arrangement, such as a lawfully enacted sales tax.

purpose so that nothing changes if the tax continues.²⁶ But in reality, the proposition, if passed, would not do that.

To be sure, if the ballot proposition were to be passed, the tax burden would remain the same; but the tax would not be funding the same projects because the new courthouse and coroner facility—the purposes for which the tax was originally passed—will have been “fully paid for by the time the tax expires.”²⁷ Indeed, the Resolution and proposition describe a new slate of materially different projects (primarily programs) for which the tax would be used. Because the Resolution does not seek to effectuate either an extension or a reenactment of an existing tax, it exceeds the Board’s authority.²⁸

This is admittedly a fine line. But as this office noted in Opinion 2007-04, without an appropriate statutory mechanism, “neither the electorate [n]or a . . . county governing body can modify the purpose of a local retailers’ sales tax that was previously adopted by the electorate.” The Resolution seeks to change the purpose for which the tax was originally passed in violation of stringent statutory requirements, which only allow the existing tax to continue. Because the proposition seeks to institute a new tax under the guise of continuing the current tax, the proposition exceeds the Board’s authority, which means that it is null and void.

IV. Is the scope of the ballot proposition within the Board’s statutory authority under K.S.A. 12-187(b)(21), and if not, does the conflict render the Resolution null and void?

The ballot proposition is not within the scope of the Board’s authority. Again, the Board is strictly limited in its ability to seek to impose and continue a sales tax under K.S.A. 12-187(b)(21), and any measures that exceed the Board’s authority are “null and void.”²⁹ As detailed above, the Resolution and its ballot proposition

²⁶ By contrast, “renewal” means “[t]he act of restoring or reestablishing” or “[t]he recreation of a legal relationship or the replacement of an old contract, as opposed to the mere extension of a previous relationship or contract.” *Renewal, supra*, at 1550–51.

²⁷ Johnson County, Kan., *Public Safety Sales Tax Renewal*, <https://www.jocogov.org/departments/board-county-commissioners/public-safety-sales-tax-renewal> (last visited July 9, 2025).

²⁸ The ballot proposition promulgated by the Resolution may also be misleading. Some voters could believe that a “yes” vote is a vote in favor of continuing the existing tax to fund the same projects for which it was originally (and actually) enacted, *i.e.*, a new courthouse and coroner facility. Similarly, other voters could believe that all of the projects named in the proposition are already being funded by the existing tax, so a “yes” vote supports their continued funding. And when a ballot proposition is misleading, the “election is void.” Att’y Gen. Op. No. 2025-9; *see also Wycoff v. Bd. of Cnty. Comm’rs of Logan Cnty.*, 189 Kan. 557, 560, 370 P.2d 138 (1962) (recognizing that “the recitals on the ballot shall clearly state the substance of the question the electors are to vote upon[,] and where that proposition is so obscurely stated that the electors may be misled thereby, the election is vitiated”).

²⁹ K.S.A. 19-101a(a)(7), (c).

impermissibly seek to impose a tax to fund programs that do not constitute public safety projects within the meaning of the statute, and they improperly characterize the proposed tax as the continuance of an existing tax. Although the proposition references “construction” and “facilities,” it appears to do so in only a cursory manner. Indeed, the proposition expands “public safety projects”—again, the only permissible matters that may be funded through a tax under K.S.A. 12-187(b)(21)—to “public safety projects, facilities, and programs.”³⁰ The proposition, the rest of the Resolution, and the Board’s public statements establish that the projects that would actually be funded if the proposition were passed are outside the scope of the purposes for which the tax was originally enacted and K.S.A. 12-187(b)(21).³¹

Because the Board has exceeded its authority, we believe a court would find the Resolution to be null and void.³²

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Adam T. Steinhilber

Adam T. Steinhilber
Assistant Solicitor General

³⁰ Resol. No. 052-25.

³¹ See generally *id.*; see also, e.g., Johnson County, Kan., *Johnson County Voters to Consider Public Safety Sales Tax Renewal on November 2025 Ballot* (May 8, 2025), <https://www.jocogov.org/newsroom/johnson-county-voters-consider-public-safety-sales-tax-renewal-november-2025-ballot> (last visited July 18, 2025) (“If renewed, public safety sales tax funds would go towards Johnson County’s public safety departments and programs. Examples of how the funds could be used include program improvements (e.g., mental health co-responder programs, new emergency dispatch services, re-entry programs for detainees); technology upgrades tied to public safety (e.g., body-worn cameras) and emergency communications/9-1-1 system enhancements.”).

³² Although not part of your inquiry, it should be noted that avenues likely exist for the Board to fund its desired projects. The Board could seek to impose a new tax under K.S.A. 12-187(b)(21) for *qualifying* public safety projects. The Board could also seek revenue under K.S.A. 12-187(b)(1), the general sales tax provision, or K.S.A. 12-187(b)(5), the specific health-care-services tax provision.