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CLERK OF THE SHAWNEE COUNTY DISTRICT COURT

CASE NUMBER: SN-2025-CV-000743

PII COMPLIANT



**Court:** Shawnee County District Court  
**Case Number:** SN-2025-CV-000743  
**Case Title:** Board of County Commissioners of Johnson  
County, Kansas vs. Kris W. Kobach  
**Type:** ORD: Order Originated by Judge MDO re  
Plaintiff's and Defendant's Respective Summary  
Judgment Mtngs

SO ORDERED,

A handwritten signature in blue ink, appearing to read "Jay Befort", is written over a horizontal line.

/s/ Honorable Jay Befort, District Court  
Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION FIFTEEN**

**BOARD OF COUNTY** )  
**COMMISSIONERS OF** )  
**JOHNSON COUNTY, KANSAS** )  
**Plaintiff,** )  
 )  
v. )  
 )  
**KRIS W. KOBACH, ATTORNEY** )  
**GENERAL OF THE STATE** )  
**OF KANSAS** )  
**Defendant.** )

**Case No.: SN-2025-CV-000743**

**MEMORANDUM DECISION AND ORDER**  
**REGARDING PLAINTIFF’S and DEFENDANT’S**  
**RESPECTIVE MOTIONS FOR SUMMARY JUDGMENT**

This matter comes before the Court on the Plaintiff’s, Board of County Commissioners of Johnson County (“BOCC”) and Defendant’s, Kris W. Kobach, Attorney General of the State of Kansas (“Defendant” or the “AG”) competing Summary Judgment Motions (“MSJ”). Each party filed respective MSJ’s on October 30, 2025, and responses on November 13, 2025. Defendant filed a Reply in Support of Defendant’s MSJ on November 18, 2025. The Court heard oral arguments on the MSJ’s on November 19, 2025. The Court has reviewed the motions, responses, reply, and all supporting briefs of the parties, and after hearing oral arguments, submits the following:

**I. Overview and Procedural History**

BOCC seeks declaratory judgment to resolve a controversy initiated by the Attorney General’s Office to challenge BOCC’s authority to approve ballot language for the renewal of its existing quarter-cent countywide retailers’ sales tax (“Tax”). Specifically, the AG issued Opinion No. 2025-13 (the “Opinion”) on July 21, 2025, opining the BOCC exceeded its authority by

approving ballot language to renew its existing one-quarter cent countywide retailers' sales tax, that a court would find the Resolution null and void effectively labeling the ballot question as illegal for the November 4, 2025 election. The Opinion injected uncertainty regarding the validity of the ballot question, and, BOCC argues, forces the BOCC to modify lawful language or abandon the effort to renew the sales tax altogether. To alleviate those concerns and to address whether the AG's Opinion deprives Johnson County voters' ability to determine the merits of funding the construction and operation of public safety projects via the Tax, characterizing services such as mental health and emergency medical services as not constituting "public safety projects" under K.S.A. 12-187(b)(21), BOCC requests the clarification and seeks summary judgment in its favor. It should be noted that the vote on the renewal of the Tax is currently scheduled for the March 3, 2026, election.

Contextually, for the purpose of funding the construction and operation of law enforcement facilities, which is patently expensive and necessary, the Kansas Legislature granted the BOCC limited *additional* taxing authority through K.S.A. 12-187(b)(21). The existing tax will accomplish its principal purpose—a new courthouse and coroner facility—when it ends in early 2027. BOCC seeks to continue this revenue stream to finance a different set of expenses which include programs and services not tied to law enforcement facilities and would normally be covered by "general" tax revenue. The AG opines that state law forecloses the BOCC's attempt to renew the tax for this additional set of expenses. The AG maintains the BOCC has exceeded its authority in proposing its ballot proposition, and the AG seeks summary judgment in its favor.

## **II. Facts**

The Parties have agreed to stipulate to BOCC Exhibits A through G and their contents, which were attached to the Petition and are also attached to this Memorandum. The Parties have

also stipulated to Defendant's Exhibit Resolution No. 042-16. In reviewing the respective responses to the opposing party's MSJ, neither party controverted the respective statements of fact, although the Court notes each party included clarification and reservation in their responses. *See* Supreme Court Rule 141. The Court will incorporate each party's separate statement of facts and will retain the various exhibit references as made in each party's respective memoranda in support of their MSJ's.

1. The BOCC adopted Resolution No. 052-25 at a regular meeting held on May 8, 2025. Exhibit A, Resolution No. 052-25.

2. Resolution No. 052-25 proposed to submit to the electors "the renewal of the existing one-fourth (1/4) of one cent countywide retailers' sales tax," in Johnson County, "for the purpose of financing the construction, renovation, maintenance, operation costs and personnel expenses of public safety projects," and set the election for November 4, 2025. Exhibit A, Resolution No. 052-25, p. 1.

3. In a letter to the Attorney General dated June 4, 2025, Kansas State Senator Mike Thompson sought an Attorney General opinion, pursuant to K.S.A. 75-704, on four (4) questions pertaining to Resolution No. 052-25 concluding with a request to determine whether the resolution was "null and void." Senator Thompson's letter (the "Senator Thompson letter") is Exhibit B.

4. Although the resolution specifically recited an intended use of funds for "construction," Senator Thompson's letter recites the purported existence of "other evidence that the County's intent may be to use the revenue solely to support operational programs without the construction of any qualifying capital projects." Exhibit B, Senator Thompson letter, p. 2.

5. Senator Thompson's letter, furthermore, seeks to draw a distinction between Resolution No. 052-25 and the existing sales tax passed in 2016 which Senator Thompson characterizes as "clear" in its intent to address both construction and operation of public safety

projects. Exhibit B, Senator Thompson letter, p. 2.

6. Although Resolution No. 052-25 references public safety no less than a dozen times, including in the ballot language and the title of the resolution itself, Senator Thompson's letter voices his "concern" that the 2025 ballot question would be "illegal" without a legitimate "public safety capital project." Exhibit B, Senator Thompson letter, p. 2.

7. Senator Thompson questions whether the "emergency/ambulance/911 services" and "mental health intervention" projects fall within the definition "public safety projects" under K.S.A. 12-187(b)(21). Exhibit B, Senator Thompson letter, p. 2.

8. Senator Thompson also questions whether the ballot measure may properly be referenced as a "renewal" of the existing tax. Exhibit B, Senator Thompson letter, p. 2.

9. In a letter to Johnson County Chief Counsel Peggy A. Trent, Assistant Solicitor General Adam T. Steinhilber invited Johnson County to provide input on the issues raised by Senator Thompson. That letter (the "Steinhilber letter") is Exhibit C.

10. Chief Counsel Peggy A. Trent responded in a letter dated July 2, 2025. That letter (the "Trent letter") is Exhibit D.

11. In the Opinion, signed by Kris W. Kobach and Adam T. Steinhilber, the Attorney General concludes, "[b]ecause the Board has exceeded its authority, we believe a court would find the Resolution to be null and void." The Opinion is Exhibit E.

12. In a press release dated July 22, 2025, the Attorney General reported the issuance of the Attorney General opinion, stating that "the Johnson County Board of County Commissioners exceeded their authority" in adopting the resolution seeking to bring the tax question to a vote. The Press Release is Exhibit F.

13. In the press release, the Attorney General said, “Johnson County is breaking the law by imposing this new tax...”. Exhibit F, Press Release, p. 1.

14. Because it was and is the view of the BOCC that the passage of the tax originally proposed in Resolution No. 052-25 is in the best interest of Johnson County residents, and because the BOCC seeks to avoid conducting an election under the cloud of uncertainty created by the Opinion, the BOCC passed Resolution No. 095-25 which withdrew the call for an election on the public safety tax renewal for November 4, 2025, set the date for a special election on March 3, 2026, and directed Chief Counsel to file this declaratory judgment action. Resolution No. 095-25 is Exhibit G.

15. The Johnson County Manager needs a vote on the proposed public safety tax on March 3, 2026, in order to meet the statutory deadlines for the 2027 budgeting process. The budgeting process requires careful analysis of revenue sources, including property tax and retailers’ sales tax revenues, to ensure adequate funding for essential County services. The budgeting process is set forth in more detail in the Affidavit of Penny Postoak Ferguson, Exhibit H.

16. To accommodate a March 3, 2026, election, the Johnson County Election Commissioner needs final ballot language by December 9, 2025. The statutory and practical timeline of necessary steps for March 3, 2026, election is more fully set forth in the Affidavit of Johnson County Election Commissioner Fred Sherman, Exhibit I.

17. The BOCC alleges that the Opinion has created confusion, misunderstanding, and uncertainty regarding the ballot question and that the citizens of Johnson County, Kansas, are in urgent need of court resolution of the case and controversy articulated in the Opinion and in the Petition. Petition For Declaratory Relief, Paragraphs 23-27.

18. The affidavit of Mary Birch, a Johnson County registered voter, confirms confusion

and uncertainty about the Tax election and whether her vote on the Tax proposition will have its intended effect. Affidavit of Mary Birch, Exhibit J.

19. Plaintiff and Defendant concur that “there is a controversy sufficient to vest this Court with jurisdiction.” Defendant’s Answer, Paragraphs 26, 36 and 46.

20. The Parties are requesting that the Court determine whether the BOCC acted within its legal authority in adopting Resolution No. 052-25 and Resolution No. 095-25; whether there is a legal defect in the ballot language adopted by the BOCC in Resolution No. 052-25 or Resolution No. 095-25; and whether there is a basis to limit the future use of tax revenue generated pursuant to Resolution No. 095-25.

21. In 2016, the BOCC passed Resolution No. 042-16 to impose a tax under K.S.A. 12-187(b)(21) to pay for the construction and operation of a new county courthouse and coroner facility, the demolition of the old county courthouse, and “programs and facilities related to those projects, including the courts, administration of justice, and District Attorney.” Def. MSJ Ex. 1 at 2, 4.

22. During the 2016 presidential election, the voters approved the tax, which will expire on March 31, 2027. Pet. Ex. A at 2.

23. On May 8, 2025, the Board passed Resolution No. 052-25, which promulgated a ballot proposition that would ask voters to “adopt, renew, and impose” the existing tax to fund “the cost 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[.]” Pet. Ex. A at 5; *see also* Pet. ¶¶ 6–7.

24. Resolution No. 052-25 does not mention any specific building or facility related to

law enforcement whose construction and operation would be funded by future revenue generated by the tax. *Cf. generally* Pet. Ex. A.

25. Resolution No. 052-25 provided that its ballot proposition would be on the November 2025 general election ballot. *See* Pet. Ex. A at 4, § 2.

26. On July 21, the Attorney General issued Attorney General Opinion No. 2025-13 in which he determined that the Board had “exceeded its authority” under K.S.A. 12-187(b)(21) by passing Resolution No. 052-25 to seek a tax to fund projects not authorized by the statute. Pet. Ex. E at 3–8.

27. On July 31, the Board passed Resolution No. 095-25, which reaffirmed the recitals and findings in Resolution No. 052-25, Pet. Ex. G at 2, modified the ballot proposition to ask voters to “adopt, extend, renew, and impose” the current tax for the same purposes listed in Resolution No. 052-25, *id.* at 5–6, § 5, and postponed the election to a special mail ballot election in March 2026, *id.* at 4, § 2.

28. Resolution No. 095-25 does not mention any specific building or facility related to law enforcement whose construction and operation would be funded by revenue from future revenue generated by the tax. *Cf. generally* Pet. Ex. G.

### **III. Standard of Review**

#### **A. Summary Judgment**

The appropriate standard of review for motions for summary judgment is well-known. A court may enter summary judgment “when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Thoroughbred Associates, L.L.C. v. Kansas City Royalty Co., L.L.C.*, 297 Kan. 1193, 1204, 308 P.3d 1238 (2013)



(quoting *Shamberg, Johnson & Bergman, Chtd. v. Oliver*, 289 Kan. 891, 900, 220 P.3d 333 (2009)). Before granting summary judgment, a court must “resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought.” *Thoroughbred Associates*, 297 Kan. at 1204 (quoting *Oliver*, 289 Kan. at 900).

That said, “when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case . . . there can be ‘no genuine issue as to any material fact,’ because a ‘complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.’” *Eudora Dev. Co. of Kansas v. City of Eudora*, 276 Kan. 626, 631–32, 78 P.3d 437 (2003) (quoting the district court decision) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986)).

#### B. Declaratory Judgment

The Kansas Declaratory Judgment Act, embodied in K.S.A. 60-1701 et seq., empowers courts

to declare the rights, status, and other legal relations whether or not further relief is, or could be sought. No action or proceeding shall be dismissed or stayed for the sole reason that only declaratory relief has been sought. The declaratory may be either affirmative or negative in nature; and such declarations shall have the force and effect of a final judgment.

K.S.A. 60-1701.

Serving a remedial purpose, the Kansas Declaratory Judgment Act provides relief from uncertainty and insecurity in legal controversies without requiring a party to violate another's rights to maintain an ordinary action. *Pugh v. City of Topeka*, 151 Kan. 327, 99 P.2d 862 (1940). The Act, however, cannot substitute for other adequate or practicable remedies, nor can it address issues determinable in pending actions. *Id.* There currently are no known pending actions seeking

to determine the relief sought in the instant case; likewise, the parties have identified for substitution no other adequate or practicable remedies aside from the declaratory relief sought here.

Exercising jurisdiction in declaratory judgment actions requires actual controversies. In *Department of Revenue v. Dow Chemical Co.*, the Kansas Supreme Court explained that differences of opinion or conflicts of interest must be ripe for determination as controversies over legal rights, and disagreement must not be nebulous or contingent but must have taken on fixed and final shape, so that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them. *Dep't of Revenue v. Dow Chem. Co.*, 231 Kan. 37, 41, 642 P.2d 104 (1982). Declaratory judgment actions commonly arise to resolve disputes involving the interpretation of statutes, contracts, wills, and other written instruments. Courts have jurisdiction to determine the validity of statutes or ordinances prior to a party acting in potential violation of the statute or ordinance in question. *State Ass'n of Chiropractors v. Anderson*, 186 Kan. 130, 348 P.2d 1042 (1960).

As with federal jurisprudence, the case-or-controversy requirement in Kansas incorporates four elements:

1. Parties must have standing. *State v. Snow*, 282 Kan. 323, 343, 144 P.3d 729 (2006).
2. Issues must not be moot. *Smith v. Martens*, 279 Kan. 242, 244-45, 106 P.3d 28 (2005).
3. Issues must be ripe, having taken fixed and final shape rather than remaining nebulous and contingent. *Dow Chem. Co.*, 231 Kan. at 41 (quoting *Pub. Serv. Comm'n, of Utah v. Wycoff Co.*, 344 U.S. 237, 243-44 (1952)).
4. Issues cannot present a political question. *Van Sickle v. Shanahan*, 212 Kan. 426, 438, 511 P.2d 223 (1973) (adopting standards stated in *Baker v. Carr*, 369 U.S. 186, 210, 217 (1962)).

Recognizing the "constitutional dimension" of these requirements, prudential Kansas

Supreme Court case law obligates all plaintiffs and petitioners to meet the threshold burden of establishing "a case or controversy between himself and the defendant." 312 *Educ. Ass'n v. U.S.D. No. 312*, 273 Kan. 875, 882, 47 P.3d 383 (2002) (quoting *Harrison v. Long*, 241 Kan. 174, 176, 734 P.2d 1155, appeal dismissed 484 U.S. 804 (1987)).

As noted during the opening of oral arguments on November 19, 2025, the pleadings here establish each of these elements. The Attorney General's Opinion No. 2025-13 announced the BOCC possesses no authority to pass Resolutions Nos. 052-25 and 095-25. Absent the authority to pass the resolutions, the election would be null and void. The Opinion with any concomitant publicity will more than likely have a bearing on the election if left unclarified before the election. The BOCC requests this Court's declaration as to the validity of actions taken by the BOCC and the ballot question which is set for election in March 2026.

The Attorney General has indeed acknowledged that "there is a controversy sufficient to vest this Court with jurisdiction." Defendant's Answer, Paragraphs 26, 36 and 46. Thus, little question remains that this Court may exercise jurisdiction over the case due to the existence of a case and controversy calling for resolution.

#### **IV. Analysis**

##### **A. Do BOCC's resolutions and accompanying ballot propositions exceed the County's authority to extend the quarter cent retailers' sales tax?**

Seeking to build a new courthouse and coroner facility, BOCC proposed a temporary sales tax to finance the planning and construction of those facilities. The 2016 Kansas legislature, recognizing the need described and specified by the BOCC, enacted K.S.A. 12-187(b)(21) authorizing BOCC to submit to voters the question of imposing the temporary quarter cent retailers' sales tax. The statute also included a provision sunseting the temporary tax in early 2027. The statute reads as follows:

(21) 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.

K.S.A. 12-187(b)(21).

Contained within the statutory language, BOCC had available three options which included allowing the tax to expire; seeking to lawfully continue the tax; or seeking to lawfully impose a new tax to fund the construction and operation of other law enforcement facilities. BOCC's attempt to present a ballot question for Johnson County voters suggests BOCC reads into the language a fourth option: imposing a new tax by continuing the current tax to fund programs and services not authorized by the specific 2016 statute and embodied in K.S.A. 12-187(b)(21).

As political subdivisions created by the State, a county's powers are limited to those granted to them by the State. *Bd. of Cnty. Comm'rs of Sedgwick Cnty. v. Lewis*, 203 Kan. 188, 191, 453 P.2d 46 (1969); K.S.A. 19-101; *see also* Kan. Const. art. 2, § 21. Actions in which counties exceed that authority are null and void. K.S.A. 19-101a(c). Retaining a strong interest in maintaining a minimal overall tax burden on Kansas citizens, the Legislature has authorized counties to impose sales taxes in certain circumstances, subject to strict substantive and procedural requirements. The Legislature provided the BOCC with additional taxing authority through K.S.A. 12-187(b)(21) to fund a limited range of expensive, albeit necessary projects, which in this situation, included law enforcement buildings.

BOCC's 2025 ballot proposal will, if passed by the voters, continue the quarter-cent sales tax revenue stream to pay for expenses including programs and services that are not tied to law enforcement facilities and that would normally be covered by "general" tax revenue. The limitations contained in the language of K.S.A. 12-187(b)(21) and the existence of state laws creating revenue for the desired programs and services render the BOCC's attempt beyond the original manifestation of the Legislature's intent behind the statute. Exceeding this authority results in the BOCC's ballot propositions being unlawful. *See* K.S.A. 19-101a(a)(7), (c).

- B. Does K.S.A. 12-187(b)(21), enacted by the 2016 Kansas legislature, permit Johnson County to construct and operate law enforcement facilities?

As cited previously, the Legislature passed K.S.A. 12-187(b)(21) authorized BOCC to "submit" to voters the proposal to levy a quarter cent sales tax to finance 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." The tax would expire after ten years absent a vote to "extend[]" or reenact[]" it "for additional periods not exceeding 10 years." *Id.*

The flashpoint between the parties appears to be the meaning of "public safety projects" as used in the statute. Determining this term's "plain and unambiguous" meaning, does not require the Court to "read into the statute language not readily found there." *In re Est. of Strader*, 301 Kan. 50, 55, 339 P.3d 769 (2014) (internal quotation marks omitted). In interpreting the meaning of term in question, the Court, however, may consider the context in which the term is used which include the surrounding words that will inform the meaning of the term "public safety projects." *See Young Partners, LLC v. Bd. of Educ., Unified Sch. Dist. No. 214, Grant Cnty.*, 284 Kan. 397, 408, 160 P.3d 830 (2007). In addition, as the Legislature enacted K.S.A. 12-187(b)(21) to authorize a county to impose a tax, strict construction of the statute "in favor of the taxpayer" should guide

the Court’s determination of the meaning. *See Appeal of Harbour Bros. Const. Co., Inc.*, 256 Kan. 216, 223, 883 P.2d 1194 (1994).

The plain language of K.S.A. 12-187(b)(21) authorizes BOCC to seek voter approval of a tax to fund “public safety projects,” which include “a jail, detention center, sheriff’s resource center, crime lab or other county administrative or operational facility dedicated to public safety.” The statutory language, read in the context in which the Legislature enacted it, limits the tax to funding certain buildings. *See Facility*, *Webster’s New World College Dictionary* 518 (5th ed. 2020) (defining “facility” as “a building . . . that is built or designed for some activity”).

A much broader term is “public safety” which in many contexts, may include the BOCC’s programs and services such as emergency medical services, disaster preparedness, and other comparable programs designed to protect the county’s citizenry. Here, however, the relevant context is found within the language of K.S.A. 12-187(b)(21), a specific statute authorizing Johnson County to ask voters to approve a sales tax for limited purposes set out within the statute.

The principle of reading a term in the context in which it is written arises under the Latin maxim known as the *noscitur a sociis* canon, which translated means “it is known by its associates.” *See Jones v. Kan. State Univ.*, 279 Kan. 128, 150, 106 P.3d 10 (2005). This maxim of construction, a first cousin to another maxim, *ejusdem generis*, translated as “of the same kind,” counsels the Court to define “public safety” “by reference to those words or phrases with which [the term] is associated.” Here, “public safety” in K.S.A. 12-187(b)(21) requires reading the term in the context of the statute in which is written, unless the construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute. *See* K.S.A. 77-201, *Second*. “When taken in context, a word [or term] may have a broader *or narrower* meaning than it might have if used alone.” *See Jones*, 279 Kan. at 150 (emphasis added); *see also Farm Bureau*

*Mut. Ins. Co. v. Carr*, 215 Kan. 591, 596, 528 P.2d 134 (1974) (recognizing that “the meaning of a term may be enlarged or restrained by reference to the object of the whole clause in which it is used” (quotation marks omitted)). The *noscitur a sociis* canon “is often wisely applied where a word [or term] is capable of many meanings in order to avoid the giving of unintended breadth.” *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 307 (1961).

The statute specifies the facilities as “a jail, detention center, sheriff’s resource center, crime lab” and in so doing establishes that the type of public safety at issue is *law enforcement*. While the list is neither exclusive nor exhaustive, “other” facilities may still qualify. These facilities, however, must “hav[e] the same general qualities and characteristics” as the listed facilities, *i.e.*, they must be physical structures that directly support law enforcement in order to be consistent with the context of the statutory language. *See Nat’l Educ. Ass’n-Topeka, Inc. v. USD 501, Shawnee Cnty.*, 225 Kan. 445, 453–54, 592 P.2d 93 (1979); *see also, e.g., State v. Stegman*, 41 Kan. App. 2d 568, 574–75, 203 P.3d 52 (2009) (defining term by reference to statutory list). The relevant examples here are the coroner facility which fulfills many of the same purposes as a crime lab. A courthouse, likewise, from which warrants are issued, crimes are prosecuted, and the district attorney’s offices are housed, also qualifies.

The statute only authorizes a tax to build and operate qualifying physical structures, not to fund unrelated services and programs. Revenue raised shall be pledged “for the purpose of financing the *construction and operation* costs” of the facilities. K.S.A. 12-187(b)(21) (emphasis added). By using the word *and*, the statute employs a conjunctive term, meaning both items must be satisfied. *See Pulsifer v. United States*, 601 U.S. 124, 133 (2024). In other words, the revenue must be both for the *construction* and for the *operation* of a qualifying project. *See In re Dir. of Prop. Valuation*, 284 Kan. 592, 602, 161 P.3d 755 (2007). By limiting revenue, in part, to

construction costs, the Legislature has further provided that the Board may only invoke the statute to fund buildings. *See Construction, Webster's, supra*, at 319 (defining “construction” as “the act or process of constructing,” “manner or method of building,” and “something constructed; structure; building”); *see also Construct, Webster's, supra*, at 319 (defining “construct” as “to build, form, or devise by fitting parts or elements together systematically”).

The “facility” and “construction” requirements and the examples inserted as part of the statutory language establish that the “most logical and realistic interpretation” of the statute is that “public safety projects” require construction, *i.e.*, the end result must result in a building or similar structure that directly supports law enforcement. *See In re Dir. of Prop. Valuation*, 284 Kan. at 602.

As with any expensive (and necessary) project, construction often requires additional secured revenue beyond “general” tax collections. *Cf. State ex rel. Reed v. Marion Cnty. Comm'rs*, 21 Kan. 419, 435 (1879). Recognizing this, the Legislature has thus permitted certain municipalities to impose special taxes for these projects. *See, e.g.*, K.S.A. 12-187(b)(29)–(30). In addition, the Legislature may, as in K.S.A. 12-187(b)(21), authorize municipalities to use this new revenue to begin operating these facilities (which may include related programs), an additional expensive project. *See Operation, Webster's, supra* at 1025 (defining “operation” as “the act, process, or method of operating” and “the condition of being in action or at work”); *Operate, Webster's, supra* at 1025 (defining “operate” as “to be in action so as to produce an effect; act; function; work”). Significantly, in this context, the Legislature enacted K.S.A. 12-187(b)(21) for the financing of the facilities and not as a renewable revenue stream for programs and services unrelated to the construction and operation of law enforcement facilities.

- C. Did the resolutions and propositions passed by BOCC in 2025 exceed its authority under K.S.A. 12-187(b)(21)?



BOCC's ballot proposal requests an extension of the quarter cent sales tax pursuant to K.S.A. 12-187(b)(21)

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[.]

Pet. Ex. G at 5–6, § 5; *see also* Pet. Ex. A at 5. While the terms “construction,” “operation,” and “facilities” appear to emulate the language in the statute, the compliance was limited to those words.

BOCC's ballot proposal lists no facility (law enforcement or otherwise) that it seeks to fund and operate, nor does it “pledge” to do so as required by the statute. *See* K.S.A. 12-187(b)(21); *see also* K.S.A. 12-187(g)(1) (requiring the Board “specify the purpose or purposes for which the revenue would be used”). By including specific examples, the Legislature indicated that voters must be aware of which facility they are being asked to fund. BOCC, to be in accord with the statute, must actually inform the voters of the specific project to be funded by the new specific revenue stream. The proposal, however, lists priorities for the funding absent any reference to a specific facility. BOCC's proposal effectively alters K.S.A. 12-187(b)(21) to incorporate expenses which could be utilized to fund routine government services incurred by the county.

Indeed, “emergency/ambulance/911 services,” “mental health crisis intervention,” and “emergency preparedness/disaster response” are important services provided by the county. Their importance notwithstanding, such services or interventions are not law enforcement facilities and are not directly connected to such facilities, thus falling beyond the scope of the statute as enacted by the 2016 Legislature. Moreover, as the proposition lists “Sheriff's Office” and “criminal justice

system” which relate to law enforcement, the proposal incorporates no revenue commitment for construction and operation of the facilities for the county sheriff or another law enforcement purpose. The categories neither tie to facilities nor construction and operation costs.

BOCC’s statement when passing Resolution No. 052-25, is as follows:

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.

*See also* Pet. Ex. E at 8 n.31.

Juxtapose the 2025 language with that of 2016, when the BOCC passed Resolution No. 042-16, which sought to impose a tax under K.S.A. 12-187(b)(21) for the construction and operation of a new courthouse and coroner facility, the demolition of the old courthouse, and related expenses. Def. MSJ Ex. 1. In 2016, the ballot informed voters that upon approving the tax, the BOCC’s share of the resulting revenue would

be used to fund the costs of construction and operation of public safety projects, including the construction, equipping, and furnishing of a courthouse building and a coroner facility, together with the costs to demolish the existing courthouse, and for the costs of programs and facilities related to those projects, including the courts, administration of justice, and District Attorney[.]

Def. MSJ Ex. 1 at 4. The proposition passed resulting in the construction of the courthouse and coroner’s facility.

The 2016 Legislature enacted K.S.A. 12-187(b)(21) to provide BOCC and by extension all of Johnson Count the funding mechanism, to be approved by voters, to construct and operate law enforcement facilities in Johnson County. Nowhere did BOCC identify a law enforcement facility in either of its latest resolutions. See Resolution No. 052-25, Pet. Ex. A at 1. The language of the

statute does not invest in BOCC by way of a ballot for the voters a mechanism to finance general services and programs that fall under the Board's own broad definition of "public safety." Having exceeded the statutory authority, the resolutions and ballot propositions are null and void. *See* K.S.A. 19-101a(a)(7), (c).

D. Additional questions.

Having decided that BOCC exceeded its statutory authority nullifying and voiding the resolutions and ballot proposal, the Court will not explore additional questions and exercise restraint in reaching the constitutionality of the ballot language. *See Butler v. Shawnee Mission School District Board of Education*, 314 Kan. 553, 502 P.3d 89 (2022).

**CONCLUSION**

For the foregoing reasons, this Court grants summary judgment for the Attorney General and denies summary judgment for BOCC. This Memorandum Decision and Order shall constitute the Court's entry of judgment when filed with the Clerk of this Court. No further journal entry is required.

**IT IS SO ORDERED.**

This Order is effective on the date and time shown on the electronic file stamp.

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**HON. JAY D. BEFORT**  
**DISTRICT COURT JUDGE**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above document was filed electronically on the date stamped on the order and served electronically on counsel of record.

Katie Johnson  
Div. 15 Administrative Assistant