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April 20, 2018

Via U.S. Mail and Email

Benjamin MacConnell
Lead Organizer
Justice Matters, Inc.
820 New York Street
Lawrence, Kansas 66044
ben@thedartcenter.org

Re: Petition to Support Mental Health Services in Douglas County

Dear Mr. MacConnell:

On April 16, 2018, I furnished a written advisory opinion regarding the legality of the form of the question stated on your Petition. As noted in that letter, as County Counselor I am required by Kansas Statute to conduct this review and provide a written advisory opinion. *See* K.S.A. 25-3601. That letter contained a brief discussion of additional questions and concerns regarding the Petition. As stated in the April 16 letter, our intent was to be forthcoming about any potential issues with the Petition, so that those issues could be addressed in advance, to the extent possible and to the extent you might wish to do so.

After issuing the April 16 letter, I was subsequently asked to consider whether K.S.A. 19-117 provides legal authority for a referendum on the question stated on your Petition that proposes an increase to the county property tax levy. I have now completed that review.

As noted in the previous letter, we feel it is only fair to bring any questions about the legality of your Petition to your attention now, before you go to the trouble of collecting signatures and potentially submitting the completed Petition to the County for presentation to the voters. Of course, it is up to you to determine the question that will be stated in the Petition and, if the requisite number of signatures is obtained, submitted to the County. But the County would prefer to raise these questions and concerns in advance, rather than wait until you have completed your efforts, only to find that the Petition cannot be submitted to the electorate due to some irregularity or legal defect.

Turning now to the issue at hand, your Petition (I am referring to the draft that was presented to me for review) cites K.S.A. 19-117 as the ostensible statutory basis for the proposed increase to the county property tax levy. That statute, in sub-part (c), provides for a referendum concerning the question of levying a tax or other revenue measure. However, any tax or revenue measure described in a referendum pursuant to K.S.A. 19-117(c) must be one authorized by section 19-117 or by another statute referring to 19-117. *See* K.S.A. 19-117(c) (“The board of county commissioners shall be required to submit to a referendum the question of levying a tax or other revenue measure, *authorized by the provisions of this act or other enactment referring to this act*, upon the receipt of a petition signed by not less than five percent (5%) of the qualified electors of such county....”) (emphasis added).

A tax, excise, fee, charge or other exaction authorized by section 19-117 is one “a procedure for the levy of which is not otherwise prescribed by enactment of the legislature. . . .” K.S.A. 19-117(a). In other words, a revenue measure is authorized by section 19-117 only if it is not authorized by some other statutory provision. Section 19-117(a) allows the county commission to initiate a process to impose such a tax or other revenue measure; section 19-117(c) appears to allow the electors, by successful petition and referendum election, to seek to cause the county to impose such a tax or other revenue measure. But section 19-117(c) does not authorize county electors to require the county to impose taxes or other revenue measures that are governed by legislative enactments separate and apart from K.S.A. 19-117.

The power to levy property taxes is provided in Chapter 79 of the Kansas Statutes. For example, section 79-1945 empowers the county to “levy taxes in each year for the general fund and other county purposes.” This power is not pursuant to or dependent on K.S.A. 19-117. Therefore, this type of tax cannot be considered a tax or revenue measure “a procedure for the levy of which is not otherwise prescribed by enactment of the legislature.” On the contrary, the legislature has expressly prescribed many procedures for the assessment, levy, and collection of property taxes.

The revenue measure described in the Petition proposes to increase property taxes levied by the County. As such, it is not a tax or revenue measure authorized by the provisions of K.S.A. 19-117 or another enactment referring to K.S.A. 19-117.

Based upon the foregoing analysis, I have been unable to conclude that K.S.A. 19-117 authorizes a referendum election on the question as stated.

As noted, the intent is not to provide legal advice but rather to identify questions or concerns about the Petition and to share those with you in a transparent manner. You may elect to revise your Petition in light of these comments, or perhaps you will choose not to do so. That is entirely up to you. Whatever you decide, the County will process your Petition according to applicable statutes and other governing law. Ultimately, you are responsible for submitting a legally valid petition, and therefore we encourage you to consult your own legal counsel and make independent determinations regarding these and any other matters relevant to your Petition and the petition process generally.

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April 20, 2018
Benjamin MacConnell

Very Truly Yours,
STEVENS & BRAND, L.L.P.

A handwritten signature in black ink, appearing to read "J. Bullock", with a long horizontal flourish extending to the right.

John T. Bullock
Douglas County Counselor

cc: Craig Weinaug
Douglas County Administrator

County Commissioners