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State Provisions
Leg. 1974



STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

June 24, 1974

Opinion No. 74-207

Honorable Elwaine F. Pomeroy
Chairman, Special Committee
on Local Government
Senate Chamber
State Capitol
Topeka, Kansas 66612

Dear Senator Pomeroy:

On behalf of the Special Committee on Local Government, you inquire concerning the constitutionality of 1974 House Bill 1745, relating to the financing of urban renewal projects. The bill enclosed with your letter indicates that it has been amended by a House committee and by the House Committee of the Whole.

Section 1(b) states thus:

"Any urban renewal plan authorized hereunder may contain a provision that all ad valorem taxes levied on real property levied in such urban renewal project after the effective date of approval of such renewal plan, shall be divided as follows:

(1) That portion of the valorem taxes on real property equal to an amount which would be produced from the assessed valuation of such real property as of the date of approval of the renewal plan shall be distributed to the respective local taxing subdivisions by the county treasurer in the same manner as all other property taxes are distributed.

(2) That portion of the ad valorem taxes on real property in excess of such amount shall, when collected, be paid to the urban renewal agency and deposited in a special fund and used to pay the principal and interest on loans, moneys advanced to, or indebtedness incurred by such agency to finance, in whole or in part, such renewal project. When

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such indebtedness has been paid all ad valorem taxes on said real property shall be distributed to the respective local taxing subdivisions in the same manner as taxes on other real property are distributed."

It has been suggested, you indicate, that the use of tax proceeds authorized by section 2(b) of the bill may violate Article 11, § 5 of the Kansas Constitution, which states thus:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied."

Under § 2(b), that portion of ad valorem taxes collected in excess of the amount distributable to the taxing subdivisions in behalf of which they were levied and collected under § 2(b) is not to be paid to and used by those taxing subdivisions, but, on the contrary, is to be paid to the urban renewal agency for deposit in a "special fund" for the financing and repayment of the indebtedness of the urban renewal agency. Article 11, § 5 is unambiguous and forthright. The proceeds of an ad valorem may be applied only to the "object" for which the tax is authorized by law to be levied. Any use of funds derived from levies imposed by the local taxing subdivisions for any purposes other than stated in the statutes authorizing such levies would plainly violate this provision. To devote any portion of the proceeds of a levy imposed for, e.g., a board of education, to the financing of the indebtedness of an urban renewal agency would be in direct violation of Article 11, § 5 of the Kansas Constitution.

In view of this conclusion regarding § 2(b), and inasmuch as the operation of § 3 is dependent upon that section, we do not reach the question whether either section violates Article 11, § 1 of the Constitution.

In addition, you inquire "whether there would be any legal problem in requiring a private urban renewal project developer to pay the taxes on property designated as project property during the time the title of such property is in the name of the municipality or urban renewal agency and, therefore, off the tax rolls." K.S.A. 17-4753(b) states thus:

"The property of a municipality, acquired or held for the purposes of this act, is declared to be public property used for essential public and governmental purposes and such property shall be exempt from all taxes of the municipality, the county, the state or any political subdivision

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thereof: Provided, That such tax exemption shall terminate when the municipality sells, leases or otherwise disposes of such property in an urban renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to such property."

An ad valorem tax is a tax upon property, based upon its value. Property which is exempt from taxation, such as under K.S.A. 17-4753(b), is exempt from all taxation according to the terms of the exemption, and so long as the exemption continues, no tax thereon could be charged to the developer. If the exemption were removed, the tax could be assessed only against the owner thereof. We find no precedent for making ad valorem taxes upon property a liability against other than the owner of that property.

Yours very truly,



VERN MILLER
Attorney General

VM:JRM:jsm