



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

February 28, 1975

Opinion No. 75- 88

Mr. Benjamin E. Franklin
Board of Public Utilities
454 New Brotherhood Building
Kansas City, Kansas 66101

Dear Mr. Franklin:

You advise that the Board of Public Utilities of Kansas City, Kansas, is in the process of constructing a new power plant in Kansas City, Kansas, which involves the expenditure of millions of dollars for labor, services, and materials. The questions arises as to what labor, services and materials are subject to the three percent sales tax imposed by art. 36, ch. 79, K.S.A.

K.S.A. 79-3603 states in pertinent part thus:

"From and after the effective date of this act, for the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax as follows:

* * *

(p) a tax at the rate of three percent (3%) upon the gross receipts received from the installation, maintenance, servicing and repairing of tangible personal property not held for sale in the regular course of business, whether or not any tangible personal property is transferred in conjunction therewith, except services rendered in installing

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property in connection with the original construction of a building or structure, which when installed will become a part of such building or structure"
[Emphasis supplied.]

K.S.A. 79-3606 exempts from the tax the following, in pertinent part:

"(d) All sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings, or other projects for any political subdivision of the state, public or private nonprofit hospital, public or private elementary or secondary school or a public or private nonprofit educational institution, which would be exempt from taxation under the provisions of this act is purchased directly by such political subdivision, hospital, school or educational institution." [Emphasis supplied.]

K.S.A. 79-3602(n) defines the term "political subdivision" as including

"any municipality or agency or taxing subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state."

The Board of Public Utilities is not authorized to levy taxes, and hence, is not a "political subdivision" within the terms of the exemption provided by K.S.A. 79-3606(d).

Even if the Board of Public Utilities were a "political subdivision," within the terms of this exemption, there would occur a further objection to exemption thereunder. K.S.A. 79-3606(b) and (d) exempt the sale of tangible personal property or services purchased by a political subdivision, or by its contractor, for the "erection, repair or enlargement of buildings or other projects" of the political

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subdivision, except when the political subdivision "is engaged in a business specifically taxable under the provisions of this act and such items of tangible personal property or service are used in such business" The personal property and services in question are to be used in connection with the construction of a power plant, for the manufacture of electricity. K.S.A. 79-3603(c)

"upon the gross receipts from the sale or furnishing of gas, water, electricity, and heat, whether furnished by municipally or privately owned utilities."

Thus, even if the Board were a "political subdivision" within the meaning of this exemption statute, it would not benefit therefrom because the personal property and services are to be used in connection with a business which is specifically taxable. See Board of Park Commissioners v. State, 212 Kan. 716, 512 P.2d 1040 (1973). Thus, there is applicable only the exemption afforded by K.S.A. 79-3603(p) which exempts only "services rendered in installing property in connection with the original construction of a building or structure, which when installed will become part of such building or structure."

In a previous opinion issued by this office, dated April 18, 1972, we pointed out the terms "structure" and "building" are used disjunctively in K.S.A. 79-3603(p), and that accordingly, the term "structure" must denote a broader class than tenantable buildings, such as office buildings and the like. Certainly, a structure housing components of a power-generating plant would constitute a structure, within the meaning of the exemption. Whether particular power-generating equipment itself, when installed, becomes a part of a structure which may broadly be denominated a "power plant" is a conclusion which we do not feel justified in reaching purely as a matter of law -- it is entirely too dependent upon engineering and structural information which we presently do not now have. You enclose with your letter a memorandum concerning a contract for the purchase of a condenser for cooling the turbine-generator exhaust steam, total bids for which approximate \$1,000,000. Approximately \$800,000 of this is allocated to purchase of the unit and the remaining \$200,000 for erection on the site. Approximately 85% of the erection expenses would be for labor and the remainder

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for consumable materials, tools and similar expenses. If it may be fairly concluded that the condenser, when installed, will become a part of the structure, services rendered in its installation would be exempt under K.S.A. 79-3603(p).

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. William L. Harris, Jr.
General Counsel
Department of Revenue
2nd Floor - State Office Building
Topeka, Kansas 66612