



STATE OF KANSAS

Office of the Attorney General

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

CURT T. SCHNEIDER
Attorney General

March 24, 1975

Opinion No. 75- 130

The Honorable Ruth Luzzati
State Representative
3rd Floor - State Capitol
Topeka, Kansas 66612

Dear Representative Luzzati:

You inquire concerning 1975 House Bill 2300, which concerns, generally, the authority of cities to acquire property for development purposes. Section 2(b) states thus:

"Any city may enter into lease-purchase agreements, by ordinance of the governing body, with any person, firm or corporation, hereinafter referred to as a developer, for the clearing of any site acquired by the city and/or for the construction, repair, equipping or remodeling of any building on such site, providing the governing body of said city declares that said facility, if in being would promote the welfare of the city."

The content and terms of such lease-purchase agreements is described in section 3:

"(a) Any such lease-purchase agreement entered into as provided in section 2 of this act shall fix a date on which such development shall be completed. The agreement provided for in section 2 of this act may provide that from and after such date the developer shall begin making payments to the city, annually, in an amount equal to the ad valorem payments which would be levied on such property if it was on the tax rolls and assessed as other property of a similar nature. Such payments may be

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credited to the payment of the revenue bonds issued by such city for the costs of acquiring the property and for any other acquisition costs incurred by the city prior to development. The agreement may provide that at such time as the city has been reimbursed for all such costs, including the payment of the revenue bonds and interest thereon, title to such property shall vest in the developer and shall be assessed and taxed as other property within such city."

Subsection (3) (b) states further:

"Any such lease-purchase agreement may also provide for annual payments to be made by the developer to the city in an amount equal to the sum of ad valorem taxes levied by all taxing subdivisions on such property in the year last preceding the year in which such agreement is entered into. Should the agreement provide for such payment to the city, such payment shall, immediately upon receipt of same, be transmitted by the city to the county treasurer of the county in which the city is located. The county treasurer shall apportion such payment among the taxing subdivisions of this state in the territory of which the development property is located or adjoins. The payment shall be divided by the county treasurer among such taxing subdivisions in the same proportion as the amount of the operating tax rate mill levy of each individual taxing subdivision bears to the aggregate of such levies of all the taxing subdivision among which the division is to be made. The county treasurer shall pay such amounts over to the said taxing subdivisions at the same time or times as their regular operating tax rate mill levy is paid to them."

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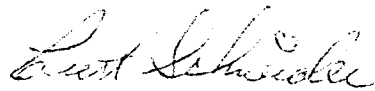
Section 10 of the bill proposes to amend K.S.A. 1974 Supp. 79-201, paragraph Sixth, to provide that "property owned by cities under the provisions of this act" shall be exempt from taxation. As the amendment is presently drafted, it is necessary not only that the property "be owned by cities under the provisions of this act," but also that it "is used or [is] to be used for any governmental or proprietary function." It is unclear whether property being cleared and developed by a lessee-purchaser from the city, to build a new building or industry thereon, is being used for a governmental or proprietary function. It is suggested that legislative attention be given to this particular ambiguity.

This ambiguity is not relevant to the question which you pose, however, which is whether provision for payment by the lessee-purchaser of annual payments under section 3, "equal to the sum of ad valorem taxes levied by all taxing subdivisions on such property in the year last preceding the year in which such agreement is entered into," results in unequal assessment and taxation in violation of Article 9, § 1 of the Kansas Constitution.

Assuming for the purposes of this opinion, that K.S.A. 79-201, as proposed to be amended by section 10, is sufficient to exempt property subject to the act from taxation, there remains no question of unequal taxation. If the property is exempt from taxation, the payments made by the lessee-purchaser may not be characterized as taxes, and hence are not subject to the requirements of Article 9, § 1. Secondly, sections 2 and 3 both provide only that the lessee-purchaser may contract with the city to make such payments. The liability is contractual in nature, and a default by the lessee-purchaser would not, on the face of the bill itself, result in an in rem liability against the property upon which the city could recover from the property itself the amount of the defaulted payments.

Thus, we find no violation of Article 9, § 1 in contractual provisions for payment authorized by sections 2 and 3 of the bill.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

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cc: The Honorable James C. Slattery
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

The Honorable John F. Hayes
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612