November 11, 1975

ATTORNEY GENERAL OPINION NO. 75-424

Mr. Patrick J. Reardon
Leavenworth County Attorney
Leavenworth County Courthouse
Leavenworth, Kansas 66048

Re: Taxation--Sale of Property--Publication of Notice

Synopsis: In the publication of a list of properties subject
to sale for nonpayment of taxes pursuant to K.S.A. 79-2303, the county treasurer may delete from the
list upon second or third publication those properties
upon which taxes have been paid subsequent to the first
publication.

* * *

Dear Mr. Reardon:

K.S.A. 79-2301 provides that all real estate upon which taxes
have not been paid shall be subject to sale as provided in the
act. Under K.S.A. 1974 Supp. 79-2302, the county treasurer
must between the first and tenth of July in each year prepare
a list

"of all real estate subject to sale,
describing such real estate as the same
is described of record in the office
of the county clerk or the register of
deeds of the county in which the real
estate is situated, with an accompanying
notice stating that such real estate
described in said list will, on the first
Tuesday of September next thereafter . . .
be sold by him to the county for the
amount of the delinquent taxes and legal
charges due thereon."
The list must be submitted to the newspaper chosen to publish the same on or before the first day of August of each year.

Publication is prescribed by K.S.A. 79-2303 thus:

"The county treasurer shall cause the said list with accompanying notice to be published in some newspaper published in said county, or if no newspaper be published in said county, then in one of general circulation in his county, once in each week for three consecutive weeks prior to the week in which is the day of sale . . . ."

The question which is raised is whether names and properties appearing in the first publication may be deleted from the list on second or third publication in those instances wherein the delinquent taxes and charges have been paid after the first publication. The statute, of course, is not explicit on the question. The proper construction to be given it in this instance should be guided, thence, by the purpose of the publication in the first instance. Publication is required in order to give formal and legal notice to the public, and to the owners of the affected properties, that the listed properties are subject to sale at the time indicated. The list to be published is of "all real estate subject to sale." If the delinquent taxes due on a particular property are paid after the first publication, that property is no longer "subject to sale," and there is no reason to continue publication of that property.

Thus, in my judgment, it is within the authority of the county treasurer to delete from the list upon second and third publication those properties which are no longer subject to sale by reason of the fact that delinquent taxes and charges due thereon have been paid after the first publication.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj