



STATE OF KANSAS

*Office of the Attorney General*

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CURT T. SCHNEIDER  
Attorney General

November 25, 1975

ATTORNEY GENERAL OPINION NO. 75- 441

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Clark County Courthouse  
Ashland, Kansas 67831

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Phillipsburg, Kansas 67661

RE: K.S.A. 79-422, 1974 Supp. 79-5a04, 79-5a06a and b

Synopsis: All public utility property, of every nature, real or personal, is listed and valued as real estate on a system-wide or unit basis, and the valuation is then apportioned to each county. In bankruptcy of a utility, then, the collection procedures to be used are those pertaining to the foreclosure of taxes on real estate, plus following the provisions of the Bankruptcy Act where applicable.

\* \* \*

Dear County Attorneys:

We have received letters inquiring about the procedure to be followed in those counties which have property of the Chicago, Rock Island and Pacific Ry. Co., upon which taxes are due now for prior years and on November 1, 1975 more taxes became payable.

On March 17, 1975, the District Court of the United States for the Northern District of Illinois, Eastern Division, in case No. 75B 2697, approved the petition of the Rock Island Ry. Co., as properly filed under Section 77, of the Bankruptcy Act (11 U.S.C. 205) and appointed William M. Gibbons as trustee. The Trustee has set up an office at the Rock Island headquarters at 745 South LaSalle Street, Chicago, Illinois 60605. Our best contact there is the office of U.C. Brown, Real Estate Tax Commissioner, or his assistant Marvin Homerding, phone number 1-312-435-7529.

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We understand that all Rock Island counties are now receiving forms on which to make claims for back taxes due and unpaid. Also, request is made for the 1975 tax statements. The back taxes can be allowed by the Court as a priority claim. The last half of 1974 taxes and all of 1975 taxes are "current" tax obligations of the Trustee and should be paid by him as an operating administrative expense. So, break your claims into two parts - one for those taxes which accrued and became a lien prior to March 17, 1975, and secondly, taxes which were due June 20, 1975 and taxes which were payable November 1, 1975. The first should be made on the form to the trustee as a claim against the trust estate. The second should be made directly to the trustee as being owed by him as part of his expense as trustee. If any interest, penalty, charges or costs have accrued, include them in your claims.

You should make your claim for the Rock Island taxes as real estate taxes. If you have listed the taxes as "personal property", under K.S.A. 79-1701, 1701a and 1701b, ask the Board of County Commissioners to correct an error or irregularity and to relist the taxes as "real estate".

All property of public utilities, real and personal, shall be returned, listed and taxed in the manner provided by law for real estate. K.S.A. 79-422. Because such utilities cross county lines, and many are interstate, the Kansas Legislature has required that all utility property be valued and assessed by the Director of Property Valuation for ad valorem tax purposes as a unit, K.S.A. 1974 Supp. 79-5a04. That Director shall then apportion such system assessed valuation, or that portion allocated to Kansas out of an interstate unit, on a statutory formula to the various county clerks in whose county such utility property is located. K.S.A. 1974 Supp. 79-5a06a and b. In all this process, what is apportioned is assessed real estate valuation, to be taxed as real estate. It then follows that the procedure for collection of utility taxes are those provided by law for the collection of real estate taxes, which are due and unpaid.

All ad valorem taxes on utility property, unpaid on November 1, shall attach to the real property "and such lien shall continue until such taxes and penalty, charges and interest which may have accrued thereon, shall be paid by the owner of the property or other person liable to pay the same." K.S.A. 79-1804. Upon judicial foreclosure the Court shall adjudge and decree that the amount of such lien found to be due to be a first and prior lien upon said property." K.S.A. 79-2801.

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"It is well known that mortgage liens, materialmen's and mechanics' liens are inferior to liens for taxes. One who takes such a lien knows this act the time of taking. It is such liens as these over which the lien for taxes has priority." State ex rel. v. Wyandotte County Commissioners, 154 Kan. 222, 231-232, 171 P.2d 591.

Therefore, in our opinion you should make claims to this trustee, as above suggested, as real estate taxes. We would further suggest that you specifically reserve the tax lien which exists under Kansas statutes by stating on the claim: "The making of this claim does not in any way waive or discharge the existing lien under Kansas statutes for unpaid taxes, penalties and interest which this County holds against property of the Chicago, Rock Island and Pacific Railroad Co., physically located in this county."

We are informed by the Chicago office that there is no money presently available to pay up the back taxes and that there is a possibility that there may not be any money available to pay current taxes. However, they say that you should get your claims in before December 31, 1975, which is the deadline, and that you will be paid as money becomes available. We have made an arrangement for notification to this office if there are to be set any contested hearings on any tax claims from Kansas. We will try to continue to give such assistance to you as we can in this matter.

Very truly yours,



CURT T. SCHNEIDER  
ATTORNEY GENERAL

CTS:CJM:gw

cc: County Attorneys of the following counties:  
Atchison, Brown, Butler, Clay, Cloud, Decatur,  
Doniphan, Douglas, Ford, Geary, Harvey, Jack-  
son, Jefferson, Jewell, Kiowa, Leavenworth,  
Marion, McPherson, Meade, Morris, Norton, Pratt,  
Reno, Republic, Riley, Saline, Sedgwick, Seward,  
Shawnee, Sheridan, Sherman, Smith, Sumner, Thomas,  
Wabaunsee and Wyandotte.

*Malone*  
*Malone*

COUNTIES	CHICAGO, R. I. & PACIFIC
Allen,	
Anderson,	
Atchison,	73769
Barber,	
Barton,	
Bourbon,	
Brown,	967416
Butler,	710392
Chase,	
Chautauqua,	
Cherokees,	
Cheyenne,	
Clark,	568086
Clay,	2467277
Cloud,	482032
Coffey,	
Comanche,	
Cowley,	
Crawford,	
Decatur,	1690278
Dickinson,	4414522
Doniphan,	2087764
Douglas,	226394
Edwards,	
Elk,	
Ellis,	
Ellsworth,	
Finney,	
Ford,	3594736
Franklin,	
Geary,	2650
Gove,	
Graham,	
Grant,	
Gray,	
Greeley,	
Greenwood,	
Hamilton,	
Harper,	
Harvey,	264336
Haskell,	
Hodgeman,	
Jackson,	2045100

Edwards,					
Elk,					
Ellis,					
Ellsworth,					
Finney,					
Ford,			3594796		
Franklin,					
Geary,				2050	
Gove,					
Graham,					
Grant,					
Gray,					
Greeley,					
Greenwood,					
Hamilton,					
Harper,					
Harvey,			264336		
Haskell,					
Hodgeman,					
Jackson,			2089099		
Jefferson,			650458		
Jewell,			2836262		
Johnson,					
Kearny,					
Kingman,					
Kiowa,			1971215		
Labette,					
Lane,					
Leavenworth,			510592		
Lincoln,					
Forward,			24209522		

COUNTIES	CHICAGO, R. I. & PACIFIC
Bro't forward,	263 893 22
Linn,	
Logan,	
Lyon,	
Marion,	46 852 89
Marshall,	
McPherson,	24 47 21 1
Meade,	24 77 8 90
Miami,	
Mitchell,	
Montgomery,	
Morris,	36 73 2 97
Morton,	
Nemaha,	
Neosho,	
Ness,	
Norton,	28 66 5 68
Osage,	
Osborne,	
Ottawa,	
Pawnee,	
Phillips,	24 1, 4 2 42
Pottawatomie,	
Pratt,	29 53 9 48
Rawlins,	
Reno,	42 94 0 14
Republic,	46 32 6 90
Rice,	
Riley,	27 84 7 62
Rooks,	
Rush,	
Russell,	
Saline,	60 14 21
Scott,	
Sedgwick,	35 66 0 38
Seward,	30 27 2 38
Shawnee,	43 23 1 78
Sheridan,	97 62 19
Sherman,	30 64 0 02
Smith,	25 70 5 36
Stafford,	
Stanton,	
Stevens,	

Pratt,	2953948
Rawlins,	
Reno,	4294014
Republic,	4632690
Rice,	
Riley,	2784718
Rooks,	
Rush,	
Russell,	
Saline,	601421
Scott,	
Sedgwick,	3566038
Seward,	3027238
Shawnee,	4373178
Sheridan,	976219
Sherman,	3064102
Smith,	2570536
Stafford,	
Stanton,	
Stevens,	
Sumner,	3756688
Thomas,	2747191
Trego,	
Wabaunsee,	6200163
Wallace,	
Washington,	541194
Wichita,	
Wilson,	
Woodson,	
Wyandotte,	15215267
<b>TOTAL,</b>	<b>106169166</b>