



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 9, 1976

ATTORNEY GENERAL OPINION NO. 76- 47

Mr. Matthew Dowd, Esq.
County Counselor
Shawnee County Courthouse
Topeka, Kansas 66603

Re: K.S.A. 1975 Supp. 79-3102, K.S.A. 79-328.

Synopsis: A private banking corporation, which builds a court-house and office building, with parking facilities, on United States Government land, but which by contract will retain all right, title and interest in such improvements, including the right to possess, rent and manage until paid in full, shall have its property placed on the tax rolls as tangible personal property pursuant to K.S.A. 79-328, in the county where located.

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Dear Mr. Dowd:

Your letter of January 16, 1976, with an attached letter dated December 30, 1975, from James L. Kealing, Regional Counsel, General Services Administration, requests our opinion whether the new Federal Courthouse and Office Building, including parking facilities, being built in the City of Topeka, Shawnee County, should be put on the tax rolls, and valued and assessed.

In a previous opinion, dated April 28, 1975, we concluded that this structure, being placed on U.S. Government land, but all right, title and interest in such improvements being vested in a trustee, until the "purchase price" is paid in full, constitutes an "executory contract" as defined in K.S.A. 79-3101, et seq., and that upon recordation a mortgage registration fee must be paid by the trustee.

You state that the trustee has not recorded the contract, but that construction is going forward with no arrangement being made for the payment of ad valorem taxes.

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Our previous opinion of April 28, 1975, is appended hereto. The reasoning therein, and the authorities cited, are applicable to the present question. Clearly, the trustee must pay a mortgage registration fee on its executory contract, or pay ad valorem taxes on the property it owns, located in Shawnee County, Kansas like other property owners.

K.S.A. 79-328, provides for the situation where improvement on real estate does not become part of that real estate. By its provisions an improvement shall be listed and taxed as personal property, and, if the taxes are not paid, the tax on such improvements shall be collected by levy and sale of the interest of the owner.

The "Topeka Project" is being financed by the sale of Series K Participation Certificates which have been purchased by the Federal Financing Bank, a Federal Agency. However, Congress did make an exception to the exempt status of the bank as follows: ".. except that (1) any real property and any tangible personal property of the Bank shall be subject to Federal, State and local taxation to the same extent according to its value as other such property is taxed, . . ." The trustee, a private corporation, has no Federal exempt status. Congress has allowed state and local taxation of the Bank's real and tangible personal property.

In our opinion, the tangible personal property of the "Topeka Project", titled in the trustee, General Services and American Security and Trust Company, and financed by the Federal Financing Bank, must be placed on the Shawnee County, Kansas tax rolls commencing on January 1, 1976 and continuing until the United States pays the "purchase price" in full and is then vested with title to such improvements. The ownership of said tangible personal property should be listed on the tax rolls under both the names of the General Services and American Security and Trust Company, and the Federal Financing Bank, and valued and taxed as other tangible personal property being taxed in Shawnee County, Kansas.

Very truly yours,



CURT T. SCHNEIDER
ATTORNEY GENERAL

CTS:CJM:gw