



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 3, 1976

ATTORNEY GENERAL OPINION NO. 76- 87

Lyndus A. Henry
County Counselor
Board of County Commissioners
County Courthouse
Olathe, Kansas 66061

RE: KSA 79-1703, 79-1704, 79-1426, 79-2014; KSA 1975
Supp. 79-1701, 79-1701a, 79-1702 and 79-1602.

Synopsis: The Board of County Commissioners has no authority or discretion to release, discharge, remit, commute or compromise any portion of the taxes assessed and levied against any person or property for any reason whatever, except in those instances where authority and power is expressly or impliedly given by legislative enactment.

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Dear County Counselor Henry:

You ask what power a Board of County Commissioners has to release, discharge, remit or commute taxes within the meaning of KSA 79-1703? You cite situations in the Courts or before the Board of Tax Appeals where there is a "bonafide" disputed valuation of property, and you ask if the Board has power and authority "to compromise and settle" such suits?

The entire matter of taxation is legislative and does not exist apart from statute, and the legislature is empowered to provide the means and agencies for carrying out its responsibilities in matters of taxation. Joseph v. McNeive, 215 Kan. 270, 524 P.2d 765. (1974).

Neither the assessing official, the Board of County Commissioners, nor the State Board of Tax Appeals has discretion to waive or excuse penalties provided by law for failure to timely file returns. Walkemeyer v. Stevens County Oil & Gas Co., 205 Kan. 486, 470 P.2d 730. (1970).

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"If it attempts to exercise jurisdiction over a subject matter not conferred by the Legislature, its orders with respect thereto are without authority of law and void." (Page 491)

The plan and intent of the legislature to hold all taxing officials strictly to the letter of the law is best expressed in KSA 79-1426, the penalty statute for violating tax law procedures.

Under KSA 1975 Supp. 79-1701, the County Clerk was given authority to correct prior to November 1 these itemized clerical errors:

- "(a) Errors in the description or quantity of real estate listed;
- (b) Errors in extensions of values or taxes whereby a taxpayer is charged with unjust taxes;
- (c) Errors which have caused improvements to be assessed upon real estate when no such improvements were in existence;
- (d) Errors whereby improvements located upon one tract or lot of real estate have been assessed as being upon another tract or lot;
- (e) Errors whereby taxes have been charged upon property which the State Board of Tax Appeals has specifically declared to be exempt from taxation under the constitution or the laws of the state;
- (f) Errors whereby the taxpayer has been assessed twice in the same year for the same property in one or more taxing districts in the county; and
- (f) Errors whereby the assessment of either real or personal property has been assigned to a taxing district in which the property did not have its taxable situs."

By KSA 1975 Supp. 79-1701a the Board of County Commissioners have authority to correct these exact same clerical errors between November 1 and August 1 of the subsequent year. When the Board of County Commissioners sits as the County Board of Equalization, and raises or lowers valuations, as provided in KSA 1975 Supp. 79-1602, they change the burden of taxation. But it is done as authorized and directed by statute, and within the time span listed by law.

When taxpayers are dissatisfied with the efforts of the County Board of Equalization, they can appeal, under KSA 1975 Supp. 79-1609 or under KSA 1975 Supp. 79-1702, to the State Board of Tax Appeals, or may go directly into Court by protesting taxes under KSA 1975 Supp. 79-2005. Either way on appeal, the Board can only stand on the judgment it made. The Board cannot reconsider its position, negotiate with the taxpayer, compromise and agree on a lower valuation and ask the Court or the Board of Tax Appeals to approve some kind of a

stipulated settlement.

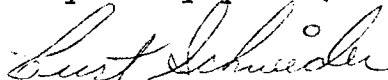
KSA 1975 Supp. 79-1602 says that the Board of County Commissioners shall sit as the County Board of Equalization for a positive period, after which the Board shall adjourn "sine die" and "the Board shall have no authority to be in session thereafter." As if to dispel any doubt about legislative intent, the last sentence of this section then says: "and after the final adjournment the Board shall not change the assessed valuation of real estate of any person or reduce the aggregate amount of the assessed valuation of the taxable property of the county."

In our opinion the Kansas Legislature has labored to make it crystal clear that, once adjourned, the County Board of Equalization should keep its hands off the assessments which it has approved, and leave any further change to the Board of Tax Appeals and the Courts. They have set up the procedure for this avenue of due process as an exclusive means of granting relief to the taxpayer.

KSA 79-1704 and 79-2014 are special laws which demonstrate that, if exceptions need be made to the general tax system rules, the legislature will make them.

If, in the interim between the Board's adjournment and the date of the hearing before the Board of Tax Appeals or the District Court, additional facts and circumstances come to the attention of the Board, which if they had been considered by the Board might have caused the Board to reach another decision, or if there has been some error in the Board's computation which would compel a change in valuation, such facts and circumstances should be presented by the Board in the hearing before the Board of Tax Appeals or the District Court, so that the appellate tribunal could properly administer justice. But the Board of Tax Appeals or the District Court should make changes justified by the appeal record, and not upon a routine approval of a stipulated compromise reached between the Board of County Commissioners and the taxpayer.

Very truly yours,



CURT T. SCHNEIDER
ATTORNEY GENERAL