



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

April 9, 1976

ATTORNEY GENERAL OPINION NO. 76-125

Mr. Raymond C. Vaughn
Director
Division of Property Valuation
State Office Building
Topeka, Kansas 66625

RE: K.S.A. 79-307a. Listing and return of livestock
for taxation.

Synopsis: The use of the words "or, in the alternative" in K.S.A. 79-307a is disjunctive. A taxpayer must choose one or the other, and cannot use both options. He cannot use one option in one taxing district and the other option in another taxing district. When he exercises one of the options, he does so for all his cattle having a tax situs in Kansas. However, this does not apply when a person owns cattle as an individual and also as a partner in a partnership. Two different taxpayers are involved. The individual can exercise choice of options, so also may the partnership. But, again, all cattle owned in each case must follow the option selected.

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Dear Mr. Vaughn:

We reaffirm the position of this office, as expressed in an opinion dated March 3, 1960, that K.S.A. 79-307a grants a choice in listing cattle for taxation by alternative options. This means one or the other method, but not both, may be used.

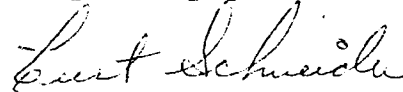
Attached is a copy of our opinion dated March 15, 1976, by which we expressed the opinion that an owner of cattle could not return one class of his cattle under one option and another class of cattle under the second option.

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We feel the same rule should apply when the same owner has cattle in more than one taxing district or in more than one county. When he exercises the option, he does so for all his cattle having a Kansas tax situs. The law gives the options to list and return "such cattle as he owns or has under his control". This means "all" the taxpayer's cattle.

You also inquire whether this ruling would apply to a person who owns cattle individually and at the same time has an interest in cattle owned by a partnership in which the same person was a partner. In such case, there are two taxpayers, one an individual, the other a partnership. Each taxpayer, in listing and returning cattle, has the right to make an election of which option to follow.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/CJM/cgm
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The problem created by the transfer of property liable for unpaid, unmatured special assessments to the state or federal government is perhaps deserving of legislative attention. The creation of a statutory lien for unmatured future installments could be accomplished by appropriate amendment to section 79-1804.

LETTER, March 3, 1960, to Mr. Bernard E. Nordling, Stevens County Attorney, Hugoton, Kan.

Re: SAME—Assessment, Livestock, Alternative Manner of Listing

You have requested our opinion on two questions concerning the new alternative formula for listing livestock. In lieu of listing all livestock held on January 1, a taxpayer is permitted by G. S. 1959 Supp., 79-307a, to return a "statement of the estimated average value of livestock which he owned or had in his possession or control during" the preceding year.

Your first question was, does this section apply to nonresident owners and, if so, must they return livestock owned or possessed by them in another state during the year. This section would apply to nonresidents; it commences with the words, "Any person required to list and make a return of livestock . . . may . . . (etc.)" Nonresidents are required by our personal property tax statutes to list personal property having a taxable situs in this state. [G. S. 1949, 79-301; G. S. 1959 Supp., 79-304; *Ray v. Board of County Commrs.*, 173 Kan. 859, 863, 252 P. 2d 899 (1953).] It is the opinion of this office that the new section, G. S. 1959 Supp., 79-307a, neither enlarges nor narrows the scope of the personal property tax; it simply provides an alternative method of returning for taxation such livestock which is otherwise taxable in Kansas. If the livestock of a nonresident (or any of his personal property) does not acquire a taxable situs in this state at any time during the taxing period, it cannot be taxed here. Therefore, a nonresident need not return livestock held by him in another state and which did not acquire a taxable situs in this state at any time during the preceding year nor on January 1st of the tax year.

Your second question was whether any taxpayer, resident or nonresident, may elect to use the alternative average value method of returning his livestock in one county, but return livestock in another county under the other method; *i. e.*, by listing all livestock held as of January 1st. It is the opinion of this office that a taxpayer can not vary the method of returning his livestock from county to county (or from township to township); he must use the same method of

returning livestock in all counties in which he makes the annual return. If a taxpayer were allowed to vary the method from county to county it could result in tax benefits clearly not intended by the legislature. The State Property Valuation Department has taken the same position on this matter.

LETTER, February 9, 1960, to Honorable John D. Bower, Representative, 4th District, State Capitol Building

Re: SAME—*Assessment, Reduction in Valuation*

You have requested the opinion of this office on a question concerning the proper application of the 1959 amendment to G. S. 1957 Supp., 82a-409 (G. S. 1959 Supp., 82a-409). Prior to this 1959 amendment Section 82a-409 provided that a landowner who had donated to the State land, easements or rights of way for the erection and maintenance of reservoirs for the storage of water would be entitled to a reduction in the assessed valuation of the contiguous land for a period of twenty years. This reduction was to be made in accordance with a schedule specified in Section 82a-405. However, the 1959 amendment to Section 82a-409 provided by its own terms the formula for reducing valuation.

The precise method by which the reduction in assessment is accomplished is provided for in other sections which have not been amended (Sec. 82a-406, 407). This method requires a certification to be made by the chief engineer of water resources to the board of county commissioners certifying to the fact of the completion of the dam and its storage capacity. The commissioners are then directed by Section 82a-407 to reduce the valuation commencing with the first period after the date of issue of the certificate of completion. The reduction is made annually thereafter for a period of twenty years. (Sec. 82a-409, 406.)

Therefore, it appears that the landowner does not become eligible for the assessment reduction until all of these steps have been taken. The final step is the issuance of the certificate of completion. Your question is:

"Which schedule of tax reduction does apply to structures on donated land or easements, where such structures were completed but not certified for tax reduction before the effective date of the act?"

In other words, the landowner donated the land to the State and the structure was built while the old statute and schedule of reduction was still effective.



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Curt T. Schneider
Attorney General

March 15, 1976

ATTORNEY GENERAL OPINION NO. 76-93

Kenneth W. McClintock
Morris County Attorney
418 East Main Street
Council Grove, Kansas 66846

RE: K.S.A. 79-307a, Listing and return of livestock.

Synopsis: The use of the word "or" in a statute has usually been interpreted "disjunctive". When used in the "conjunctive" sense, the context must clearly indicate legislative intent that the words "and" and "or" be used interchangeably. Where "or" is used in the "alternative sense", it is "disjunctive". K.S.A. 79-307a requires all cattle to be reported for taxation by one alternative or the other, and not both.

* * * *

Dear County Attorney McClintock:

You say that you have a taxpayer who has used both alternatives in K.S.A. 79-307a in listing his cattle for taxation. He is attempting to list one classification of cattle as of January 1 and another classification of cattle on the yearly average. You ask if under this statute he can use both.

Our opinion is that he cannot use both, because the alternatives are disjunctive.

It is true that the words "or" and "and" have been construed to be interchangeable. This is usually the case where the word "or" is between synonyms, each meaning substantially the same. State v. Hawri, Robinson v. Hammel, 154 Kan. 654, 658, 121 P.2d 200 (1942); 117 Kan. 74, 75, 230 P. 331 (1924).

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A proviso granting two alternatives for exemptions from registration is disjunctive. State v. Teeslink, 177 Kan. 268, 273, 278 P.2d 591 (1955). A statute using the word "or" reads in the disjunctive and should be given its ordinary meaning, not that of "and". State v. McGaugh, 180 Kan. 850, 853, 308 P.2d 85 (1957). The word "or" means one, not both, citing Webster's New International Dictionary. Standard Oil Co. v. Reed, 126 Kan. 63, 65, 266 P. 735 (1928).

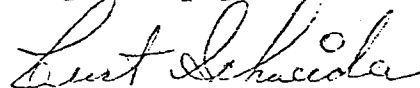
"The word 'or' is here used in the usual alternative sense of one but not both,..." White v. Atchison, T. & S.F., 125 Kan. 537, 539, 265 P. 73, (1928).

The legislature did not leave construction to conjecture. K.S.A. 79-307a provides:

"Any person...may list and make a return to the assessor for assessment and taxation such livestock which he owns, or has in his possession or control on January 1,...or, in the alternative, he may make and return to the assessor a statement of the estimated average value of livestock which he owned or had in his possession or control during the year next preceding January 1."

The legislature explicitly said this law should be used in the alternative sense. This means one or the other method, but not both.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS/ CJM/cgm
cc: Clarence A. McCreath
County Assessor
County Courthouse
Council Grove, Kansas 66846