



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 22, 1976

ATTORNEY GENERAL OPINION NO. 76-132

Mr. Jim Barnes, Chairman
Jackson County Commissioners
Jackson County Courthouse
Holton, Kansas 66436

Re: Taxation--Foreclosure--Abatement of Interest and Penalties. K.S.A. 79-2801, 79-2914, 79-1703, K.S.A. 1975 Supp. 79-1701a.

Synopsis: Foreclosure and sale of real estate for delinquent taxes, interest and penalties are mandatory. Laws provide for proration to taxing districts where tax sale proceeds are less than the tax. There is a severe penalty statute prohibiting the release, discharge, remittance and commutation of taxes.

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Dear Mr. Barnes:

You advise that the Mayor of Denison wishes to buy a property for the city to build a fire station. Several years of back taxes, interest and penalties are due against it. The Mayor proposes that he pay the taxes, but that your Board "abate the interest and penalties." You ask if this can legally be done.

In our opinion, it cannot. K.S.A. 79-1703 provides thus:

"Unlawful release, discharge, remission or commutation of taxes; civil action authorized thereon; disposition of funds recovered. Except as provided by law, no board of county

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commissioners or other officer of any county shall have power to release, discharge, remit or commute any portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason whatever. Any taxes so discharged, released, remitted or commuted may be recovered by civil action from the members of the board of county commissioners or such other officer and the sureties of their official bonds at the suit of the attorney general, the county attorney, or of any citizen of the county or the board of education of any school district a part of the territory of which is in such county, as the case may be, and when collected shall be paid into the county treasury to be properly apportioned and paid to the county, municipalities, school districts and other taxing subdivisions entitled thereto."

K.S.A. 79-2801 provides that after the first day of September of the *third* year after the tax sale, the Board of County Commissioners *shall* order the county attorney to institute judicial foreclosure proceedings. Each year taxes are delinquent, the county bids in the property subject to redemption during the next three years. If the proceeds of this sale are insufficient to pay all taxes, penalties and interest, K.S.A. 79-2914 provides the method of apportionment between the taxing districts.

The only authority which the Board of County Commissioners has to abate penalties and interest is when, before August 1 of the following year, the Board finds that, due to a *clerical error*, there has been or will be an overpayment of taxes, the Board may abate the taxes if not paid, or refund if paid. Except for this single instance, K.S.A. 79-1703 applies.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:kj