



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

May 7, 1976

ATTORNEY GENERAL OPINION NO. 76-151

Mr. Philip E. Winter  
Assistant County Attorney  
Lyon County Courthouse  
Emporia, Kansas 66801

Re: Taxation--Assessment--Exemption of Right-of-ways and Easements. K.S.A. 1975 Supp. 79-210; 79-211, 79-408; 79-1701; and K.S.A. 79-1409; 74-2439(a)

Synopsis: The County Clerk must annually make up tax rolls which contain a correct and pertinent description of each parcel of real estate. Each parcel is then appraised uniformly and equally at its fair market value in money and then assessed at 30% thereof. If an exempt body buys real estate or an interest therein, such as an easement, the County Clerk must insist that the exempt body obtain an order from the State Board of Tax Appeals declaring that property or interest therein to be exempt from taxation. A copy of such order is filed by the exempt body with the County Clerk, who then enters the property, or interest therein, in the exempt property record, the reason for the exemption, and the fair market value of such property or interest exempted.

\* \* \*

Dear Mr. Winter:

You write that the City of Emporia has acquired a permanent easement on certain land for streets, alleys, and utilities. You ask if it is necessary that the City of Emporia get an order of the Board of Tax Appeals declaring such easement exempt from taxation, or if the County Clerk can grant the exemption, and reduce the taxable value left to the owner in fee simple.

- Mr. Philip E. Winter  
Page Two  
May 7, 1976

In our opinion, only the Board of Tax Appeals can order that any property or interest therein be stricken from the tax rolls as exempt. The Board of Tax Appeals is the State Board of Equalization, K.S.A. 1975 Supp. 74-2439(a), K.S.A. 79-1409, and as such is vested with the power to raise or reduce assessed valuations. Exemptions must be supervised by some state-wide authority to achieve equality and uniformity in the burden of taxation.

Prior to 1970 there was great variance, county from county, in granting exemptions. The 1970 Kansas Legislature passed Chapter 380, which gave rise to K.S.A. 1975 Supp. 79-210 and 79-211. This law struck from the tax records all previous exemptions and made everyone and everybody, public or private, owning property or interests therein claimed to be exempt, to prove up such exemption. This was done by getting an order from the Board of Tax Appeals, which was filed with the County Clerk, who then set up "an exempt property record" listing all exempt property in the county, and the fair market value of such exemptions. Also, each owner of exempt property was compelled to file annually an exempt claim that the exempt use continues, or else the property goes back onto the tax rolls. Because of the burden, the 1972 Legislature excepted the state and municipalities from this annual claim, but the rest of the laws remained intact.

Under K.S.A. 1975 Supp. 79-408 the County Clerk must make up the tax rolls annually, describing *each* parcel, unless the Board of Tax Appeals orders her to transfer specific property to the tax exempt record. She must follow the orders of the Board, K.S.A. 1975 Supp. 79-1701. Cities are no exception to this rule.

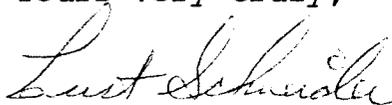
You further ask how the County Clerk can divide the valuation between the City easement and what is left to the owner in fee. This is a matter of appraisal judgment. If a right-of-way or easement is taken that does not prohibit a gainful use of the surface of the ground, such as in the case of buried pipelines, or overhead power lines, then the division is possible. But, where the state, county or city takes a portion of the ground for streets and highways, and this easement is permanent and exclusive, it practically destroys any market value of the ground itself. On the Clerk's tax roll, the Clerk can list the whole lot or acre description, and simply list the number of feet or acres under easement at "no value." Correspondingly, the County Clerk would list in the exempt record book the legal description of easement and the whole fair market value of the area covered by the easement.

There have been instances where the subsurface estate becomes valuable for oil and gas production. If the subsurface feet or acres are covered by the owner in an oil or gas lease, the area

Mr. Philip E. Winter  
Page Three  
May 7, 1976

is simply included in valuing the owner's assessable mineral interests.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:CJM:kj