



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

June 8, 1976

ATTORNEY GENERAL OPINION NO. 76-166

Mr. A. B. Howard  
Assistant City Attorney  
Legal Department  
Ninth Floor - Municipal Office Building  
One Civic Center Plaza  
Kansas City, Kansas 66101

Re: Cities--Intangible Tax--Ordinance

Synopsis: Under 1976 House Bill 3112, a city may enact and publish an ordinance authorized thereunder fixing the rate of the levy upon money, notes or other evidence of debt, or electing against such a levy in 1976. Said rate or election may become operative only in 1977 or any year thereafter, although the ordinance itself is effective and subject to referendum upon completion of publication in 1976.

\* \* \*

Dear Mr. Howard:

House Bill No. 3112, enacted by the 1976 Legislature, permits city and county governing bodies to fix, by resolution or ordinance, the rate of the tax levied for the benefit of the city or county upon money, notes or other evidence of debt having a situs in the city or county. You inquire whether the city may enact the necessary ordinance in 1976, to become effective in 1977, or whether the city governing body must wait until 1977 to enact the ordinance.

Mr. A. B. Howard  
Page Two  
June 8, 1976

Section 1(b) provides in pertinent part thus:

*"The governing body of any city may, in the year 1977 or in any years thereafter, by ordinance fix the rate of the tax levied for the benefit of such city upon money, notes and other evidence of debt having a tax situs in such city at a rate other than the rate prescribed in subsection (a) of this section. . . . Such governing body may by ordinance, in lieu of prescribing a rate of taxation, elect that no tax shall be levied for the benefit of such city upon money, notes, and other evidence of debt having a tax situs in such city. Every ordinance passed by any city under the authority of this subsection shall be published once each week for two consecutive weeks in the official city newspaper. . . . A copy of each ordinance and resolution becoming effective shall be filed with the secretary of revenue and the county treasurer of the county on or before September 1 of the year preceding the year in which such tax or the removal thereof shall be applicable."*  
[Emphasis supplied.]

The underscored language provides, thus, that the city may fix the rate of the tax or, in lieu thereof, elect that no tax shall be levied, and shall do so by ordinance "in the year 1977 or in any years thereafter." Each such ordinance must be filed with the Secretary of Revenue and the county treasurer on or before September 1 of the year preceding the year in which the tax or removal thereof shall be applicable.

The evident purpose of the Legislature was to authorize a city and county to act, by resolution or ordinance, to fix the rate of the tax levied for its benefit, or elect not to levy the tax, and to authorize the governing bodies to act toward that end in the year 1977 or any year thereafter.

Ordinances generally speak only from the time they go into effect. K.S.A. 12-3007 states in part thus:

"Ordinances shall take effect the day of publication unless a different and later day is stated in the ordinance or otherwise specified by statute."

Mr. A. B. Howard  
Page Three  
June 8, 1976

Thus, it may be argued that the city may enact and publish an ordinance in 1976 which fixes the rate or makes the requisite election *for* 1977, the rate or election to become operative from a date stated in the ordinance, *e.g.*, January 1, 1977, although the ordinance itself is effective in 1976, upon the date of publication.


In my judgment, the specification that the rate be fixed by ordinance, or that the election be made by ordinance, in the year 1977 or any year thereafter forbids the enactment of any ordinance fixing a rate or making the election which rate or election is effective and operative prior to January 1, 1977. An ordinance enacted July 1, 1976, for example, which fixes the rate of the tax or makes the requisite election to become effective and operative at a stated date in 1977 complies, in my judgment, with the bill.

An ordinance so passed in 1976, for example, would be duly published once each week for two consecutive weeks in the official city newspaper. The ordinance would be effective sixty days therefrom unless a sufficient protest petition was filed within sixty days following the date of the last publication. The rates prescribed in the ordinance, or the election made thereby, would become effective on the date fixed by the ordinance in 1977, although the ordinance itself would be effective upon publication in 1976 to permit the filing of a petition for an election thereon.

The Kansas Legislature commonly enacts laws which are effective upon publication in the statute book, *i.e.*, July 1, but which contain provisions which are effective at some later date stated in the bill. *See. e.g.*, ch. 426, §§ 24-65, L. 1975.

An ordinance thus drawn and enacted operates to fix the rate or make the requisite election effective in 1977, although the procedural steps of passage and publication of the ordinance are accomplished in 1976. In my judgment, then, under 1976 House Bill No. 3112, a city may by ordinance enacted and published in 1976 provide for the fixing of the rate or for the requisite election to become operative in 1977. To reiterate, the *ordinance* would become effective and liable to referendum vote in 1976, although the *rate* fixed thereby or *election* would become operative in 1977.

Yours very truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj