



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 18, 1976

ATTORNEY GENERAL OPINION NO. 76-259

Mr. Robert E. Duncan II
Attorney at Law
The Board of Tax Appeals
1030-S State Office Bldg.
Topeka, Kansas 66612

RE: Taxation--Protest Appeals--Notification of Order
K.S.A. 1975 Supp. 79-2005, K.S.A. 74-2426, 74-2439.

Synopsis: The statutory requirement of mailing to all parties copies of all orders of the Board of Tax Appeals by use of registered or certified mail applies to tax protest hearing applications. Taxing districts are necessary and interested parties.

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Dear Mr. Duncan:

You ask whether the filing of an "application" to the Board of Tax Appeals for a hearing on the validity of a tax protest, one of the options provided under K.S.A. 1975 Supp. 79-2005, is an "appeal" that is included in K.S.A. 74-2426.

You state that great sums of money are expended in mailing a copy of its orders on such applications to all taxing districts, when these districts rarely appear in such proceedings. You suggest that the word "appeal" envisions an appellant and appellee. This office, on December 4, 1972, answered a letter from the Board and expressed an opinion that all orders of the Board, whether arising from appeals or from original jurisdiction, must be mailed by registered or certified mail to all parties. You ask that we re-evaluate this opinion.

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When taxes are paid under protest under K.S.A. 1975 Supp. 79-2005, the County Treasurer must mail or deliver to the governing board of every taxing district, making a levy included in the protested taxes, a copy of such protest. Even though the protested tax money is being distributed to the taxing districts, they must know what amounts have been questioned, and they must continue to be informed as the protest continues. If the protest is sustained, and a refund ordered by the Board or a Court on appeal, this statute provides the procedure by which each taxing district must refund the protested money, even to the extent of issuing no-fund warrants, if necessary. There can be no question but that these taxing districts are necessary parties.

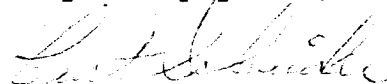
The taxing districts are also interested parties. It is their tax money that is being protested, and it is they who must make any refund. The districts themselves would have a right to appeal under K.S.A. 74-2426 any order of the Board directing refunds.

Ordinarily, the Board of County Commissioners, the County Attorney or County Counselor, represent the entire county at such protest hearings, and the smaller taxing districts depend upon them, but they still follow the proceedings. Even when the county appeals a refund order under K.S.A. 74-2426, the State of Kansas and every taxing district affected are given service of summons. They all must be in Court so that the Court can direct its order to them.

There are two statutes describing the powers and duties of the State Board of Tax Appeals: K.S.A. 74-2437 and 74-2439. Both appeals and applications are included. K.S.A. 74-2439(a) covers appeals to the Board, sitting as the State Board of Equalization under K.S.A. 1975 Supp. 79-1609. K.S.A. 74-2439(e) grants the Board power to hear applications for refund of protested taxes under 79-2005.

K.S.A. 74-2426 and 74-2439 are certainly *pari materia*. They were in several Kansas Session Laws as different sections. In Chapter 31, Laws of 1958 (Special Session), they were sections 1 and 2. K.S.A. 79-2005 is incorporated by reference in 74-2439. They are all part of the legislative due process plan of litigating contested taxes.

Very truly yours,



CURT T. SCHNEIDER
Attorney General