September 22, 1976

ATTORNEY GENERAL OPINION NO. 76-295

Mr. F. Kent Kalb
Secretary of Revenue
Kansas Department of Revenue
2nd Floor - State Office Building
Topeka, Kansas 66612

Re: Taxation--Intangibles Tax--Elimination or Reduction

Synopsis: The requirement that a city, county or township file a copy of its resolution or ordinance reducing or eliminating the intangibles tax by September 1 preceding the year in which it is to become effective is directory and not mandatory. The September 1 filing date must be complied with as nearly as possible and practicable, and a belated filing is effective, unless it is so late as to disrupt the orderly tax collection and distribution processes of the Secretary of Revenue and the county treasurers.

Dear Secretary Kalb:

K.S.A. 1975 Supp. 79-3109 was amended by ch. 425, § 1, L. 1976, to permit boards of county commissioners, city governing bodies and township boards to reduce the rate of, or eliminate altogether, the Kansas intangibles tax levied within their respective jurisdictions. In order to do so, the statutory procedure must be followed, including adoption of the appropriate resolution or ordinance, and publication thereof. If a timely and sufficient protest petition is filed, the resolution or ordinance may not become effective without an election thereon. Lastly, 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 there-
of shall be applicable."

A number of counties, townships and cities have adopted resolutions
or ordinances, and published notice thereof, for elimination or re-
duction of the intangibles tax, effective for the taxable year 1977.
You advise that although most have filed copies of their resolutions
or ordinances with your offices, some did not do so by September 1,
1977, and some have not yet done so. You inquire whether the filing
requirement described above is mandatory or directory, and thus,
whether failure to file the required copy with your office by Septem-
ber 1, 1976, renders the ordinance or resolution ineffective for 1977.

In City of Hutchinson v. Ryan, 154 Kan. 751, 121 P.2d 179 (1942), the
court stated the applicable principles thus, quoting from 59 Corpus
Juris 1078:

"'A statute specifying a time within which
a public officer is to perform an official act
regarding the rights and duties of others, and
made with a view to the proper, orderly, and
prompt conduct of business is usually directory,
unless the phraseology of the statute, or the
nature of the act to be performed, and the con-
sequences of doing or failing to do it at such
time, is such that the designation of time must
be considered a limitation on the power of the
officer. So a statute requiring a public body,
merely for the orderly transaction of business,
to fix the time for the performance of certain
acts which may as effectually be done at any
other time is usually regarded as directory.'"
154 Kan. at 757.

In School District v. Clark County Commissioners, 155 Kan. 636, 127
P.2d 418 (1942) the court stated thus:

"There is a rule of statutory construction
familiar to all lawyers, which is that when the
legislature prescribes the time when an official
act is to be performed, the broad legislative
purpose is to be considered by the courts whenever they are called upon to decide whether the time prescribed by statute is mandatory or directory. If mandatory, there must be strict conformity. If directory, the legislative intention is to be complied with a [sic] nearly as practicable. Instances of the latter sort frequently arise, and indeed they are particularly applicable in respect to the official mode of procedure in matters of taxation. For example, it is the duty of the board of county commissioners at its meeting on the first Monday in August to order the proper levies of every sort to be extended on the tax rolls . . . . Instance are not rare where the board has declined or failed to make a particular levy; mandamus is invoked and a decision may be reached some weeks later holding that the contested levy should be made, and it is then made, although the directory time at which it should have been made has passed. Again, the statute says the county clerk shall prepare and deliver the tax rolls to the county treasurer on or before November 1 . . . . If the work of preparing the tax rolls is not completed by the statutory date (and litigation over the legality of the levies or other untoward circumstances sometimes causes delay), the statutory date on which the tax rolls should be delivered to the county treasurer must of necessity be regarded as directory rather than mandatory. Although the tax rolls are not delivered to the treasurer by the time directed by the statute, nevertheless we all have to pay our taxes when the belated delivery is made!" [Emphasis by the court.] 155 Kan. at 638-639.

The criteria for determining whether a particular requirement is mandatory or directory was reiterated in Shriver v. Board of County Commissioners, 189 Kan. 548, 370 P.2d 124 (1962):

"Generally speaking, statutory provisions directing the mode of proceeding by public
officers and intended to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties cannot be injuriously affected, are not regarded as mandatory, unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated." 189 Kan. at 556.

The intangibles tax is collected by the Secretary of Revenue, and notice of local ordinances and resolutions eliminating or reducing the rate of that tax must necessarily be given to your Department. The Legislature recognized that ordinarily, local action to eliminate or reduce the intangibles tax must be completed before final adoption of the budget in August of each year. The Legislature presumably required filing of copies of local ordinances and resolutions with your Department and the respective county treasurers by September 1, in order to assure ample time to prepare for tax collection and distribution in accordance with these local acts.

In School District v. Clark County Commissioners, supra, the court pointed out that lack of strict conformity with procedural steps in the taxing process will not invalidate taxes levied through such procedure. E.g., the fact that the tax rolls are not delivered to the county treasurer by the statutory deadline does not affect the validity of taxes levied thereafter. Similarly, here, the lack of strict conformity with the procedural filing requirement should not, in my view, be construed to invalidate any county, city or township action which is otherwise lawfully perfected and sufficient to affect the 1977 intangible levy. The broad legislative purpose in requiring the September 1 filing was, doubtless, to facilitate the collection of the intangibles tax. Lack of strict compliance with that filing date should not operate to frustrate the effect of local ordinances and resolutions and compel the collection of a tax which the local governing bodies have eliminated or reduced.

I can but conclude that the requirement that copies of local ordinances or resolutions be filed with you and county treasurers on September 1 is directory and not mandatory. It must be complied with as nearly as possible and practicable. However, a belated filing which does not jeopardize the integrity and dispatch of the tax collection and distribution procedures does not render the local
ordinance or resolution invalid and ineffective, in my judgment, for the succeeding year.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj