



STATE OF KANSAS

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**Curt T. Schneider,**  
Attorney General

October 6, 1976

ATTORNEY GENERAL OPINION NO. 76- 314

Honorable Norman Gaar  
Chairman  
Special Committee on Assessment  
and Taxation  
Senate Chamber - Statehouse  
Topeka, Kansas 66612

RE: K.S.A. 1975 Supp. 79-1001 et seq., K.S.A. 79-306c,  
K.S.A. 79-307a, 79-907, 79-229 et seq., 79-422,  
Article 11, Section 1 of the Kansas Constitution  
and Amendment 14 to the United States Constitution.

Synopsis: The legislature has authority, without constitutional amendment, to extend the scope of property tax exemptions beyond that stated in the constitution, but such exemptions must treat all members of a class equally and the exemptions must serve a public purpose and promote the public welfare. No statute may be enacted, which imposes a tax in lieu of property tax, until the state constitution is amended to grant specifically such authority. The 1974 Constitutional amendment of the Kansas Constitution, granting to the legislature authority to classify separately motor vehicles and tax them uniformly as to class, leaves the legislature free to tax Kansas motor vehicles by whatever formula it deems appropriate, whether in the hands of dealers or individual owners, so long as it treats all members in a class uniformly.

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Dear Senator Gaar:

As Chairman of the Special Committee on Assessment and Taxation, you request our opinion upon several matters:

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1. Can the legislature provide for exemptions of inventories from property taxation, or is a constitutional amendment necessary?

In our opinion, the legislature is clothed with authority, without a constitutional amendment, to exempt inventories, if it is for a public purpose and all members of a class are treated equally. Although, the Kansas legislature may extend the scope of property tax exemptions beyond that stated in the constitution, the statutory exemptions must have a public purpose and promote the public welfare. State ex rel. v. Board of Regents, 167 Kan. 587, Syl. #6, 207 P.2d 373 (1949). The legislature in its "wisdom and discretion" may grant exemptions so long as it treats all members in a class equally. Wheeler v. Weightman, 96 Kan. 50, 59, 149 Kan. 50, (1915). The constitution provision that certain property shall be exempt from taxation does not preclude the legislature from providing for other exemptions. City of Harper v. Fink, 148 Kan. 278, 280 P.3d 1080 (1938).

2. If an exemption could be granted without amending the constitution, would all types of inventories (merchants, manufacturers and livestock) have to be exempted uniformly, or could one or two types be exempted and others remain subject to taxation? Also, would granting exemption to some inventories and not others violate the United States Constitution?

In our opinion any legislative act, which exempts, without specific constitutional authority, some inventories of personal property from property tax leaving other inventories subject to taxation, violates both Article 11, Section 1 of the Kansas Constitution and the 14th Amendment to the Constitution of the United States.

Wheeler, supra, makes some forceful statements on this matter:

"The imposition of taxes upon selected classes of property to be exclusion of others, and the exemption of selected classes to the exclusion of others, constitute invidious discriminations which destroy uniformity." (p.58)

"Besides this, an exemption from taxation, granted through favoritism or other arbitrary motive, of property not benefiting the public in any way different from other property of the state, could not be sustained even although the financial effect of the exemption might not be appreciably felt.

'It is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation.' (1 Cooley on Taxation, 3d ed., p. 381)" (p.61)

"(C)lassification shall be natural and not arbitrary or capricious, and that all persons or subjects in the same class shall be treated in the same way." (p.65)

The equal protection clause of the Federal Constitution and the State Constitutional provision pertaining to equality and uniformity of taxation are substantially similar, and in general what violates one will contravene the other. Northern Natural Gas Co. v. Williams, 208 Kan. 407, Syl. #3, 493 p.2d 568, Cert. den. 406 U.S. 967, 92 S.Ct. 2408, 32 L.Ed. 2d 2408 (1972).

Thus, a statute, taxing cemetery land owned by a corporation, while all other cemetery lands owned by individuals are exempt, was held to be an unjust discrimination in violation of state and federal constitutions. Mt. Hope Cemetery Co. v. Pleasant, 139 Kan. 417, 32 P.2d 500 (1934).

3. Could the legislature impose a tax based on a measure other than value in lieu of property tax, without a constitutional amendment?

Our answer to this question is no. There must be a constitutional amendment.

It was the Wheeler case, supra, which struck down a mortgage registration fee law, "in lieu of" property tax, because the constitutional provision requiring an equal and uniform rate of taxation had no exception. (P. 77-78). Thereafter, in 1924, the constitution was amended to allow that "mineral products, money, notes, and other evidence of debt may be classified and taxed uniformly as to class as the legislature shall provide." The 1925 session implemented this amendment by an act creating a mortgage registration fee in lieu of property tax and that law was upheld. Voran v. Wright, 129 Kan. 1, 281 P. 938 (1929). Missouri Pacific Railroad Co. v. Deering, 184 Kan. 283, 286, 336 P.2d 482, Cert. den. 361 U.S. 12, 80 S.Ct. 84, 4 L.Ed 2d 21 (1959).

Inventories of merchants, manufacturers and livestock being assessed on monthly average for ad valorem tax purposes, is not an "in lieu of" property tax, but a means of classifying property

for valuation purposes. Practical problems exist in the valuation and assessment for certain types of personal property, and the legislature can meet these problems by providing classification in the mode of assessment, so long as equality in the burden of property taxation substantially results. State ex rel. v. Dwyer, 204 Kan. 1, 3, 460 P. 2d 507 (1969). This case, upholding the "proration" of assessment of automobiles, pointed to such statutes as K.S.A. 79-316b and c pertaining to pro rata assessment of cattle; K.S.A. 79-1001 et seq. pertaining to assessments of merchants and manufacturers on a monthly average inventory basis; K.S.A. 79-907, which taxes leased railroad freight cars on a percentage of the gross earnings of the cars, but "the tax shall not exceed what it would be on an ad valorem basis" upheld by Associated Rly. Equipment Owners v. Wilson, 167 Kan. 608, 208 P.2d 604 (1949).

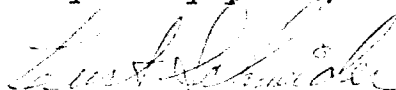
Other statutes could also be cited which show legislative classification in the mode of valuation and assessment: K.S.A. 79-307a which gives owners of livestock a formula for determining an average annual value; K.S.A. 79-329, 330 and 331, which provides a formula for valuation and assessment of oil and gas reserves where there is production; K.S.A. 79-422 which provides that all property of utilities, real or personal, shall be listed and taxed as is provided by law for real estate.

But in all of these laws, there is an essential purpose to arrive at fair market value and then assess at the statutory rate. That is all that Article 11, Section 1 requires - that "The legislature shall provide for a uniform and equal rate of assessment and taxation." This cannot be done by an "in lieu of" formula which provides a different "rate".

4. Under the Constitutional Amendment of August 6, 1974, which added "motor vehicles" to the list in Article 11, Section 1, that the legislature may classify and tax uniformly as to class, can inventories of motor vehicles dealers be taxed differently from other merchants' inventories?

We believe that such authority was specifically given by such amendment. The legislature is free now to tax motor vehicles, whether in the hands of dealers or individual owners, by whatever formula it deems appropriate, so long as it treats all members in a class uniformly. However, such authority to classify dealers separately and to tax uniformly the dealers' inventories of motor vehicles, does not include other inventories and personal property on hand, such as parts, materials and supplies. It just applies to the finished product, the motor vehicle itself.

Very truly yours,



CURT T. SCHNEIDER  
Attorney General