



STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
Attorney General

October 6, 1976

ATTORNEY GENERAL OPINION NO. 76- 317

The Honorable Elwill M. Shanahan  
Secretary of State  
2nd Floor - State Capitol Building  
Topeka, Kansas 66612

Re: Taxation--Sales Tax--Exemptions

Synopsis: The Secretary of State of Kansas, making sales and rendering services in the performance of official statutory duties, is not subject to the provisions to the Kansas Sales Tax law requiring registration, collection and reporting for sales tax purposes. The State of Kansas, its officials and agencies, when making sales under statutory authority are not engaging in the "business" of selling at "retail" generally, and become subject to the Sales Tax Act only when engaging in businesses specifically made taxable by statute.

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Dear Secretary Shanahan:

You inquire if the Office of Secretary of State is required to collect and remit sales tax required by the Kansas Retailers Sales Tax Act when performing the statutory responsibility of selling Kansas statutes, session laws and flags.

We do not believe that a state official, making sales under statutory authority and directions in the performance of official duties, is engaged in a retail "business."

"Business", in its narrower, legal, legislative sense, is a commercial or industrial establishment or enterprise, engaged in especially for livelihood or gain. 12 C.J.S. 765 BUSINESS - NARROWER SENSE, citing Gray v. Board of County Comm'rs. of Sedgwick County, 101 Kan. 195, 197, 165 P. 867, L.R.A. 1918F 182. (1917) This case held that a county, in the administration of its affairs, was not an employer engaged in a trade or business within the meaning of the Workmen's Compensation Law.

In a related tax statute, K.S.A. 1975 Supp. 79-1001(a), a "merchant" is defined as "every person, company or corporation who shall own or hold, subject to his control, any personal property within this state, which shall have been purchased with a view of being sold at an advanced price or profit, or which shall have been consigned to him for the purpose of being so sold." 57 C.J.S. 1061 MERCHANT says: "The word "merchant" may be applied to a retailer, and the term has been defined as meaning one who carries on a retail business." The profit theme is essential to the concept of stores and storekeepers.

It is true that the Secretary of State does make some "sales", but they are all statutory and the fee or charge is specified by law. Examples are:

a) Flags and Banners - K.S.A. 75-419 - "selling price of each flag and banner shall be as near to its cost as it practicable plus cost of distribution, if any."

b) Kansas Session Laws - K.S.A. 1975 Supp. 45-107 - sets price.

c) Kansas Statutes Annotated - K.S.A. 1975 Supp. 77-138 - sets price.

d) Kansas Administrative Regulations - K.S.A. 1975 Supp. 77-430 - sets price.

e) Copies of official records - K.S.A. 1975 Supp. 75-409 - provides for certified copies with seal \$1.00 per page, uncertified copies 25¢ per page. If copies are made outside the office, the charge shall be "actual costs of reproducing and transmitting such copy."

No mention of sales tax is made in any of these statutes. They are not revenue raising measures, but obviously show legislative intent to offset cost only in rendering state services. All fees and charges collected by the Secretary of State under these statutes are deposited in the state general fund.

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The Kansas Sales Tax Act does have several specific provisions which place the State of Kansas and its political subdivisions, and its agencies under the sales tax law in certain instances:

K.S.A. 1975 Supp. 79-3603(c) - sales or furnishing of gas, water, electricity, and heat.

K.S.A. 1975 Supp. 79-3603(e) - admission to state fairs.

K.S.A. 1975 Supp. 79-3603(m) - fees for participation in sports games and other recreational activities.

If the State of Kansas was considered by the legislature to be a "retailer" generally under the Sales Tax Law, it would be unnecessary to specify those instances when tax should be collected from the State.

In addition, the Kansas Sales Tax Law, K.S.A. 1975 Supp. 79-3603(b) exempts from the act all sales to the State of Kansas "except when such state, political subdivisions, or hospital is engaged or proposes to engage in a business specifically taxable under the provisions of this act and such items ... are used or proposed to be used in such business." This refers to the above mentioned taxable instances, when the state engages in certain type business activities and otherwise, the State and its agencies are not under the Act.

In our opinion, the Secretary of State is not generally engaged in the business of selling tangible personal property or services at retail, and is not subject to the Kansas Sales Tax Law requiring registration, collection and reporting for sales tax purposes. That office is not presently engaged in any business "specifically taxable" to the State of Kansas under that Act.

Very truly yours,



CURT T. SCHNEIDER  
Attorney General

CTS:CJM:gw