

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 26, 1977

ATTORNEY GENERAL OPINION NO. 77- 31

Mr. John E. Lang
Attorney at Law
405 Lincoln Avenue
Wamego, Kansas 66547

Re: Taxation--Intangibles Tax--Abatement

Synopsis: The board of county commissioners has no authority to abate any tax, except as provided in K.S.A. 1976 Supp. 79-1701a for the correction of clerical errors enumerated in K.S.A. 1976 Supp. 79-1701.

Re: Counties--County Counselor--Power to Appoint

Synopsis: The board of county commissioners of Pottawatomie County is authorized to appoint a county counselor in the exercise of its home rule powers pursuant to K.S.A. 19-101a et seq., and to prescribe the duties of such officer either by reference to K.S.A. 19-247, or independently of such statute.

* * *

Dear Mr. Lang:

You ask if your board of county commissioners may abate an intangible tax where the same has been certified to the county treasurer.

In our opinion, the board of county commissioners cannot abate any tax, except as provided in K.S.A. 1976 Supp. 79-1701a for the correction of clerical errors enumerated in K.S.A. 1976 Supp. 79-1701.

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If the request for abatement is not for any of such listed instances of clerical errors; then the Board should be advised to look carefully at K.S.A. 79-1703. This statute provides: "Except as provided by law, no board of county commissioners . . . shall have power to release, discharge, remit or commute any portion of the taxes assessed or levied against any person or property. . . ." Serious consequences result from violation of this law.

If the Director of Taxation has made an error in the certification of intangible tax, the error should be taken up with the Director of Taxation and the Secretary of Revenue, not the board of county commissioners.

You cite K.S.A. 79-1517. This law has to do with the certification and collection of inheritance tax, not intangible tax. Again, if there has been an error in computing inheritance tax, the board of county commissioners is not involved. The problem should be reviewed by the Director of Taxation and the Secretary of Revenue. The board of county commissioners have no statutory authority to change or abate the certification of inheritance tax to the county treasurer.

Secondly, you inquire concerning the authority of the board of county commissioners of Pottawatomie County to appoint a county commissioner.

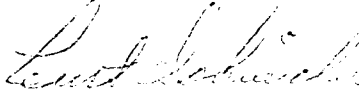
As you point out, K.S.A. 19-246, which provided for such appointments in counties with a population in excess of 23,000, has been repealed, although K.S.A. 19-247, which provides the duties of county counselors, has not been repealed. Insofar as concerns authority for such appointments, in my judgment, Pottawatomie County may appoint a county counselor in the exercise of its home rule powers under K.S.A. 19-101a(b), as a matter of local legislation and administration.

K.S.A. 19-247 stands in a somewhat awkward position, prescribing by statute the duties of an office which does not exist by statute. In my judgment, if the county commissioners may create the office, as I believe they may, they may also define and prescribe the duties thereof. They may do so by reference to K.S.A. 19-247, or in any other fashion they deem appropriate. Under K.S.A. 19-247, the county counselor assumes "all duties in civil matters" which theretofore devolved upon the county attorney. Approval of vouchers for payment is a civil matter, and would fall within your province as county counselor. Broadly speaking, all of those duties which are prescribed by law for the county attorney which

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do not involve the administration of the criminal laws would
attach to your office as county counselor.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Ed Pugh
Pottawatomie County Attorney
Pottawatomie County Courthouse
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