

STATE OF KANSAS

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February 9, 1977

ATTORNEY GENERAL OPINION NO. 77-54

The Honorable John Carlin  
Speaker of the House  
Kansas House of Representatives  
3rd Floor - State Capitol Building  
Topeka, Kansas 66612

Re: Taxation--Motor Vehicles--City-County Road Fund

Synopsis: The special city-county road fund created by K.S.A. 1976 Supp. 79-3425 is applied in part to the support of the "state system of highways" as that term is used in Article 11, § 9 of the Kansas Constitution. The tax levied by K.S.A. 79-6a01 et seq. is not a "general property tax" within the meaning of Article 11, § 9. The tax levied by K.S.A. 79-6a01 and applied as proposed by 1977 House Bill 2202 constitutes a "special tax" on motor vehicles within the meaning of Article 11, § 10 of the Kansas Constitution, and may permissibly be applied to road and highway purposes.

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Dear Speaker Carlin:

K.S.A. 79-6a01 et seq. provides that the Director of Property Valuation shall value and assess all "over-the-road motor vehicles and rolling equipment of motor carriers" as defined in that section. The method of such valuation and assessment is prescribed by K.S.A. 79-6a03, and the director shall levy a tax upon such property at a rate computed as prescribed by K.S.A. 1976 Supp. 79-6a04. Proceeds of the tax are credited to the state general fund.

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You have introduced 1977 House Bill No. 2202, which directs that the proceeds shall be credited to the special city and county highway fund which is created by K.S.A. 1976 Supp. 79-3425.

Article 11, § 9 of the Kansas Constitution provides in pertinent part thus:

"The state shall never be a party in carrying on any work of internal improvement except that: (1) It may adopt, construct, reconstruct and maintain a state system of highways, but no general property tax shall ever be laid nor general obligation bonds issued by the state for such highways. . . ."  
[Emphasis supplied.]

You inquire, first, whether the special city-county highway fund which is created by K.S.A. 1976 Supp. 79-3425 supports a "state system of highways" as that phrase is used in Article 11, § 9.

By a statute first enacted in 1927, and amended successively since that time, a "state highway system" has been designated. K.S.A. 68-406 provides for the establishment and designation of a "state highway system" which is not to exceed 10,000 miles. The meaning of this term was explored in State ex rel. Arn v. State Commission of Revenue and Taxation, 163 Kan. 240, 181 P.2d 532 (1947). There, the state challenged the legality of a 1945 enactment of the Kansas legislature which authorized a motor fuel tax, in addition to that which was already in force, the proceeds of which were to be used to match federal funds and to be applied, in part, to improve the secondary road system, including farm-to-market roads, rural free delivery mail and school bus routes, which system was also established by that legislature. It was objected that the 1945 enactment violated the state constitution by compelling the expenditure of state funds on streets and highways which were not a part of the "state highway system" as designed by the state. The court stated thus:

"Counsel for plaintiff argue that the state highway system so established is synonymous with the words 'a state system of highways' used in our constitution . . . and in effect argue that having established a state highway system, with a limited number of miles, it has no authority to establish an additional

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secondary road system . . . . The point is  
not well taken. . . .

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We think the phrase, 'a state system of highways,' in our constitution . . . is broad enough to authorize the state to classify all the highways of the state and to provide for their construction and maintenance either by the state or by any of its political subdivisions, or by any combination of them, as it may deem proper. It is well settled that the state, through its legislature, may exercise any governmental powers not granted to federal government and not prohibited by our constitution. . . . Certainly the power authorized to be exercised by the constitutional provision was not exhausted by the establishment of the state highway system under G.S. 1945 Supp. 68-406." 163 Kan. at 247.

It seems clear the the attorney general did not contend in that case that the legislature was powerless to create a system of highways which included the secondary road system, but rather, that the legislature had expressly excluded that secondary road system from the state highway system. Indeed, the legislative purpose to establish the secondary road system as a system entirely separate from the state highway system is clear from ch. 272, § 1, L. 1925, which states in pertinent part thus:

"There shall be designated in the state of Kansas a system of roads which, for the purposes of this act, shall be known as the secondary road system, including farm-to-market roads selected in accordance with the provisions of this act, rural mail routes and school bus routes not on the state highway system, the construction, reconstruction and maintenance of which shall be under the jurisdiction of the board of county commissioners of each county."

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As a point of constitutional law, however, the decision stands for the proposition that the system of secondary roads is a part of the "state highway system" notwithstanding the legislature has never declared that to be so. At the present time, roads are classified by the legislature in K.S.A. 68-101 thus:

"(2) The term 'class A roads' shall mean all roads in county unit road counties, not designated as part of the county primary or county secondary road systems nor as part of the state or federal road systems. It is intended, and the term 'class A roads' shall be construed to mean and include the roads formerly under the jurisdiction of the township, unless otherwise designated and classified by the county engineer and the board of county commissioners.

(3) The term 'county roads' shall mean all roads designated as such by the board of county commissioners, including roads on the county secondary road system and class A roads in county road unit counties.

(4) The terms 'state roads' and 'state highways' shall mean all roads designated as a part of the state highway system by the secretary of transportation.

(5) The term 'township roads' shall mean all roads within a township not within a county road unit county other than federal, state, and county roads."

Under State ex rel. Arn v. State Commission of Revenue and Taxation, supra, this legislative classification of roads and highways is irrelevant to any interpretation of Article 11, § 9, for all of the roads classified above are presumptively part of the "state system of highways" within that section of our constitution. What impelled the court to disregard the legislative designation of a "state highway system" in the application of Article 11, § 9 is entirely unclear. Nonetheless, it is now settled that the "state system of highways" under that section includes every road or highway in the state, whether primary, secondary, county or otherwise. See Kiewit & Sons' Co. v. State Highway Commission, 184 Kan. 737, 339 P.2d 267 (1959).

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The uses of the special city-county highway fund are prescribed in K.S.A. 1976 Supp. 79-3425, and it is clear that at least some portion of that fund in each county will be expended on roads which fall within the expansive "state system of highways" as the Kansas Supreme Court regards that term. Thus, in regard to your first question, the special city-county highway fund as defined in K.S.A. 1976 Supp. 79-3425 is applied in part to the support of a "state system of highways" as that term is used in Article 11, § 9.

Secondly, you ask whether the tax levied on motor carriers under K.S.A. 79-6a01 et seq. is a "general property tax" which is prohibited by Article 11, § 9. Under K.S.A. 79-6a01 et seq., the tax is clearly a property tax. The value of the vehicles and rolling equipment is to be defined by K.S.A. 79-6a03, by multiplying the true value of the equipment by the ratio which the total number of miles of the equipment operated in Kansas bears to the total number of miles operated everywhere. It is not, however, an excise tax, or a tax on the operation of the vehicles, but a tax on the vehicles themselves, the measure of the value of the taxable property being determined in part by the ratio of Kansas to out-of-state mileage. Notwithstanding it is a property tax, it is not a "general property tax," as that tax has been viewed by the Kansas Supreme Court. In State ex rel. Boynton v. State Highway Commission, 138 Kan. 913, 28 P.2d 770 (1934), the court construed Article 11, §§ 5 and 6, which prohibited certain debts. The court stated thus:

"The debts referred to in article 11, sections 5 and 6, . . . are debts to be paid by a general property tax. This is clear from a reading of the sections. What the framers of our constitution were guarding against was the incurring of debts in excess of a million dollars payable by a general-property tax without the question having been submitted to and adopted by the people. They regarded property as the basis of taxation. . . . They were not dealing with the questions of obligations to be paid only by special tax, such as on motor vehicles or motor fuels, or from funds raised in some manner other than property tax." 138 Kan. at 918.  
[Emphasis supplied.]

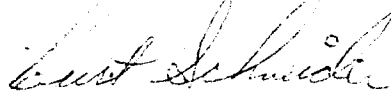
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It may be argued, of course, that when the language of Article 11, § 9 was adopted in 1928, that the phrase "general property tax" was not given such a restrictive meaning at that time by the framers of that amendment. At the same time, however, Article 11, § 10 was adopted, providing thus:

"The state shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels. [Emphasis supplied.]

In light of the foregoing, I must conclude, in answer to your second question, that the tax levied pursuant to K.S.A. 79-6a01 et seq. is not a "general property tax" within the meaning of Article 11, § 9. The court has construed that term in other provisions of the constitution to refer to a general tax on real property, and not to a tax on motor vehicles alone, and in my judgment, this construction would be applied by the court to this section on the constitution as well. In response to your third question, it is my opinion that 1977 House Bill 2202, as proposed, complies with Article 11, § 10 as authorizing a "special tax" on motor vehicles for road and highway purposes.

Yours very truly,



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