

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 19, 1977

ATTORNEY GENERAL OPINION NO. 77-235

Joseph E. Cole
Geary County Counselor
Post Office Box 62
Junction City, Kansas 66441

RE: Taxation - Collection of Delinquent Personal
Property Tax - Priority - Effect of Transfer
or Sale, K.S.A. 79-2109, 79-2110, 79-2111

SYNOPSIS: Collection of personal property ad valorem taxes is a proceedings against the property itself to enforce a lien which has priority over all other claims and liens against such property. This priority includes repossession rights of mortgagees and sellers under conditional sales contract, and materialmens' and mechanics' liens. No sale or transfer "in any manner" of personal property after it has been assessed will terminate the tax lien, except a sale "in the ordinary course of retail trade", or the expiration of three years from the date the tax became due and payable. Otherwise, personal property in the hands of any transferee may be taken on due process and sold to pay the tax.

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Dear Mr. Cole:

You say you have a unique problem in Geary County of Fort Riley soldiers owning mobile homes and then leaving without notice. Twenty have changed hands since January 1, others,

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under mortgage to a finance company or being sold on a conditional sales contract, have been repossessed. You ask if the personal property tax liability follows the mobile home throughout the year and may the property be levied upon in the hands of someone who was not assessed on January 1?

You further state that it appears to you that K.S.A. 79-2109 and 79-2110 apply to bulk sales only and you ask if these statutes apply to sales of mobile homes between individuals?

Ad valorem tax liens attach to the property taxed, real or personal, and the collection of such taxes is strictly an "in rem" proceedings against the property taxed, in which the tax lien takes priority over other liens.

"It is well known that mortgage liens, materialmens' and mechanics' liens are inferior to the lien for taxes. One who takes such a lien knows this at the time of taking. It is such liens as these over which the lien for taxes has priority." State, ex rel., v. Wyandotte County Comm'rs., 154 Kan. 222, 231-232, 117 P.2d 591 (1941).

Taxes are not classed as "debts", and an ordinary civil action does not lie for their recovery. Boeing Airplace Co. v. Board of Comm'rs. of Sedgwick County, 164 Kan. 149, 153, 188 P.2d 429, 11 A.L.R. 2d 350 (1948).

Collection of taxes is purely statutory. K.S.A. 79-2111 provides that delinquent personal property taxes shall "be paid from the proceeds of the sale of the property so taken on such legal process, in preference to all other claims against it." Other related statutes on taxing of personal property, which reflect the same legislative plan, are: K.S.A. 79-309 and K.S.A. 79-319.

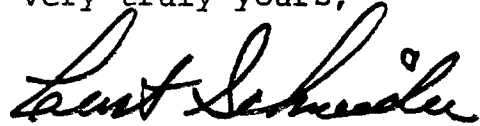
It is our opinion that K.S.A. 79-2109, 79-2110 and 79-2111 are addressed to all sales of personal property for taxes, whether bulk or item sale and whether held by an individual or by a merchant, finance company, or retailer. Any transfer or sale of personal property, after it is listed and assessed, does not affect the lien for taxes which attaches to the property itself, and which follows that property into the hands of all subsequent transferees or holders, excepting only when the property is purchased "in the ordinary

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course of retail trade". Therefore, the personal property, repossessed under a mortgage or a conditional sales contract, is still subject to the tax lien. K.S.A. 79-2110 does provide a statute of limitations that "no personal property which has been transferred in any manner after it has been assessed shall be liable for the tax in the hands of the transferee after the expiration of three years from the time such tax became originally due and payable". The exact converse of this statement, that personal property transferred in any manner after it has been assessed shall be liable for tax for three years after the tax became due, is just as true.

Attached are two earlier opinions which are in accord: Opinion No. 75-317 dated August 11, 1975 and Opinion No. 62-115 dated September 26, 1962.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw