

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 10, 1977

ATTORNEY GENERAL OPINION NO. 77- 259

Mr. James L. Bush
Windscheffel & Bush
206 South Main
Smith Center, Kansas 66967

Re: Taxation--Sales Tax--Irrigation Districts

Synopsis: The sale of personal property and services to an irrigation district which is organized under K.S.A. 42-704 for use in the sale and furnishing of water for irrigation purposes is subject to the retailers' sales tax. "Property which is consumed" in the irrigation of crops, as that phrase is defined in K.S.A. 1976 Supp. 79-3606(n) is exempt from the retailers' sales tax act, the term including primarily electricity, gas and water insofar as pertinent here.

* * *

Dear Mr. Bush:

As counsel for the Kirwin Irrigation District No. 1, you inquire whether purchases of goods and services by the district are exempt from the retailers' sales tax or compensating use tax.

The district is organized under K.S.A. 42-701 et seq. Under K.S.A. 42-704, upon approval of creation of the district, its articles of incorporation may be presented to the Secretary of State, and upon payment of the required fee, "shall be eligible to incorporate as a quasi municipal corporation" The question is raised whether sales of materials to the district are exempt from the retailers' sales tax and compensating use tax.

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Two exemptions appear pertinent here. K.S.A. 1976 Supp. 79-3606 provides in pertinent part thus:

"The following shall be exempt from the tax imposed by this act:

* * *

(b) All sales of tangible personal property or service, including the renting or leasing of tangible personal property, purchased directly by the state of Kansas, a political subdivision thereof other than a school or educational institution or purchased by a public or private nonprofit hospital and used exclusively for state, political subdivision or hospital purposes, except when such state, political subdivision, or hospital is engaged or proposes to engage in a business specifically taxable under the provisions of this act and such items of tangible personal property or service are used or proposed to be used in such business" [Emphasis supplied.]

The sale of water is specifically taxable under the act. K.S.A. 1976 Supp. 79-3603 provides in pertinent part thus:

"[F]or the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax as follows:

* * *

(c) a tax at the rate of three percent (3%) upon the gross receipts from the sale or furnishing of gas, water, electricity, and heat, whether furnished by municipally or privately owned utilities"

The sale or furnishing of water is a taxable transaction under the retailers' sales tax act. Thus, sales of tangible personal

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property or services to political subdivisions are exempt from the retailers' sales tax, except when the political subdivision is engaged in a "business specifically taxable" under the act. The furnishing of water is specifically a taxable transaction, and the sale of tangible personal property or services to a political subdivision to be used or proposed to be used in that business are not exempt. Construing K.S.A. 1976 Supp. 79-3603(c) and K.S.A. 1976 Supp. 79-3606(b) together, as we must, it is clear, in my judgment, that when a political subdivision engages in the sale of water, it is engaged in a business which is specifically taxable under the act. The sale of water is no less a "business" because it is conducted by a political subdivision, such as a quasi-municipal corporation. Thus, under K.S.A. 1976 Supp. 79-3606(b), the sale of personal property or services to a political subdivision to be used in that business is not exempt from the retailers' sales tax.

K.S.A. 1976 Supp. 79-3606(n) exempts from the tax

"[a]ll sales of tangible personal property which is consumed in the . . . irrigation of crops for ultimate sale at retail within or without the state of Kansas"
[Emphasis supplied.]

The underscored language is defined at K.S.A. 1976 Supp. 79-3602(m) to mean

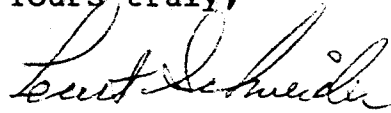
"tangible personal property which is essential or necessary to and which is used in the actual process of and immediately consumed or dissipated in . . . the irrigation of crops, for sale in the regular course of business, and which is not reusable for such purpose."

This subsection enumerates items of tangible personal property which are declared to be consumed, to include such items as insecticides, herbicides, germicides, pesticides, fungicides, antibiotics, biologicals, pharmaceuticals, vitamins and chemicals, and electricity, gas and water. Thus, water conditioning chemicals, and energy used in irrigation are "property which is consumed" in irrigation, and is thus exempt from the retailers' sales

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tax. However, items such as pipe, pipe fittings, valves, meters, pumps, and like equipment and replacement parts are obviously not "consumed" or dissipated in the process, and thus remain subject to the retailers' sales tax.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj