



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

October 4, 1977

ATTORNEY GENERAL OPINION NO. 77- 323

Mr. Richard N. Raleigh
Barber County Attorney
P. O. Box 248
Medicine Lodge, Kansas 67104

RE: Taxation - Employment of Private Collection Services to Collect Delinquent Personal Property Taxes. K.S.A. 19-101, 19-235, 79-319, 79-1411a, 79-1411b; K.S.A. 1976 Supp. 19-101a.

SYNOPSIS: The Board of County Commissioners, under current statutes granting "home rule" and other board authorities, has full power to employ the private services of a collection agency or attorney, to assist in the collection of delinquent personal property taxes, on a straight salary or a contingent fee basis, so long as the assistant performing such services is paid directly and the county officer, in whose office such work is performed, receives no part of such salary or fee.

* * *

Dear County Attorney Raleigh:

You ask if your Board of County Commissioners may employ the services of independent counsel, other than the County Attorney, to undertake the collection of delinquent personal property taxes on a contingent fee basis?

It is true that there has been a decision of the Kansas Supreme Court that the Boards of County Commissioners, under the then existing statutes, had no power to employ persons commonly referred to as a "tax ferret". But the Court noted that some other states had approved such a contract, but it was based on statutes "giving power, either expressly or by implication, to make such contracts". The Court further stated: "Much may be said in support of the contention that such services are

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needed to help prevent widespread evasions of our tax laws, but whatever the arguments for or against the proposition it is a matter of public policy for determination by the legislature." *State ex rel., v. Sedgwick County Commissioners*, 150 Kan. 143, 146-147, 91 P.2d 2 (1939).

In 1974, by Chapter 110, Section 1 and 2, the Kansas Legislature gave counties "home rule". These two sections are now codified as K.S.A. 19-101 and K.S.A. 1976 Supp. 19-101a. K.S.A. 19-101 says a county is a body corporate and is politically empowered: "fourth, to make all contracts and do all acts in relation to the property and concerns of the county, necessary to the exercise of its corporate or administrative powers;" and "fifth, to exercise the powers of home rule to determine their local affairs and government authorized under the provisions of section 2 of this act;". K.S.A. 19-101a (Section 2) gives counties power to: "(a) ... transact all county business and perform such powers of local legislation and administration as they deem appropriate, ... (b) counties shall apply the powers of local legislation granted in subsection (a) of this section by resolution of the board of county commissioners. If no statutory authority exists for such local legislation ... and the local legislation proposed ... is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper."

By Chapter 398, Section 1 of the 1955 Session Laws, now codified as K.S.A. 79-1411a, the Legislature declared the county "to be the governmental unit charged with the primary responsibility for the administration of all laws relating to the assessment, review, equalization, extension and *collection* of real and personal property taxes ..." In 1965, by Chapter 511, Section 8, now K.S.A. 79-1411b, it gave the Board of County Commissioners authority to determine "the most practical method of providing for the listing and assessing of all tangible property".

K.S.A. 19-235 was in existence at the time of the *Sedgwick County* case, *supra*, but was not mentioned in that decision, which said that the county relied largely upon G. S. 1935 79-1432. K.S.A. 19-235 says the County Commissioners shall "allow any sum of money to any county officer for clerk hire or for an assistant in his office, ... All payments made ... shall be made directly to the clerk or assistant performing such services, and in no case shall any part of the moneys so

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allowed by the county commissioners be paid to the county officer in whose office such work or assistance is performed."

In a subsequent case, *Edwards County Commissioners v. Simmons*, 159 Kan. 41, 151 P.2d 960 (1944) the Court upheld a contract to employ an attorney to collect delinquent taxes from a public utility under a special statute, since repealed. This case is pertinent because the Court approved a contingency type employment contract, and the 15% fee was taken out of the delinquent taxes. The Court did refer to the *Sedgwick County* case, *supra*, and stated that it adhered to the doctrine expressed therein that statutory methods of tax collection must be followed unless the legislature gave power, express or implied, to contract otherwise. But the Court then found that there was a statute which did give such authority to make the particular contract.

There is no existing statute authorizing Boards of County Commissioners specifically to contract for tax collection assistants, nor is there any statute prohibiting such a contract.

In our opinion, the Kansas Legislature, in giving "home rule" to counties in 1974 by K.S.A. 19-101 and K.S.A. 1976 Supp. 19-101a (fourth), when read in the light of the 1955 statute, K.S.A. 79-1411a, providing that the county "is hereby declared to be the governmental unit charged with the primary responsibility for the administration of all laws relating to the ... collection of real and personal property taxes ...", clearly gives at least implied authority to Boards of County Commissioners to contract with an independent attorney or agent to assist in locating missing taxpayers who owe delinquent personal property taxes. In these days of increased population and high mobility, K.S.A. 79-319 is entirely inadequate to discourage a taxpayer from moving his personal property out of county or state after it has been assessed on January 1. A single county official can reasonably be found to need the services of one especially skilled in "ferreting" out missing persons. Under K.S.A. 19-235, if an attorney other than the county attorney were hired, it should be someone outside of any legal firm of which the County Attorney is a member.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:tkb