



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

October 20, 1977

ATTORNEY GENERAL OPINION NO. 77- 344

Mr. James W. Clark
Franklin County Attorney
Court Building
Ottawa, Kansas 66067

Re: Taxation - Preparation of Tax Rolls - Timely
Changes and Certification Essential, K.S.A.
79-1801, 79-1802, 79-1803, 79-1409, K.S.A.
1976 Supp. 79-1701, 79-1701a and 79-1702

Synopsis: When budgets have been adopted, levies determined, tax rolls prepared and ready for certification, it is too late by the middle of October to attempt to make changes in the levies on such rolls. An orderly and timely system of assessment and collection of taxes is imperative to the successful operation of government. There are procedures whereby the Board of Tax Appeals may later direct a refund of taxes erroneously collected, or a cancellation of all or any portion of erroneous taxes still uncollected together with penalties charged thereon.

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Dear County Attorney Clark:

You present a situation where a school district held a special bond election to build a vocational education building. The election was favorable to the issue of the bonds and the election was certified. Prior to August 25, the school district certified an additional 2.4 mill levy to the County Clerk.

The County Clerk has completed the final tax rolls, computed the total levy for each tract on the tax rolls which includes the special bond levy, and the tax rolls are nearly ready for certification to the County Treasurer.

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You say a bond attorney has just refused to pass the bonds because of insufficient publication notice of the election, as required by K.S.A. 1976 Supp. 25-2018 and cites Lambert v. Unified School District, 204 Kan. 381 (1969). The school district now asks that the County Clerk, in the middle of October, delete the levy and remake the rolls just as if the levy was never made. You say it would be nearly impossible to change the tax rolls now and yet meet the November 1 deadline for getting out tax statements. You ask if the County Clerk can at this stage comply with such request?

Under K.S.A. 79-1802, the Board of County Commissioners must meet the first Monday of August to determine the amount of money to be raised by tax for all county purposes. Under K.S.A. 79-1801 prior to August 25th, all other taxing districts in the county must certify to the County Clerk the amount by them levied. That statute then says: "Thereupon, the county clerk shall place the same upon the tax roll of the county, in the manner prescribed by law, and the said tax shall be collected by the county treasurer" There is no discretion given to these county officers to amend, delete, or in any way change these tax rolls once made up, except that the County Clerk may correct certain clerical errors specified in K.S.A. 1976 Supp. 79-1701. But, dropping a certified levy from the tax rolls is not one of the authorized corrections.

K.S.A. 1976 Supp. 79-1701a gives a much broader authority to the Board of County Commissioners, but it still restricts that Board to the correction of clerical errors of the type specified in K.S.A. 1976 Supp. 79-1701.

The State Board of Tax Appeals is given full authority to remedy all tax grievances, not covered by the preceding two sections, in K.S.A. 1976 Supp. 79-1702 and it would seem to be the best and quickest remedy available in the situation you present.

In reply to your question, it is our opinion that the County Clerk has no authority to make any change in the tax rolls, once they are made up, except as specifically authorized. To do otherwise might disrupt the orderly and timely statutory procedure for the collection of taxes, which must be avoided:

"Taxation is an unloved subject, but no one in modern times, to our limited knowledge, has come up with a practical alternative. Government is indispensable to any civilized society and an orderly system of assessment and collection of taxes is an imperative to a government's successful operation. In

Mobil Oil Corporation v. McHenry,
200 Kan. 211, 436 P.2d 982, we stressed
the necessity of order and timeliness in
a viable system of taxation and we sur-
veyed in some detail the procedures
ordained by the legislature in providing
a logical and orderly scheme. On page
223, we said:

'The tax procedure and time schedule
established by the legislature in Chapter
79 of the Kansas Statutes Annotated re-
quires the work of taxation to be done
speedily and to the end that the business
of government may be carried on.'"

Northern Natural Gas Co. v. Bender,
208 Kan. 135, 140, 490 P.2d 399
(1971).

A pertinent example of the legislative timely plan can be
found in K.S.A. 79-1409 in a proviso that says: "That any
certification received by the county clerk after August 25
may be handled as an abatement, refund or added tax as the
certification warrants." So, even orders of the Board of
Tax Appeals received by the County Clerk after August 25 will
not alter or change the tax rolls, preparation of which has
commenced on that date.

Very truly yours,

CURT T. SCHNEIDER
Attorney General

CTS:CJM:ksn