



STATE OF KANSAS

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February 27, 1978

ATTORNEY GENERAL OPINION NO. 78- 114

The Honorable Robin Leach
Kansas House of Representatives
Statehouse
Topeka, Kansas 66612

Re: Taxation--Exemption--Constitutionality

Synopsis: The taxation scheme proposed in Section 1 Second of House Bill 3096 and Section 1 Second of House Bill 2778 is not in violation of Article 11, Section 1 of the Kansas Constitution as a matter of law.

* * *

Dear Representative Leach:

You inquired as to the constitutionality of the tax exemption scheme set forth in Section 1 Second of House Bill 3096 and Section 1 Second of House Bill 2778. In pertinent part these bills provide as follows:

"Section 1.K.S.A. 79-20ld is hereby amended to read as follows: 79-20ld. The following described property, to the extent herein specified, shall be and is hereby levied under the laws of the state of Kansas:

...Second. All farm storage and drying equipment meeting eligibility requirements, as provided in Title 7, Chapter XIV, Subchapter B, Part 1474 of the code of Federal Regulations and as in effect on December 31, 1977, for loans under the federal farm storage and drying equipment loan program, which equipment is used exclusively for the storage or drying of corn, oats, barley, grain sorghum, wheat, rye, soybeans, flaxseed, rice, dry edible

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beans, peanuts or sunflower seed, for a period of eight (8) years from and after the calendar year in which such equipment is acquired or construction thereof is completed. The provisions of this section shall apply to all taxable years commencing after December 31, 1974 1977."

Article 11 Subsection 1 of the Kansas Constitution requires that, "the legislature shall provide for a uniform and equal rate of taxation". This section also provides for the exemption from taxation of all property used exclusively for "state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes and all household goods and personal effects not used for the production of income."

The Supreme Court of Kansas has considered the extent to which Article 11, § 1 limits the Legislature in providing for exemptions in addition to those specifically enumerated in said Article on many occasions. In the most recent case, Topeka Cemetery Association vs Schnellbacher, 218 Kan. 39, the Court reaffirmed prior law with the following statement:

"The Legislature has the authority to provide that property other than that named in Article 11, § 1 of the Kansas Constitution may be exempt from taxation; but this exemption must have a public purpose and be designed to promote the general welfare." (At p. 39)

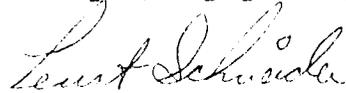
The specific question whether the exemption of property used in agricultural production could be exempted by the Legislature under this rationale has never been explored by the Supreme Court. However, in the case of Gunkle vs Killingsworth, 118 Kan. 154, the Court upheld the validity of an enactment exempting "rural credit shares" from property taxation. In pertinent part, the opinion of the Court in reaching this result is as follows:

"In the absence of constitutional provisions express or implied the Legislature has full power to grant exemptions from taxation. Within the scope of legislative power, the Legislature itself is the judge of what exemptions are in the public interest and will conduce the public welfare. The public has a deep interest in agricultural prosperity. The purpose of the exemption is obviously in the interest of the public, the classification is not unreasonable and the act is not deemed to be in conflict with the Constitution."
(Emphasis supplied)

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Agriculture is a major segment of the economy of this state. The prosperity and economic well being of Kansas farmers is a matter of keen public interest and concern. The legislature might very well have recognized that the current excess of stored grain results in a need for additional farm storage facilities, which represent a substantial investment for individual farmers. In addition, the legislature might have reasonably concluded that the financial burden resulting from the construction of such facilities would be particularly acute for only a limited period of time and that only a temporary tax exemption for such facilities was necessary. Viewing the proposed amendment as a legislative response to the short term financial plight of Kansas farmers resulting from these circumstances, we cannot conclude as a matter of law that the enactment of the proposed exemption does not serve a public purpose.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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