

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

June 26, 1978

ATTORNEY GENERAL OPINION NO. 78-212

Mr. Neil R. Shortlidge
Assistant City Attorney
8500 Santa Fe Drive
Overland Park, Kansas 66212

Re: Cities--Occupational Taxes--Attorneys

Synopsis: Under Article 12, § 5(b) of the Kansas Constitution, a city may by charter ordinance exempt itself from K.S.A. 19-1310, and impose an occupational tax upon attorneys in said city.

* * *

Dear Mr. Shortlidge:

K.S.A. 19-1310 provides thus:

"All attorneys registered under this act shall not be liable to pay any occupation tax or city license fees levied under the laws of this state by any municipality."

You request my opinion whether the City of Overland Park may by charter ordinance exempt itself from this prohibition.

Article 12, § 5(b) of the Kansas Constitution provides in pertinent part thus:

"Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges

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and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class"

K.S.A. 19-1310 was first enacted in 1919, as § 3 of ch. 178. Sections 1 and 2 of the original enactment, as amended many times in the intervening years, are found at K.S.A. 19-1308 and K.S.A. 1977 Supp. 19-1309. K.S.A. 19-1310 applies to only those "attorneys registered under this act." [Emphasis supplied.] Thus, the application of K.S.A. 19-1310 is governed by the two preceding sections of the act, now the sections referenced above. K.S.A. 19-1308 limits the application of the act to only those classes of counties enumerated therein. The act does not apply to all counties, and thus, it does not apply to all cities. The constitutional power of a Kansas city to levy an occupation tax or city license fee or tax is subject only to enactments of the legislature which apply uniformly to all cities, or to all cities within any one of not to exceed four classes of cities established by the legislature for the purpose of imposing such limitations. In *Callaway v. City of Overland Park*, 211 Kan. 646, 508 P.2d 902 (1973), the court recognized this principle thus:

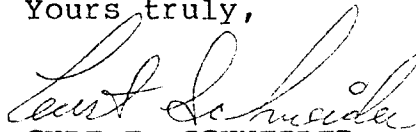
"Referring . . . to the quoted portion of subsection (b) [of Art. 12, § 5 of the Kansas Constitution] it becomes apparent the Constitution of the State of Kansas empowers a city to impose or levy a business or occupation tax by revenue ordinance for the purpose of raising revenue except where such tax has been limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class." 211 Kan. at 649.

Neither K.S.A. 19-1310 nor the original enactment of which it is a part, and as amended comprising K.S.A. 19-1308 and 1977 Supp. 19-1309, applies uniformly to all cities, nor to all cities of any class of cities established by the legislature for the purpose of limiting the imposing of such occupation taxes. Thus, in my judgment, the City of Overland Park may exempt itself from the prohibition of K.S.A. 19-1310, and impose an occupation tax upon attorneys in that city. The enactment of an occupation tax is

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clearly a local matter, and absent limiting legislation, as in this instance, it falls within the constitutional authority of the city.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj