



STATE OF KANSAS

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October 10, 1978

ATTORNEY GENERAL OPINION NO. 78- 318

John E. Bremer
Decatur County Attorney
Decatur County Courthouse
Oberlin, Kansas 67749

RE: Taxation - Personal Property - Livestock Owned
By Non-Residents In Feed Lots - Collection Prior
To Sale Or Removal - Posting of Surety Bond.
K.S.A. 79-307a thru d, 79-316,b,c, 79-319.

SYNOPSIS: Cattle, brought into Kansas for final feeding in
feed lots, must be reported monthly by the lot
operator, valued and assessed by the county ap-
praiser, and taxed by the county treasurer. If
such cattle later are sold or removed from the
lot, the county treasurer is authorized to col-
lect forthwith such taxes, by tax warrant if
necessary. However, such collection procedure
should not be undertaken if the owner of the
cattle can satisfy the county treasurer that
sufficient property remains or a satisfactory
arrangement has been made, like a surety bond,
that all such taxes will be paid timely when
the same become regularly due.

* * *

Dear Mr. Bremer:

You write that non-resident owners of cattle have been using
feed lots in your county and that your county officials have
been striving to enforce ad valorem tax collection as provided
in K.S.A. 79-307a thru d., when the cattle are sold or moved
out of Kansas after the final feeding period. In each instance
the County Treasurer is confronted with collecting the taxes
forthwith, as provided in K.S.A. 79-307d. This statute re-
quires the Treasurer to follow K.S.A. 79-319 "If, in the opin-
ion of the county treasurer, the collection of the taxes as-
sessed on said cattle is in jeopardy ...".

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With non-residents this procedure is usually followed since they have no other property, real or personal, remaining in the county. You suggest that it would do much to decrease your workload, and encourage use of feed lots in your county by out-of-state cattle owners, if a surety bond could be posted by the non-resident cattle owners with the County Treasurer guaranteeing that the taxes would be paid in full when regularly due. You ask our opinion if this could be done?

In our opinion it can be done. K.S.A. 79-307d gives the County Treasurer broad discretion to form a judgment whether payment of taxes "is in jeopardy". Then, K.S.A. 79-319 says that it shall be utilized when a person is about to remove property from the county "without leaving sufficient remaining for the payment of taxes". Determining what is "sufficient" is another judgment. We see no reason why a proper surety bond left behind would not be "sufficient" to take the question of payment of taxes out of "jeopardy". Of course, the bond is not actual payment of taxes when given, and the treasurer should give no receipt for the taxes upon accepting the bond. What has happened is that a local surety stands liable for the payment of the taxes, if the out-of-state cattle owner defaults payment of taxes as they become regularly due.

Citizens of other states, bringing property into Kansas, have the right to enjoy all the privileges and immunities enjoyed by the citizens of Kansas. In the matter of ad valorem taxation there must be no discrimination against non-residents. This is secured by Article 4, Section 2, Clause 1 of the United States Constitution and the Fourteenth Amendment thereto. This was so held in Bivins v. Board of Com'rs. of Wabaunsee County, Kansas, 66 F. 2d 351, C.C.A. Kan. (1933). This case pertained to Kansas 1929 ad valorem taxation of cattle owned by a non-resident.

Even before this decision, the Kansas legislature in 1930 amended K.S.A. 79-316 to recognize prior taxation and assessment in another state of property being brought into this state when positive proof of such assessment is made to the Kansas assessor. The Kansas Supreme Court has recognized the unconstitutionality of K.S.A. 79-316 before the 1930 amendment, overruling a prior decision, and following the federal case above cited, in Bivins v. Riley County Comm'rs., 141 Kan. 916, 44 P.2d 229 (1935).

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In making the 1930 Amendment to K.S.A. 79-316, Kansas became a reciprocity state. Reciprocity in the taxation of cattle, moving from one state to another, was even more emphasized by the passage in 1943 of K.S.A. 79-316b and 79-316c.

There have been two cases construing K.S.A. 79-316 as amended: Ray v. Board of County Comm'rs., 173 Kan. 859, 252 P.2d 899 (1953), which demonstrates the principle of reciprocity; and V. S. Dicarolo Masonry Co. v. Higgins, 178 Kan. 222, 284 P.2d 640 (1955) where, notwithstanding taxation in another state, it was held that Kansas could constitutionally collect the full year's tax on motor vehicles "permanently" kept in Kansas. But, this decision is not applicable here for the reason that the final feeding period in a Kansas feed lot can extend only for a very few months.

In your letter you mention that your county officials have been allowing the non-resident cattle owners to take the option provided in K.S.A. 79-307a. When the owner had no cattle in the county on January 1, and selected that option, a refund of tax was necessitated when it had been collected. It is to avoid this situation that you favor posting a surety bond. Your county officials were correct in permitting non-resident cattle owners to take the option under K.S.A. 79-307a, because, to deny them this privilege, that would be unconstitutional under the BIVINS cases supra. Being able to post a surety bond should facilitate the exercise of this option.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw