



STATE OF KANSAS

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October 13, 1978

ATTORNEY GENERAL OPINION NO. 78- 325

J. Byron Meeks
Edwards County Attorney
Edwards County Courthouse
Kinsley, Kansas 67547

RE: Taxation - Refund of Taxes Erroneously Collected.
K.S.A. 79-1701a, 79-1702, 79-1703.

SYNOPSIS: Where a county erroneously lists property for ad valorem tax purposes in the names of persons not record title owners, assesses the taxes, forecloses without notifying the owners of record, conveys to the purchasers at such tax sale, and then several years later the true owners, by court decision, have their title quieted against such tax sale purchasers, these purchasers have a tax grievance which can be remedied by the State Board of Tax Appeals, or by an action against the county.

* * *

Dear Mr. Meeks:

You report a situation where your county erroneously continued to list and tax certain mineral interests in the names of persons who once owned them, but which were extinguished in a mortgage foreclosure suit, and this was so found in a recent court decision quieting title against the purchasers at a county tax sale which took place in 1974. You ask the appropriate method whereby the County may refund the tax sale purchase price, plus accrued interest?

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Ordinarily, where taxes have been collected erroneously as the result of a clerical error in the listing and assessment of property, the Board of County Commissioners can direct a refund, but this must be done by August 1 of the year following the year in which the property was assessed. K.S.A. 79-1701a.

But, since this clerical error was not brought to the attention of the Board within this period, the Board no longer has such authority. In fact, K.S.A. 79-1703 makes it unlawful for the Board of County Commissioners to remit any taxes "for any reason whatever."

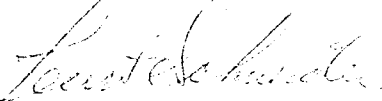
In our opinion, K.S.A. 79-1702 provides an effective means whereby the Board of Tax Appeals can order the necessary refund, plus interest accrued, to be made by the county. Perhaps, the County could join with the tax sale purchasers in petitioning the State Board to grant such relief?

There seems to be no time limit in presenting a tax grievance to the Board of Tax Appeals under K.S.A. 79-1702. That Board, under this statute, has full administrative and supervisory power to correct tax grievances and its decisions are conclusive upon subordinate taxing officials. Thompson v. Chautauqua County Comm'rs., 147 Kan. 151, 153, 75 P.2d 839 (1938); Robinson v. Jones, 119 Kan. 609, 612, 240 Pac. 957 (1925).

The remedy under K.S.A. 79-1702 is accumulative, not exclusive, and other avenues of relief are available to an aggrieved taxpayer, such as mandamus and injunction. Magnolia Petroleum Co. v. State Commission of Rev. & Taxation, 181 Kan. 84, 89, 309 P.2d 644 (1957).

Before undertaking a tax sale, most counties have an abstractor certify the names of record title owners so that all proper parties may be named in the action and notified. Was that done in this case? If so, the certificate should have listed the true record title owners. If it did not, then maybe the abstract company, or its insurer, may desire to share with the county its refund, at least to the extent of the interest and costs of sale?

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw