



OFFICE OF THE

ROBI

2ND FLOOR, KANSAS

2

MAIN PHONE: (913) 296-2215 CONSUMER PROTECTION: 296-3751 ANTITRUST: 296-5299

Memorandum

OFFICE

2ND FLOOR

*This opinion overruled in
Attorney General Opinion No. 79-313*

CURT T. SCHNEIDER
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION NO. 78- 360

The Honorable Robert G. Frey
State Representative
451 Harold Boulevard
Liberal, Kansas 67901

Re: Budget Law--Unpaid Taxes--Allowance For

Synopsis: K.S.A. 79-2930 permits an allowance to be made in the amounts or rates of levy prescribed in a budget adopted by a governing body under the Kansas budget law for unpaid taxes, which allowance may not exceed one hundred five percent of the rate of delinquency in the preceding tax year.

* * *

Dear Representative Frey:

K.S.A. 79-2930, of the Kansas budget law, concerning the preparation of budgets by taxing subdivisions, states in pertinent part thus:

"The governing bodies, in fixing the amount or rates of levy may take into consideration and make allowance for the taxes which may not be paid, such allowance, however, shall not exceed by more than five percent (5%) the percentage of delinquency for the preceding tax year."

You advise that some disagreement has arisen over the interpretation of this provision. On the one hand it is urged that it permits

The Honorable Robert G. Frey
Page Two
November 8, 1978

the taxing body to take into consideration taxes which shall not be paid in fixing the rates or amounts of levy, and make an allowance therefor, which allowance may permit them to add five percent of the total budget to the actual percentage of delinquency, in computing the amount of such allowances. Others argue that it permits the governing body to "multiply the actual percentage of delinquency for the preceding tax year by five percent (5%), and that the result of this computation is the total allowance which may be made for delinquent taxes in computing the new budget.

The language in question here is not a model of clarity. As it stands, the allowance for delinquent tax "shall not exceed by more than five percent (5%) the percentage of delinquency for the preceding tax year." Thus, if the percentage of delinquency in the preceding tax year was one percent, the allowance for delinquency in the next tax year may not exceed that amount, *i.e.*, one percent, by five percent. Thus, the total allowance which might be made for delinquent taxes would be one hundred five percent of the preceding year's delinquency.

I understand that the statute may be widely understood to permit a larger allowance for delinquent taxes than the foregoing, and that it is commonly understood to permit an allowance for delinquency not exceeding five percent of the total budget. The literal and plain language, however, permits an allowance which exceeds the delinquency of the preceding year by only five percent.

In *State ex rel. Boynton v. Wheat Farming Co.*, 137 Kan. 697, 22 P.2d 1093 (1933), the court quoted thus from a legal treatise concerning the practical construction of statutes:

"A practicable construction of a statute is not conclusive on the courts, but if unvarying for a long period of time it should be disregarded only for the most cogent reasons. The doctrine arises only from a course of conduct, and is never applied to a single case. Moreover, no matter how long the usage has been established, or how general the acquiescence in the customary construction, it will not be permitted to override the plain meaning of a statute, nor will the rule of practicable construction apply where the ambiguity is merely captious and not serious enough to raise a reasonable doubt in a fair mind reflecting honestly on the subject.'" 137 Kan. at 712.

The Honorable Robert G. Frey
Page Three
November 8, 1978

In my judgment, the quoted language is plain and unambiguous,
prohibits an allowance for unpaid taxes which exceeds 105 percent
of the delinquency in the preceding tax year.

Yours truly,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj