



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

CURT T. SCHNEIDER
ATTORNEY GENERAL

December 28, 1978

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

ATTORNEY GENERAL OPINION NO. 78- 391

Mr. Daniel A. Young
Douglas County Counselor
7 West 11th Street
Post Office Box 585
Lawrence, Kansas 66044

Re: Taxation--Affidavit of Poverty--Motor Vehicle Registration

Synopsis: When a person lawfully entitled to do so files an affidavit under K.S.A. 79-2102, the affidavit constitutes evidence required by K.S.A. 8-173(b) showing that the vehicle is thereby exempt from taxation for that tax year, and authorizes the acceptance of such motor vehicle registration application by the county treasurer.

* * *

Dear Mr. Young:

You inquire concerning the relation between K.S.A. 79-2102 and K.S.A. 8-173. The question has arisen concerning a quadriplegic woman who attends the University of Kansas. Transportation is furnished here by a specially fitted van which is titled in her name. K.S.A. 8-173 provides that a county treasurer shall not accept an application for registration of a motor vehicle unless the applicant shall exhibit to the county treasurer either a receipt showing payment of all personal property taxes for the preceding year, or,

"(b) Evidence that such vehicle was assessed for taxation purposes by a state agency, or was assessed as stock in trade

Mr. Daniel A. Young
Page Two
December 28, 1978

of a merchant or manufacturer, or was otherwise assessed and taxed, or was exempt from taxation under the laws of this state." [Emphasis supplied.]

K.S.A. 29-2101 *et seq.* provides the procedure for the collection of unpaid personal property taxes. For all taxes on personal property which remain unpaid on February 16 and July 1 of each year, the county treasurer shall send a notice to the party to whom the taxes were assessed. If the taxes remain unpaid for a period of thirty days after the mailing of this notice, the county treasurer shall issue a warrant to the sheriff, directing that officer to levy the amount of the unpaid taxes, together with interest and fees, upon the property. K.S.A. 79-2102 states thus, in pertinent part:

"If any one to whom such fact is known, or if the person against whom such unpaid tax is charged, shall make and file with the treasurer an affidavit that such person is unable, by reason of poverty or infirmity, to contribute to the public charge, such warrant shall not be issued or executed. The treasurer shall note such fact on the tax roll opposite such tax, and shall preserve all such affidavits, and shall submit them together with uncollected taxes to the county commissioners."

The question which is presented is whether, when an applicant for motor vehicle registration has filed an affidavit pursuant to K.S.A. 79-2102, the county treasurer may accept that affidavit as evidence that the vehicle "was exempt from taxation under the laws of this state," and accept the application under K.S.A. 8-173.

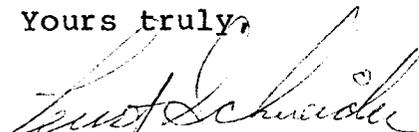
K.S.A. 8-173 was designed to assist in the collection of personal property taxes by requiring that an applicant for motor vehicle registration present evidence that he or she has no outstanding personal property tax liability as a condition precedent to filing the registration application. The applicant may present either a receipt showing payment, or may show otherwise that there is no outstanding liability by showing that it was otherwise assessed and taxed, *e.g.*, either by a state agency or as stock in trade of a merchant or manufacturer or that it was exempt from taxation.

Mr. Daniel A. Young
Page Three
December 28, 1978

When an individual files an affidavit under K.S.A. 79-2102, he or she does so not on the basis that the property is exempt from taxation, but that the taxpayer is unable to pay the taxes which have been assessed thereon by reason of infirmity or poverty. The statute is not specific as to the legal consequence of the affidavit, except to direct that a warrant shall not issue for the levy of the taxes upon the property of the affiant or person in whose behalf the affidavit has been filed. The apparent intent and purpose of K.S.A. 79-2102 is to relieve those persons who are unable to pay taxes which have been duly assessed from their liability for such taxes and hence, to forestall levies upon their property for that liability. Relief from the liability is not based upon any statutory exemption, but upon the public policy of the state, as manifested in this provision.

K.S.A. 8-173 should be construed accordingly. Just as K.S.A. 79-2101 *et seq.* prescribe the legal procedures for the collection of unpaid personal property taxes, K.S.A. 8-173 provides an additional device, or incentive, as it were, for the timely payment of personal property taxes, by conditioning the acceptance of a motor vehicle registration application upon a showing that the applicant has no outstanding personal property tax liability. It should be construed, so far as its language will permit, to be compatible with other statutory provisions which are *in pari materia*, *i.e.*, K.S.A. 79-2101 *et seq.* In my judgment, when an affidavit has been filed pursuant to K.S.A. 79-2102 by a person legally entitled to do so, the affiant, or person in whose behalf it is filed, is relieved of the outstanding liability "to contribute to the public charge," and his or her property is no longer subject to levy for such taxes. For the purposes of K.S.A. 8-173(b), the affidavit constitutes evidence that the taxpayer has been relieved of his or her outstanding personal property tax liability, that his or her property is no longer subject to levy or execution for any outstanding tax liability, and that the vehicle is thereby exempted from taxation for the year for which the affidavit was filed.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj