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April 13, 1979

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ATTORNEY GENERAL OPINION NO. 79- 50

The Honorable Fred L. Weaver
Kansas State House of Representatives
State Capitol
Room 325 South
Topeka, Kansas 66612

Re: Kansas Constitution--Finance and Taxation--Uniform
and Equal Rate of Assessment and Taxation

Synopsis: If enacted, 1979 House Bill No. 2407 would violate
Article 11, Section 1, of the Kansas Constitution
for the reason that it would classify farm and
business machinery and equipment for purposes
of ad valorem taxation.

* * *

Dear Representative Weaver:

You request our opinion as to whether 1979 House Bill No. 2407
violates the provisions of Article 11, Section 1, of the Kansas
Constitution, which require a uniform and equal rate of
assessment and taxation.

Briefly stated, House Bill No. 2407 provides that the fair
market value of farm and business machinery and equipment, for
purposes of ad valorem taxation, shall be the "average original
price paid for such machinery and equipment, based upon nationally
published guides or other trade sources," and further provides

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that said "initial value" shall be reduced by "ten percent (10%) of such value per year of age from the model year of manufacture of such machinery and equipment, not to exceed a total of eighty percent (80%)."

In order to consider the constitutionality of the proposed act, it is first necessary to analyze the substance of the provisions contained therein. Although House Bill No. 2407 purports to define the "fair market value" of farm and business machinery and equipment, it is clear that, in reality, it is simply a mandate that said property be appraised (for purposes of ad valorem taxation) on a basis other than fair market value, said basis being original price less applicable straight-line depreciation. "Original price less straight-line depreciation" very frequently will yield a significantly different valuation than that based on "fair market value," since the former term does not take into account many of the factors implicit in "fair market value," as set forth in K.S.A. 79-503. A valuation based on original price less straight-line depreciation will be arbitrarily low relative to other property in the state (which is appraised at "fair market value") where inflation causes farm or business equipment to hold its value to a greater extent than is provided for by straight-line depreciation. Many other examples of this disparity in valuation are likewise apparent, but in the interest of brevity will not be enumerated here.

In short, it is obvious that "original price less straight-line depreciation" and "fair market value" are not equivalent bases on which to assess property. This being true, it becomes clear that House Bill No. 2407 would create an exception to the requirement (set forth in K.S.A. 79-501) that all tangible personal property be appraised at its "fair market value in money," and would result in the classification of farm and business machinery and equipment for purposes of ad valorem taxation. Such classification is constitutionally impermissible.

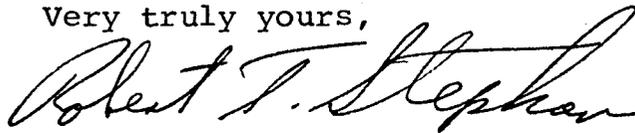
Although Article 11, Section 1, of the Kansas Constitution has been amended to allow the classification of six types of property (motor vehicles, mineral products, money, mortgages, notes, and other evidence of debt), it remains impermissible to classify other types of property for purposes of ad valorem taxation. See Voran v. Wright, 129 Kan. 601, 607 (1930); Meadowlark Hill, Inc. v. Kearns, 211 Kan. 35, 42 (1973).

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In our judgment, House Bill No. 2407, if enacted, would result in the classification of farm and business machinery and equipment, in violation of Article 11, Section 1, of the Kansas Constitution.

Even if House Bill No. 2407 could be interpreted as a mode or method of appraisal, rather than a classification of farm and business machinery for purposes of ad valorem taxation, it would, in our opinion, still be constitutionally defective. The principle of uniformity requires that various methods of appraisal produce uniform results. Cupples Hesse Corporation v. State Tax Commission, 329 S.W. 2d 696, 699 (1959). Statutorily declaring "original price less straight-line depreciation" to be the equivalent of "fair market value" does not make it so. While it is permissible for the legislature to prescribe different factors to be considered in appraising certain types of property, in order to ascertain its fair market value, House Bill No. 2407 exceeds these parameters by arbitrarily defining fair market value and eliminating any objective appraisal of the property to determine such value. For these reasons, House Bill No. 2407 is also constitutionally infirm if it could be regarded as a mode or method of appraisal for farm and business machinery and equipment.

Very truly yours,



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RTS:BJS:TRH:jam