



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 24, 1979

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

ATTORNEY GENERAL OPINION NO. 79- 93

Mr. Tom Stockwell
City Attorney
City of Merriam
Suite 302, United Kansas Bank & Trust Building
Highway 50 at Antioch
Merriam, Kansas 66202

Re: Cities and Municipalities--Local Retailers'
Sales Taxes--Application to Utility Services

Synopsis: Retail sales transactions by which electricity, gas, intrastate telephone and telegraph services and other utility services are furnished to local residents, are subject to a local retailers' sales tax where such tax is imposed. Such transactions shall be subject to the City of Merriam's retailers' sales tax, when said tax becomes effective on July 1, 1979.

* * *

Dear Mr. Stockwell:

You advise that pursuant to franchises granted by the City of Merriam, the Kansas City Power & Light Company, the Gas Service Company, and Southwestern Bell Telephone Company provide utility services in the city. Further, you advise that local electors have approved a one-half of one percent sales tax which becomes effective on July 1, 1979, and you have asked for our opinion whether the utility services provided by the above-named companies shall be subject to the new city sales tax.

Mr. Tom Stockwell
Page Two
May 24, 1979

In submitting your request, you have called our attention to K.S.A. 1978 Supp. 12-194 (L. 1978, ch. 56, §8), which is part of the series of statutes (K.S.A. 1978 Supp. 12-187 et seq.) providing for a local retailers' sales tax. However, we do not find this section of the act to have direct application to your inquiry. K.S.A. 1978 Supp. 12-194 operates to circumscribe the power of cities and counties to levy excise taxes; it expressly prohibits the levying of excise taxes or taxes in the nature of an excise "other than a retailers' sales tax." Additionally, it preserves the power of cities to enter into franchise agreements and to impose occupation taxes or license fees. The section does not, however, relate to the incidence of a local sales tax on franchised local sales; therefore, it has no direct bearing on the question you have raised.

Under K.S.A. 1978 Supp. 12-187 et seq., the power to levy local retailers' sales taxes is granted to cities and counties. Generally speaking, the local tax closely corresponds in its application and effect with the Kansas Retailers' Sales Tax Act, established and levied pursuant to K.S.A. 79-3601 et seq., and which has statewide application. Both of these acts were amended, in part, by 1979 House Bill No. 2088, which was signed by the governor on April 17, 1979, and becomes effective July 1, 1979, the same date the local sales tax approved by the voters of Merriam takes effect.

By virtue of House Bill No. 2088 (a copy of which is enclosed for your consideration), as of July 1, 1979, certain sales and services furnished by utility companies for noncommercial and agricultural use will be exempt from the statewide retailers' sales tax. Notably, however, the same sales and services will not be exempt from the local tax. Section 2 of HB 2088 amends K.S.A. 1978 Supp. 79-3606 by adding three new exemptions to the statewide sales tax, as follows:

"(x) all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes to residential premises for non-commercial use by the occupant of such premises and all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes for agricultural use;

"(y) all sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises;

Mr. Tom Stockwell
Page Three
May 24, 1979

"(z) all sales of intrastate telephone and telegraph services for noncommercial use except noncommercial intrastate long distance telephone service."

All other sales of gas, water, electricity, heat and intrastate telephone and telegraph services, not exempted by the foregoing provisions, are subject to the state tax. [See subsections (b) and (c) of Section 1 of HB 2088.] Note carefully, however, that the above-quoted exemptions from the state sales tax are not exemptions from local sales taxes. Section 3 of the new enactment (amending K.S.A. 1978 Supp. 12-189) requires that the local retailers' sales tax "shall be identical in its application" to the statewide tax "[e]xcept as otherwise specifically provided in K.S.A. 1978 Supp. 12-190 and section 4 of this act [HB 2088]." Section 4 provides an important distinction from the Kansas Retailers' Sales Tax Act, because it expressly makes taxable under the local retailers' sales tax those sales which are specifically exempted from the statewide tax by section 2 of HB 2088. Section 4 provides as follows:

"The following sales shall be subject to the taxes levied and collected by all cities and counties under the provisions of K.S.A. 1978 Supp. 12-187 et seq. and amendments thereto:

"(a) All sales of natural gas, electricity, heat and water delivered through mains, lines or pipes to residential premises for non-commercial use by the occupant of such premises and all sales of natural gas, electricity, heat and water delivered through mains, lines or pipes for agricultural use;

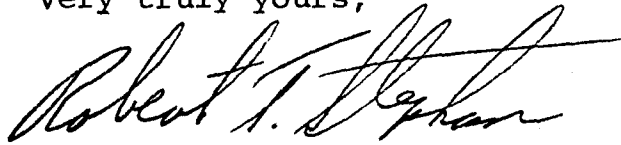
"(b) All sales of propane gas, LP-gas, coal, wood and other fuel sources for the production of heat or lighting for noncommercial use of an occupant of residential premises;

"(c) All sales of intrastate telephone and telegraph services for noncommercial use;"

Mr. Tom Stockwell
Page Four
May 24, 1979

Accordingly, retail sales transactions by which electricity, gas, intrastate telephone and telegraph services, and other utility services are furnished to local residents, are subject to a local retailers' sales tax in those communities where such tax is imposed. Therefore, such transactions shall be subject to the City of Merriam's retailers' sales tax when said tax becomes effective on July 1, 1979.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk
Enclosure