



STATE OF KANSAS

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July 23, 1979

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ATTORNEY GENERAL OPINION NO. 79-151

Mr. James A. Spencer
City Attorney
The City of Oakley
Oakley, Kansas 67748

Re: Taxation -- Exemption -- Municipally Owned Property.

Synopsis: Municipally owned property which is leased to entities or individuals whose use of the property would not qualify it for exemption is therefore not entitled to be exempted to the municipality.

* * *

Dear Mr. Spencer:

You have inquired concerning the tax exempt status of certain property owned by the City of Oakley, but which has been leased to corporations or individuals for private usages. Based on the Kansas Supreme Court opinion in Stahl v. Educational Association, 54 Kan. 542, 38 P. 796 (1895), we are of the opinion that the property is not entitled to exemption from property or ad valorem taxation. In that case, property owned by the association was leased to a tenant and all of the rents and profits derived from the property were used by the association (a tax exempt educational institution) exclusively for educational purposes. The court denied exempt status to the property and stated:

"When its real estate is rented to a tenant, or its funds invested in other property for profit, or loaned at interest, the property thus rented or invested or loaned will be liable to taxation, as much as any other property that is rented or invested or loaned, no matter in whose hands it might be."

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The court in a recent case has decided the converse issue. The court in the case of In the Matter of the Appeal of Clay L. Wirt, et al, 225 Kan. 517, held that property owned by a nontax exempt entity and leased for profit to a qualifying tax exempt entity is not being used exclusively for tax exempt purposes and is subject to ad valorem and property taxes.

Your inquiry concerned the following described facts:

1. A CATV tower site which is leased to a local cable company in conjunction with a lease of facilities pursuant to an industrial revenue bond issue for the construction of the tower and appurtenant structures;
2. The municipal golf course which is leased to Oakley Country Club, Inc., a non-profit corporation, which maintains the course for municipal use;
3. Municipal airport hangar sites, which hangars are owned by the City of Oakley and which are leased to private aircraft owners.

Because we are of the opinion as previously stated that all of the above described property should be placed on the tax rolls, we see no need to discuss all of these items individually. All of the usages which you have stated are of a proprietary nature and although the issue of proprietary versus governmental functions is not the determinative factor herein, we did give weight to that fact. Our reason for so doing is based upon the very same section of the statute (K.S.A. 1978 Supp. 79-201a) which grants exempt status to property constructed or purchased with the proceeds of industrial revenue bonds. In that statute it is stated that it is the intent of the legislature to grant exempt status for a ten year period to such property and that regardless of the function of the property, be it governmental or proprietary, it shall be considered to be "used exclusively" for the purposes of that particular statute.

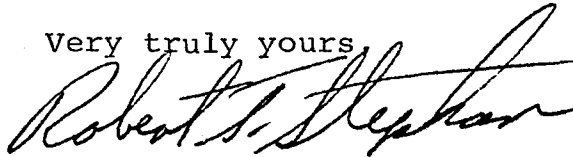
The legislature thus reiterated that property must be "used exclusively" for a specific purpose in order to qualify for exempt status, and that if need be, as in this example, it would arbitrarily declare that certain property under certain circumstances was being "used exclusively" and thereby qualified for the exemption.

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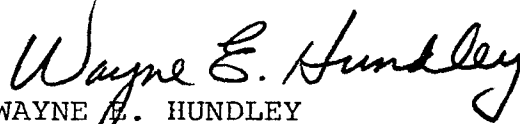
Finally, we believe that questions concerning exemption from taxation should be viewed in a cautious manner, keeping in mind the court's statement in the case of City of Arkansas City v. Board of County Commissioners, 197 Kan. 728:

"Taxation is the rule -- exemption is the exception -- and statutes granting exemption from taxation are to be strictly construed."

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



WAYNE E. HUNDLEY
Deputy Attorney General

RTS:WEH:vls