



STATE OF KANSAS

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August 23, 1979

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ATTORNEY GENERAL OPINION NO. 79-185

Mr. James A. Spencer  
City Attorney  
City Hall  
Oakley, Kansas 67748

Re: Taxation--Listing Property for Taxation--Place  
of Listing

Synopsis: The power of cities and of other taxing subdivisions to levy property and ad valorem taxes is circumscribed by enactments of the legislature passed in the exercise of its constitutional function under Article 11 of the Kansas Constitution. Cities have no authority to exempt from taxation by the city specific items of personal property subject to the property tax.

\* \* \*

Dear Mr. Spencer:

You have submitted for our review a copy of the City of Oakley's Charter Ordinance No. 7, by which the city has exempted itself from and substituted provisions for K.S.A. 79-304, and you have requested our opinion as to its validity. You advise that it is your opinion that, under the "home rule" authority granted to cities by Article 12, Section 5, of the Kansas Constitution, a city possesses the power to exempt certain property from taxation by the city.

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The charter ordinance in question purports to exempt from taxation by the city, by amendment of K.S.A. 79-304,

"[a]ll aircraft, aircraft hangars, fuel tanks and pumps, chemical tanks and water tanks stationed, located or stored at the Oakley Municipal Airport." City of Oakley, Charter Ordinance No. 7, Section 2.

You explain that the city "is merely giving up its right to assess the city mill levy against certain specific items of personal property located on the Oakley Municipal Airport which is within the city limits of the City of Oakley" and that the ordinance has no effect on the taxing authority of the county, township, school and fire districts concerning those items of personal property.

Section 1 of the charter ordinance provides as follows:

"The City of Oakley, Kansas, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt and does exempt itself from, and makes inapplicable to it, certain provisions of K.S.A. 79-304, as amended, which pertain to the listing of personal property located on any municipal airport for taxation, which certain provisions of said statute are as follows:

"'All tangible personal property stationed, located, or stored on any municipal airport or airfield shall be listed and taxed in the township, school district, city or taxing district in which the owner resides, but if the owner is a nonresident of this state or of the county in which such tangible personal property is located, then such property shall be listed and taxed in the same township, school district, city, or taxing district in which said property is located.'"

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Article 12, Section 5, of the Kansas Constitution establishes the "home rule" power of cities. Subsection (c)(1) of the amendment provides:

"Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city."

Thus, to determine whether a city may exercise its power to exempt itself from a particular enactment of the legislature, it must first be determined whether the enactment is applicable uniformly to all cities or whether the enactment prescribes limits of indebtedness.

K.S.A. 79-304 is one section of the legislature's comprehensive statutory scheme for assessment and taxation of all real and personal property in the state of Kansas. Article 3 of Chapter 79 of the Kansas Statutes Annotated concerns listing and assessment of tangible personal property. K.S.A. 79-303 requires that "[e]very person, association, company or corporation who shall own or hold, subject to his or her control, any tangible personal property shall list said property for assessment." K.S.A. 79-304, quoted in part above, determines the tax situs for particular items of personal property.

The statute in question is part of an enactment applicable uniformly to all taxing districts, including all cities, and thus is not subject to exemption or amendment by charter ordinance. Indeed, in light of the mandate of Article 11 of the Kansas Constitution, we find that the section is part of an enactment of statewide concern applicable uniformly to all cities. Article 11, Section 1, of the Kansas Constitution states:

"The legislature shall provide for a uniform and equal rate of assessment and taxation, except that the legislature may provide for the classification and taxation uniformly as to class of motor vehicles, mineral products, money, mortgages, notes and other evidence of debts or may exempt any of such classes of property from property taxation and impose taxes upon another basis in lieu

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thereof. All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income, shall be exempted from property taxation."  
(Emphasis added.)

Briefly stated, the Kansas Constitution vests plenary power in the legislature in matters of the rate and assessment of property taxes levied in the state of Kansas. In the exercise of that power, by an enactment applicable uniformly to all cities, the legislature has declared that "[a]ll property in this state, real and personal, not expressly exempt therefrom, shall be subject to taxation." K.S.A. 79-101 (emphasis added). The legislature also has determined, by enactments uniformly applicable to all cities, that certain items of property should be exempt from "property or ad valorem taxes levied under the laws of the state of Kansas." K.S.A. 79-201. See Chapter 79, Article 2, Kansas Statutes Annotated, passim.

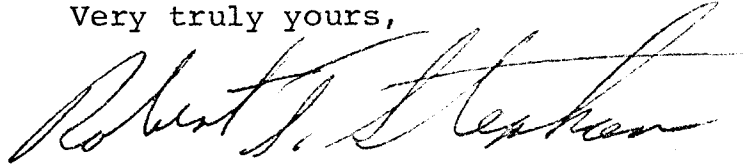
Significantly, only the legislature has the authority to determine a "uniform and equal rate of assessment." Interpreting the "constitutional command" of Article 11, the Kansas Supreme Court has declared that "[a]ssessment is a prerequisite to the application of any rate of taxation, and assessment includes listing and valuation." Wheeler v. Weightman, 96 Kan. 50, 53 (1915). (Emphasis added.) Since exemptions of certain items of personal property from the property tax must necessarily affect the rate, as well as the "uniform and equal" application of the rate, the Constitution dictates that only the legislature may make such exemptions.

We conclude, therefore, that the power of cities and of other taxing subdivisions to levy property and ad valorem taxes is circumscribed by enactments of the legislature passed in the exercise of its constitutional function under Article 11 of the Kansas Constitution. Cities have no constitutional or statutory authority to exempt from taxation by the city specific items of personal property subject to the property tax. Only the legislature has the authority to make such exemptions.

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Accordingly, it is our judgment that Charter Ordinance No. 7 of the City of Oakley, which ordinance exempts from taxation by the city certain personal property stationed, located or stored on the city's municipal airport, is invalid and without legal effect.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Steven Carr  
Assistant Attorney General

RTS:WRA:SC:gk