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December 28, 1979

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ATTORNEY GENERAL OPINION NO. 79-313

Mr. Kenneth Heer  
Kingman County Attorney  
103 Avenue A East  
Kingman, Kansas 67068

Re: Taxation--Budgets of Taxing Bodies--Allowance  
for Unpaid Taxes

Synopsis: K.S.A. 79-2930 permits an allowance for unpaid taxes to be made in the amount or rate of levy prescribed in a budget adopted by a governing body under the Kansas budget law (K.S.A. 79-2925 et seq.), which allowance may not exceed 5 percentage points over the rate of delinquency in the preceding year.

\* \* \*

Dear Mr. Heer:

You have requested our review of Attorney General Opinion No. 78-360 and our opinion as to the meaning of K.S.A. 79-2930. Specifically, you inquire as to our interpretation of the following portion of the statute in question, which statute is one of several sections comprising the budget law (K.S.A. 79-2925 et seq.):

"The governing bodies [of taxing subdivisions], in fixing the amount or rate of levy may take into consideration and make allowance for the taxes which may not be paid, such allowance, however, shall not exceed by more than five percent (5%) the percentage of delinquency for the preceding tax year."  
(Emphasis added.)

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You have correctly noted that former Attorney General Curt Schneider interpreted the emphasized language to mean that taxing subdivisions may budget for unpaid taxes in the ensuing budget year in an amount not to exceed 105 percent of the rate of the preceding year's delinquency. Attorney General Opinion No. 78-360. In other words, assuming that a municipality's delinquent taxes amounted to 1 percent of the budget amount in a given year, under General Schneider's interpretation, the municipality could make an allowance for unpaid taxes in the next budget year not to exceed 1.05 percent of the budget amount.

In contrast, you note that the long-standing interpretation of the language in question is to the contrary. You advise that, since its enactment in 1933 (L. 1933, ch. 316, §6), the statute has been interpreted to mean that a municipality may make an allowance for delinquent taxes by an increased percentage not to exceed 5 percentage points over the previous year's rate of delinquency. Using the example noted above, *i.e.*, delinquent taxes amounting to 1 percent in a given year, you argue that the statute permits a maximum allowance of 6 percent of the budget amount in anticipation of delinquencies to that extent in the ensuing budget year.

In Attorney General Opinion No. 78-360, General Schneider acknowledged that "[t]he language in question here is not a model of clarity" but he nonetheless concluded that the language is "plain and unambiguous," and that the statute prohibits an allowance for unpaid taxes which exceeds 105 percent of the rate of delinquency in the preceding tax year. We agree that General Schneider's conclusion provides a sound legal interpretation of the language in question, but we depart from his opinion in one significant respect. In our judgment, the language in question is not "plain and unambiguous" but is subject to varying interpretations.

In the course of our review of the 1978 opinion, we have interviewed a number of state administrative officers and local government finance experts in private enterprise, all with considerable experience in preparation and review of budgets of local units of government, all of whom unanimously confirm that, since 1933, the statute has been interpreted to permit a taxing subdivision to make allowances for anticipated delinquencies in its budget by an amount not to exceed 5 percentage points over the rate of delinquency experienced in the preceding tax year, contrary to General Schneider's interpretation. Guided by established rules of statutory construction and persuaded that the long-standing administrative construction of the statute better reflects and effectuates legislative intent, we herewith respectfully record our disagreement with Attorney General Opinion No. 78-360.

In 82 C.J.S. Statutes, the following principles are stated as general rules of statutory construction:

"In seeking to ascertain the legislative intent where the language of a statute is ambiguous, the courts will take into consideration all the facts and circumstances existing at the time of, and leading up to, its enactment, such as the history of the times . . . . Other contemporaneous circumstances which will be considered by the courts include the evils to be remedied by the new act, the remedy provided for the removal or mitigation of such evils, and the reason for such remedy . . . . (§353)

. . . .

"Where the language of a statute is ambiguous or uncertain, the construction placed upon it by contemporaries, although not controlling may be resorted to as an aid in ascertaining the legislative intent, and should not be overturned except for cogent reasons . . . . (§357)

. . . .

"In determining the proper construction of an ambiguous statute, the contemporaneous construction placed on it by the officers or departments charged with the duty of executing it is to be considered and given weight, . . . if such contemporaneous construction has been uniform and consistent, and has been observed for a long period of time . . . .

"Executive construction is entitled to additional weight where it has been impliedly endorsed by the legislature, as by the reenactment of the statute, or the passage of a similar one, in the same or substantially the same terms . . . .

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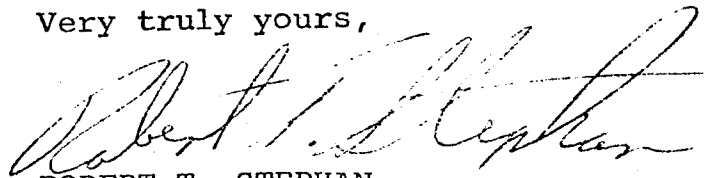
or by the failure of the Legislature,  
with knowledge of such construction,  
to change the law or adopt amendments . . . ."  
(\$359)

The foregoing rules of statutory construction are particularly applicable to the statute about which you have inquired. Significantly, the statute was first enacted in 1933, a time of considerable economic hardship for nearly everyone, a time when home or farm mortgage foreclosures and tax delinquencies were not uncommon occurrences. As a consequence, local government budgets became more difficult to maintain. In response, the legislature provided for some measure of flexibility in the budgetary process of local units of government by permitting them to make increased allowances in their budgets for anticipated delinquency losses. Since that time, and for nearly 50 years after its enactment, the statute in question has been interpreted by state and local officers involved in local government finance to permit increases in the amount of budgetary allowances for unpaid taxes not to exceed 5 percentage points over the rate of delinquency of the preceding year.

Moreover, for the same period of time, the legislature has acquiesced in the aforesaid contemporaneous and established construction of the law, and thus may be said to have impliedly endorsed it. Such an endorsement gives great weight to the established interpretation and is a good indication of legislative intent. The Kansas Legislature has had ample opportunity to amend the statutory language in question to contravene this interpretation, but it has not done so. The language has remained substantially unchanged in the three amendments since the original enactment. Cf. L. 1933, ch. 316, §6 with L. 1941, ch. 377, §5; L. 1970, ch. 387, §3; and L. 1974, ch. 364, §28.

Accordingly, we conclude that K.S.A. 79-2930 permits an allowance for unpaid taxes to be made in the amount or rate of levy prescribed in a budget adopted by a governing body under the Kansas budget law, which allowance may not exceed 5 percentage points over the rate of delinquency in the preceding year.

Very truly yours,



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Steven Carr  
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