



STATE OF KANSAS

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August 4, 1980

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ATTORNEY GENERAL OPINION NO. 80-174

Don Vsetecka
Finney County Attorney
118 West Pine Street
Garden City, Kansas 67846

Re: Taxation--Deposit of Tax Receipts--Allocation
of Interest Earned Prior to Distribution

Synopsis: In the absence of statutory provision to the contrary, interest earned on tax revenues deposited by the county treasurer in an interest-bearing account prior to the time at which the tax revenues are available for distribution must be apportioned among the various taxing subdivisions in the ratio of their respective shares of the total tax receipts so deposited.

From and after the date such tax receipts are available for distribution, the provisions of K.S.A. 1979 Supp. 12-1678a govern the disposition of accrued interest. Cited herein: K.S.A. 1979 Supp. 12-1678a, K.S.A. 1979 Supp. 19-101a (as amended by L. 1980, ch. 85, §1); K.S.A. 79-1801.

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Dear Mr. Vsetecka:

You inquire whether the city of Garden City is entitled to a portion of the interest which has accrued on ad valorem tax receipts which have been received by the Finney County treasurer

Don Vsetecka
Page Two
August 4, 1980

and deposited in an interest-bearing account. It appears the county treasurer has deposited all tax payments coming into her hands into a single, interest-bearing account, and at some later date, will determine exactly how much taxes have been collected on behalf of each taxing district. The question posed is who is entitled to the interest accrued on such tax receipts between the time the same are received and deposited, and the time such receipts are available for distribution.

We find no statute which answers this question. In addition, we find no Kansas case which directly addresses this proposition. However, several Kansas cases have determined that interest collected on delinquent taxes belongs to the taxing subdivision that levied the tax. See Board of Education v. Franklin County Commr's, 149 Kan. 798 (1939); Board of Education v. Wyandotte County, 116 Kan. 38 (1924); and Sedgwick County v. Wichita, 62 Kan. 704 (1901).

While all the foregoing cases concern the proper distribution of interest accrued on delinquent taxes, and, therefore, are not directly on point to the question you pose, we believe these cases establish the principle that, unless otherwise specified by statutory provision, interest accrued on taxes levied by a particular subdivision belong to that subdivision, and should be distributed to that taxing subdivision along with the principal amount of the taxes collected on its behalf.

In both the Sedgwick County and Wyandotte County cases, supra, the Court was confronted with the question of who was entitled to the interest on delinquent taxes, where the legislature had prescribed no statutory provision for distribution of the same. In each case, the Court held the taxing district that imposed the tax was entitled to the interest accrued thereon. In the Sedgwick County case, the Court specifically held: "[W]e hold that, in the absence of legislative disposition of penalties and interest, the same would attach to and be disposed of the same as the original tax itself." (Emphasis added.) 62 Kan. at 708.

In Board of Education v. Wyandotte County, supra, the Court states:

"In 37 Cyc. 1594 the rule is thus stated:
'Unless otherwise directed, interest, penalties and costs collected on delinquent taxes follow the tax, and go to the state, county, or city, according as the one or the other is entitled to the tax itself; and in cases where two or more of these are interested in the tax, such

Don Vsetecka
Page Three
August 4, 1980

interest and penalties should be apportioned among them in the ratio of their respective shares of the tax. But the legislature may change this rule and dispose otherwise of interest or penalties." (Emphasis added.) 116 Kan. at 39.

While in the case of delinquent taxes the duty of paying accrued interest falls on the delinquent taxpayer, and while in the case you pose, the interest is paid voluntarily by a financial institution, we discern no basis for differing from the foregoing conclusions of the Court. Thus, in response to your inquiry, it is our opinion that if tax revenues received by a county treasurer are deposited into a single, interest-bearing account prior to the time at which such revenues are available for distribution, the interest derived from such account must be apportioned among the various taxing subdivisions in the ratio of their respective shares of the total tax receipts. Of course, the provisions of K.S.A. 1979 Supp. 12-1678a govern the distribution of interest after the taxing subdivisions have been given proper notice of the availability of tax receipts collected on their behalf. However, while the provisions of K.S.A. 1979 Supp. 12-1678a provide for the investment of tax revenues collected on behalf of taxing subdivisions other than the county, it is to be noted the provisions thereof do not apply in the case you present because your inquiry concerns the distribution of interest that has accrued on tax revenues between the time said revenues are collected and the time the same are "available for distribution." The provisions of K.S.A. 1979 Supp. 12-1678a are operative only at the time that public funds have been received "and are available for distribution." (Emphasis added.) No mention is made as to the distribution of interest that may have accrued on tax revenues between the time they are received and deposited by the county treasurer, and the time at which said revenues "are available for distribution." Thus, this statute is of no assistance in answering your specific inquiry.

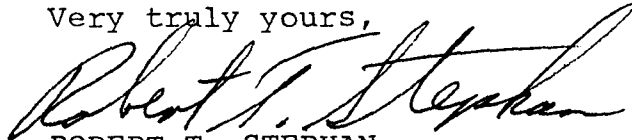
In addition, it is to be noted the distribution of such interest is not a proper subject of county home rule. K.S.A. 1979 Supp. 19-101a (as amended by L. 1980, ch. 85, §1). The Board of County Commissioners have no interest in, or control over, tax receipts collected by the county treasurer on behalf of taxing subdivisions other than the county. Those tax receipts belong exclusively to the taxing subdivision which imposed the same. K.S.A. 79-1801 and K.S.A. 1979 Supp. 12-1678a.

Thus, in response to your inquiry, we are of the opinion that, in the absence of statutory provision to the contrary, interest earned on tax revenues deposited by the county treasurer in an

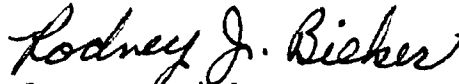
Don Vsetecka
Page Four
August 4, 1980

interest-bearing account prior to the time at which the tax revenues are available for distribution must be apportioned among the various taxing subdivisions in the ratio of their respective shares of the total tax receipts so deposited. From and after the date such tax receipts are available for distribution, the provisions of K.S.A. 1979 Supp. 12-1678a govern the disposition of accrued interest.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm