ATTORNEY GENERAL OPINION NO. 80-237

The Honorable Franklin D. Gaines
Kansas State Senator
Box 219
Augusta, Kansas 67010

Re: Taxation--Kansas Retailers' Sales Tax--Tax Imposed

Synopsis: Contractors for both utilities and cable television firms are subject to the tax imposed by subsection (1) of K.S.A. 1979 Supp. 79-3603. However, with regard to the service of installing tangible personal property in connection with the original construction of a conveyance or distribution line, sales tax is imposed upon services rendered to a cable television system or privately owned utility (other than a cooperative, nonprofit, membership corporation organized under the provisions of K.S.A. 17-4601 et seq.), whereas no tax is imposed where the services relate to a transmission line of a municipal or quasi-municipal corporation. Cited herein: K.S.A. 1979 Supp. 79-3603 and 79-3606.

Dear Senator Gaines:

You have requested an Attorney General's opinion regarding a sales tax question raised by one of your constituents. You state that the constituent alleges that he has been "forced to pay sales tax on construction projects involving cable TV," whereas "all other utilities are exempt under the laws of the State of Kansas."

Subsection (1) of K.S.A. 1979 Supp. 79-3603 imposes sales tax
"at the rate of three percent (3%) upon
the gross receipts received from the sales
of tangible personal property to all con-
tractors, subcontractors or repairmen of
materials and supplies for use by them in
erecting structures for others, or building
on, or otherwise improving, altering, or re-
pairing real or personal property of others . . . ."

Since the sale of gas, water, electricity, and heat is a business
specifically taxable under the Kansas Retailers' Sales Tax Act
[K.S.A. 1979 Supp. 79-3603(c)], contractors purchasing materials
and supplies for incorporation in projects of municipally-owned
utilities are not within the exemptions set forth in K.S.A.
1979 Supp. 79-3606(b) and (d). See City of Chanute v. Commission
of Revenue and Taxation, 156 Kan. 538 (1943). Therefore,
contractors for either private or municipally-owned utilities
are subject to the tax imposed by K.S.A. 1979 Supp. 79-3603(1),
and would presumably include the tax as part of the contract
price charged to the utility. This treatment is no different
than that which is applicable to projects of cable TV firms.

Another tax imposed by the sales tax act is upon the gross
receipts received for

"the service of installing or applying
tangible personal property which when
installed or applied is not being held for
sale in the regular course of business,
and whether or not such tangible personal
property when installed or applied remains
tangible personal property or becomes a
part of real estate, except that no tax
shall be imposed upon the service of in-
stalling or applying tangible personal
property in connection with the original
construction of a building or facility . . . ."
K.S.A. 1979 Supp. 79-3603(p). (Emphasis added.)

The term "facility" is defined as follows:

"'[F]acility' shall mean a mill, plant,
refinery, oil or gas well, water well, feed
lot or any conveyance, transmission or distri-
bution line of any cooperative, nonprofit,
membership corporation organized under or
subject to the provisions of K.S.A. 17-4601
et seq. or of any municipal or quasi-municipal
corporation, including the land improvements immediately surrounding such facility ...."
K.S.A. 1979 Supp. 79-3603(p). (Emphasis added.)

Therefore, as the above statutory excerpts indicate, no sales tax is imposed upon the service of installing or applying tangible personal property in connection with the original construction of a conveyance, transmission, or distribution line of any municipal or quasi-municipal corporation. Under the present tax-imposing statute, however, such services would be taxable with regard to the original construction of a distribution or transmission line of a cable TV system, or a privately owned utility.

In summary, contractors for both utilities and cable television firms are subject to the tax imposed by subsection (1) of K.S.A. 1979 Supp. 79-3603. However, with regard to the service of installing tangible personal property in connection with the original construction of a conveyance or distribution line, sales tax is imposed upon services rendered to a cable television system, whereas no tax is imposed where the services relate to a transmission line of a municipal or quasi-municipal corporation.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

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Assistant Attorney General

RTS:BJS:TRH:jm