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November 12, 1980

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ATTORNEY GENERAL OPINION NO. 80- 245

Mr. Mike Heim
Principal Analyst
Legislative Research Department
Room 545-N, Statehouse
Topeka, Kansas 66612

Re: Taxation--Property Exempt From Taxation--County
Property Used for Governmental or Proprietary Function
For Which Bonds Are Issued

Synopsis: Property used by a county to promote industrial development for which industrial revenue bonds are issued is exempt from ad valorem property taxation under K.S.A. 1979 Supp. 79-201a. (Affirming Attorney General Opinion No. 77-382 and Attorney General Opinion No. 79-141.) Cited herein: K.S.A. 1979 Supp. 79-201a.

* * *

Dear Mr. Heim:

On behalf of the Special Committee on Assessment and Taxation, you have asked for our opinion on a taxation question arising out of some conflicting interpretations of Attorney General Opinion Nos. 77-382 and 79-141. Specifically, you inquire whether property used by a county to promote industrial development for which industrial revenue bonds are issued is exempt from ad valorem property taxes.

As you have correctly noted, we expressed our opinion that counties, in the exercise of their home rule powers, may issue industrial revenue bonds to promote industrial development in the several counties, in Attorney General Opinion No. 79-141. In so doing, we affirmed Attorney General Opinion No. 77-382, with one exception, not relevant

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to the question you have presented. In Opinion No. 79-141, we expressly noted our agreement with the earlier opinion with respect to the tax questions addressed on pages 4 and 5 of that opinion. One of those questions was the question whether the property purchased by the county (with the proceeds from the sale of county industrial revenue bonds) and leased to industrial firms or corporations is exempt from ad valorem taxation.

K.S.A. 1979 Supp. 79-201a, Second, provides, in pertinent part, for the exemption of certain property from ad valorem taxation, as follows:

"All property used exclusively by the state or any municipality or political subdivision of the state. All property owned or operated by the state or any municipality or political subdivision of the state which is used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be 'used exclusively' by the state, municipality or political subdivision for the purposes of this act." (Emphasis added.)

As Attorney General Schneider advised:

"The [industrial development] facility acquired or constructed by the county [a political subdivision of the state] is owned by it, and it is, of course, one for which bonds may be . . . issued, and it is used by the city [sic, county] for lease to a private corporation in the furtherance of legislative purposes such as those set forth at K.S.A. 12-1740. Without belaboring the distinction between governmental and proprietary purposes, certainly the property is being used by the city [sic, county] as its owner in one or the other fashion. The property, thus, would be exempt from ad valorem taxation under [K.S.A. 1979 Supp. 79-201a]." Attorney General Opinion No. 77-382, p. 5. (Emphasis added.)

We reaffirm Attorney General Opinion No. 77-382 with respect to the property tax question you have raised, for the reasons given in the above quotation. We take exception to that opinion in only one

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respect, as explained in Attorney General Opinion No. 79-141,
which exception is not relevant to this discussion.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:pf