



STATE OF KANSAS

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January 14, 1981

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ATTORNEY GENERAL OPINION NO. 81- 11

Mr. James Lucian  
Chairman, Cherokee County  
Board of Commissioners  
Cherokee County Courthouse  
Columbus, Kansas 66725

Re: Taxation--Listing Property for Taxation--Issuance  
of Advance Tax Notices and Warrants

Synopsis: K.S.A. 79-319 is applicable only in those cases where a person is about to remove his or her property from the county. It is not applicable in those cases where a taxpayer is about to sell his or her property, or has sold the same. Cited herein: K.S.A. 79-319, 79-1420, 79-1422, 79-2109, 79-2110; L. 1899, ch. 248.

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Dear Mr. Lucian:

In a letter to Phil Martin, Director of Property Valuation, you explain that the following situations occurred in Cherokee County during 1980:

- "1. An out of State Coal Mining firm ceased operation and removed some of the equipment after being assessed for 1980.
- "2. A farmer refused to list his equipment and later held an auction to dispose of his farm and machinery.

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"3. A retail store held a closing out sale and ceased operation after turning in a 1980 Commercial Personal Property rendition."

You explain that the county appraiser notified the county treasurer of each of the foregoing situations, and, in response thereto, the county treasurer issued an advance tax notice to each of the taxpayers and also issued tax warrants to be executed by the sheriff. However, the county attorney advised the sheriff not to enforce the warrants. You seek our opinion on whether the tax warrants were properly issued and enforceable in each of the situations, pursuant to K.S.A. 79-319 "and related statutes."

K.S.A. 79-319 provides:

"When any person is about to remove his or her property from the county, after the same has been assessed and before the taxes thereon have been paid, without leaving sufficient remaining for the payment of the taxes thereon, the tax shall at once become due and payable, and the county treasurer shall forthwith issue a tax warrant for the collection of the same, and it shall be enforced as in other cases."  
(Emphasis added.)

While perhaps not expressed in the clearest of terms, it is our opinion the language of this statute prescribes that it shall be invoked whenever, in the judgment of the county treasurer, a person is about to remove his or her property from the county, (1) after the property has been assessed but before the taxes thereon have been paid, and (2) without leaving sufficient property in the county to pay taxes. However, we are of the further opinion that the provisions of this statute may not be enlarged to include situations where a person is about to sell, or has sold his or her property. The fact a person is about to sell or has sold his or her property, in our judgment, cannot be construed to mean that such person "is about to remove his or her property from the county."

Our opinion is based upon the fact that, when the provisions of K.S.A. 79-319 were originally enacted in 1899 (L. 1899, ch. 248), they were embodied in Section 6 of an act entitled: "AN ACT providing for the assessment and taxation of property in certain cases." (Emphasis added.) That act provided separate sections which were to govern in cases where: (1) property was brought into the state; (2) a person sold his or her property to one person,

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(3) property of a taxpayer was seized by legal process, or (4) property of a taxpayer was about to be removed from the county. Therefore, when K.S.A. 79-319 was originally enacted, the legislature was mindful not only of the tax collection problems which result when a taxpayer removes property from the county, but also, when a taxpayer sells property subject to taxation. These problems, however, were dealt with in separate sections. Thus, the legislature distinguished the removal of property from the county from the sale of property by a taxpayer.

Two existing statutes address the sale of property by a taxpayer after the property has been assessed (i.e., K.S.A. 79-2109 and 79-2110), but these statutes relate only to the sale of all of a taxpayer's property or all of a class thereof "to any one person." Thus, those statutes are inapplicable where the property of a taxpayer, or an entire class thereof, is not sold to one person. Consequently those statutes appear to be inapplicable to any of the situations you describe, and we are unaware of any other statutory provision which authorizes the issuance of an advance tax notice and a tax warrant in those situations where a taxpayer sells his or her personal property to more than one person. K.S.A. 79-309, however, provides in relevant part:

"All property shall be listed and valued on the first day of January in the year in which the same is assessed, and the transfer and sale of any taxable personal property subsequently to the first day of January shall not authorize any person to omit the same from the list, although such list be not made until after the sale or transfer of such property; but all such property shall be listed for taxation in the same manner as if no sale or transfer thereof had been made." (Emphasis added.)

Thus, it is clear that the sale of personalty after January 1 of the year in which it is assessed does not relieve the obligation of the taxpayer to list such property for taxation and pay the tax due thereon. However, due to the lack of statutory provisions authorizing an alternative collection method, it is our opinion that taxes due on such property can be collected only in the same manner as taxes on property which has not been sold are collected. "The method of collection of taxes is not prescribed in the constitution but is left to the legislative discretion and control, and no method exists apart from the statute." (Emphasis added.) Board of County Commissioners v. Matlock, 192 Kan. 272, syl. ¶1 (1963).

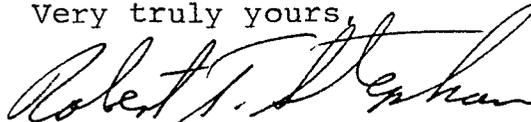
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Based upon the foregoing principles, it is our opinion that the county treasurer lacked statutory authority to issue advance tax notices and tax warrants in the latter two situations you describe, unless the sales involved therein come under the provisions of K.S.A. 79-2109 or 79-2110, i.e., all of the taxpayer's property, or an entire class thereof, was sold to one person. As we have noted, however, the provisions of K.S.A. 79-309 are applicable and the taxpayers who sold their personalty are liable for the taxes imposed upon such personalty in 1980.

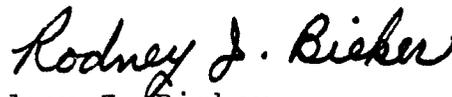
Further, in regard to the taxpayer who refused to list his property, we call to your attention the provisions of K.S.A. 79-1420 and 79-1422, which impose criminal and civil penalties, respectively, for the failure or refusal to provide a list of property for purposes of taxation. Parenthetically, however, we note the very recent decision of the Kansas Supreme Court in National Cooperative Refinery Ass'n v. Board of McPherson County Comm'rs, 228 Kan. 595 (1980), where the Court held that K.S.A. 79-1422, as currently written, does not authorize the imposition of a penalty against a taxpayer who voluntarily files a list of his personalty more than 45 days late. Because we have not been apprised of the precise circumstances surrounding the taxpayer's refusal to list his property, the application of this decision to the pertinent facts should be discussed with your county attorney.

Finally, in regard to the out-of-state coal mining firm that ceased operations in your county during 1980, it appears to us, under the facts you have presented, the issuance of an advance tax notice and a tax warrant were authorized by K.S.A. 79-319. Consequently, it is our opinion the tax warrant that was issued properly could have been executed by the sheriff.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Rodney J. Bieker  
Assistant Attorney General

RTS:BJS:RJB:jm