



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 29, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81-124

Mr. Charles Menghini
City Attorney
316 National Bank Building
Pittsburg, Kansas 66762

Re: Cities and Municipalities--Home Rule Powers--
Imposition of City Occupation Tax Upon Attorneys

Synopsis: A city may impose an occupation tax on attorneys pursuant to home rule power; however, attorneys registered under the provisions of K.S.A. 19-1308 et seq. are exempt from such tax. Disapproving and withdrawing Attorney General Opinion Nos. 78-212 and 78-362. Cited herein: K.S.A. 19-1309, 19-1310, Kan. Const., Art. 12, §5.

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Dear Mr. Menghini:

You have requested an opinion regarding whether the City of Pittsburg may properly impose an occupation tax upon attorneys by ordinance under the home rule power granted in Article 12, Section 5(b) of the Kansas Constitution. You state that several attorneys have objected to the tax on the basis that K.S.A. 19-1310 provides a specific exemption from such tax for those attorneys registered under K.S.A. 19-1308 et seq. K.S.A. 19-1310 provides:

"All attorneys registered under this act shall not be liable to pay any occupation tax or city license fees levied under the laws of this state by any municipality."

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K.S.A. 19-1308 requires all attorneys living, practicing, appearing in court, working or associated with any firm in certain counties to register and pay an annual registration fee to the clerk of the district court. By limiting this requirement's application to counties having various populations and assessed tangible valuations, the statute clearly relates to some but not all counties and is, therefore, not uniformly applicable to all counties.

Two previous Attorney General Opinions, Nos. 78-212 and 78-362, and a consolidated civil case in Johnson County District Court, Tarver v. City of Overland Park and Provance v. City of Shawnee, Case Nos. 80170 and 82144, respectively, have addressed this question. In each instance, it was determined that K.S.A. 19-1308 et seq., of which 19-1310 is a part, constitute an "enactment" which is not uniformly applicable to all counties and, therefore, is not uniformly applicable to all cities. Because a city may exempt itself from a non-uniform statute under its powers of home rule (Kan. Const., Art. 12, §5), the district court and the Attorney General concluded that the city had the authority to impose such a tax on attorneys who are registered pursuant to K.S.A. 19-1308.

We disagree. To support the conclusions reached by these authorities one must find that 19-1310 applies only to cities located in those counties designated in 19-1308, thereby making the "enactment" (K.S.A. 19-1308 et seq.) non-uniform in its application to cities. However, the clear and unambiguous language of 19-1310 will not support such a finding. K.S.A. 19-1310 is uniformly applicable to all cities. There is no language which suggests that it is applicable only to cities located in those counties wherein registration is required pursuant to 19-1308.

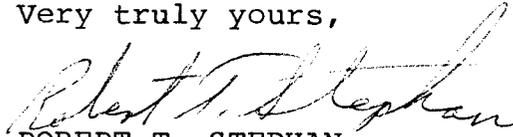
K.S.A. 19-1310 does not prohibit the levying of occupation taxes on attorneys generally. It merely exempts those attorneys who are already required by statute to pay a fee, which is imposed upon them solely because of their occupation, from paying an additional tax imposed because of their occupation.

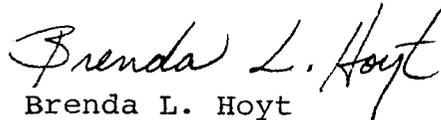
We, therefore, conclude that the City of Pittsburg may impose an occupation tax on attorneys generally pursuant to its home

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rule powers; however, attorneys who are registered under K.S.A. 19-1308 et seq. are exempt from such tax. Accordingly, Attorney General Opinion Nos. 78-212 and 78-362 are hereby withdrawn.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Brenda L. Hoyt
Assistant Attorney General

RTS:BJS:BLH:jm