



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 3

The Honorable David F. Louis  
State Representative, Eighteenth District  
10716 West 52nd Circle  
Shawnee, Kansas 66203

Re: Taxation--Miscellaneous Provisions--Interest  
Charges on Delinquent Special Assessments

Synopsis: The provisions of K.S.A. 1980 Supp. 79-2004 grant the authority for the charging of interest upon delinquent special assessments, when said special assessments, by law, are to be collected in the same manner as other taxes. Cited herein: K.S.A. 79-1804, K.S.A. 1980 Supp. 79-2004, 79-2968.

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Dear Representative Louis:

You seek an opinion regarding the authority under which delinquent special assessments are charged interest. You indicate that the statute which fixes the rate of interest charged on delinquent property taxes, K.S.A. 1980 Supp. 79-2968, appears to apply only to taxes, and not to special assessments.

Your inquiry apparently is based upon the legion of Kansas Supreme Court cases in which it has been held: "[U]nder Article 11 of our Constitution, taxes and assessments technically considered, are different things." State Highway Commission v. City of Topeka, 193 Kan. 335, 337 (1964). See also the cases cited therein at 337. Those numerous cases, however, do not prohibit the collection of special assessments in the same manner as general property taxes.

The decision of the Kansas Supreme Court in Tull v. Royston, 30 Kan. 617 (1883), makes this fact absolutely clear. In that

case, the Court was required to determine whether special assessments became a lien upon real property, and, if so, upon what date. In deciding these questions, the Court had to construe the meaning of section 85 of chapter 107 of the Laws of 1879. That statute is the predecessor of K.S.A. 79-1804, and, at the time of the decision in Tull, provided, as K.S.A. 79-1804 currently provides:

"All taxes shall be due on the first day of November of each year. A lien for all taxes shall attach to the real property subject to the same on the first day of November in the year in which such tax is levied, and such lien shall continue until such taxes and penalty, charges and interest which may have accrued thereon shall be paid by the owner of the property, or other person liable to pay the same."

In the Tull case, the plaintiff claimed the provisions of this statute were not applicable in regard to special assessments, because such assessments, technically, were not taxes. In rejecting this claim, the Court said:

"While special assessments for improvements in cities are not taxes within §1, art. 2 [sic] of the constitution, yet we must construe them to be included in the word 'taxes,' in . . . [§85] of ch. 107, Comp. Laws of 1879. In construing these sections the intent of the law makers must control, and this intention is to be ascertained from all that is expressed in the statute, rather than the technical significance of the word 'assessment.'" 30 Kan. at 619.

Following this holding, the Court continued:

"Sec. 43, ch. 19a, Comp. Laws of 1879, relating to cities of the third class, favors this construction. It reads:

"'All taxes and assessments levied under authority of this act shall be certified to the county clerk of the proper county to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other taxes are by law collectible.'" Id. at 619.

Thus, in Tull, the Court concluded that the term "taxes," as used in the predecessor of K.S.A. 79-1804, included "special assessments." Moreover, the Court's conclusion was based upon the language of the statute pursuant to which the special assessment was levied, particularly the portion thereof that specified the assessments were to be "collected in like manner as other taxes are by law collectible."

Based upon this decision of the Supreme Court, which has been cited and followed in subsequent cases [see, e.g., Johnson County Comm'rs v. Robb, 161 Kan. 683, 691 (1946) and White v. Immenschuh, 106 Kan. 333, 336 (1920)], we believe that any special assessment, which, by law, is to be collected in the same manner as other taxes, is encompassed within the provisions of K.S.A. 1980 Supp. 79-2004, which provides:

"Any person charged with real estate taxes on the tax books in the hands of the county treasurer may at such person's option pay the full amount thereof on or before the twentieth day of December of each year, or the one-half thereof on or before the twentieth day of December and the remaining one-half on or before the twentieth day of June next ensuing, except that if the full amount of the real estate taxes listed upon any tax statement shall be ten dollars or less the entire amount of such tax shall be due and payable on or before the twentieth day of December.

"In case the said first half of said real estate taxes remain unpaid after the twentieth day of December, said first half of said tax shall draw interest at the rate per annum prescribed by K.S.A. 1980 Supp. 79-2968(b), and may be paid at any time prior to June twentieth following by paying said one-half of tax together with interest at above rate from December twentieth to date of payment. And all real estate taxes of the preceding year and accrued interest thereon which shall remain due and unpaid on June twenty-first shall draw interest at the rate per annum prescribed by K.S.A. 1980 Supp. 79-2968(b) from June twentieth until paid, or real estate sold for taxes by foreclosure as provided by law. Taxes levied in any year prior to 1980 and any interest accrued thereon under the provisions of former law which remain due and unpaid on December 20, 1980, shall draw interest at

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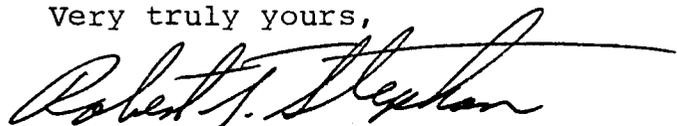
the rate per annum prescribed by K.S.A. 1980 Supp. 79-2968(b) from and after December 20, 1980. All interest herein provided shall be credited to the county general fund, and whenever any such interest is paid the county treasurer shall enter the amount of interest so paid on the tax rolls in the proper column and account for such sum." (Emphasis added.)

Consonant with our opinion that this statute applies to both general property taxes and special assessments, it is pursuant to the above-emphasized provisions that interest is charged upon unpaid (delinquent) special assessments. The rate of interest is prescribed in K.S.A. 1980 Supp. 79-2968, in which it is provided:

"Except as otherwise specifically provided by law, whenever interest is charged under any law of this state upon any delinquent or unpaid taxes levied or imposed by the state of Kansas or any taxing subdivision thereof the rate thereof shall be: (a) One and one-half percent per month if computed monthly; and (b) eighteen percent per annum if computed annually."

Thus, in response to your inquiry, we are of the opinion that the provisions of K.S.A. 1980 Supp. 79-2004 grant the authority for the charging of interest on delinquent special assessments, when said special assessments, by law, are to be collected in the same manner as other taxes.

Very truly yours,



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RTS:BJS:RJB:jm