



STATE OF KANSAS

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April 26, 1982

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ATTORNEY GENERAL OPINION NO. 82-95

The Honorable Fred W. Rosenau  
State Representative, 39th District  
3050 South 65th Street  
Kansas City, Kansas 66106

The Honorable David L. Webb  
State Representative, 27th District  
Box 163  
Stilwell, Kansas 66085

Re: Counties and County Officers--Public Improvements--  
Sewer Districts; Collection of Special Assessments  
and Enforcement of Delinquencies

Synopsis: Pursuant to K.S.A. 19-2731 et seq., a board of county commissioners is empowered to raise money for the construction of both main and lateral sewers through the issuance of general obligation bonds. Said bonds shall be paid for through the making of special assessments on the land in the district, and, at the option of the board of county commissioners, on the improvements thereto (K.S.A. 19-27,153). These assessments are to be collected in the same manner as other property taxes. Accordingly, the failure by a property owner to pay such an assessment subjects the property to sale by the county. In the event of a dispute over the amount or validity of such an assessment, a property owner must follow procedures established by statute for challenging the assessment, and cannot as an alternative withhold the disputed portion from the total taxes and assessments due on the property. Cited herein: K.S.A. 19-2735, 19-2737, 60-907, K.S.A. 1981 Supp. 60-2301, 79-2004, 79-2005, K.S.A. 79-2302.

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Dear Representatives Rosenau and Webb:

As state representatives from districts located in whole or in part in Johnson County, you request our opinion on two questions which relate to special assessments. Specifically, you inquire whether the owner of property which is subject to such an assessment may withhold payment of the amount due if he contests the manner in which the assessment has been levied. Further, you ask whether, in the event of non-payment, a property owner's residence may be subject to sale by the county for such assessments.

Briefly, you inform us that a sewer district was organized at some time in the past by Johnson County in the area near Stanley, Kansas. Designated as Blue River District No. 5, you state that the district was originally designed to provide service for a number of new residences and other buildings. Due to various factors, only a few of these anticipated structures have actually been built. As a result, you state that the lots which have been developed, together with existing residences, face large special assessments, so large in fact some property owners are faced with the possibility of nonpayment.

Your first inquiry concerns whether the affected property owners may elect to withhold payment of the assessments in question, while at the same time continuing to pay all other assessments and ad valorem levies. We presume that under such a scenario such withholding would continue until an adjustment in the amount of the assessment could be made, or another solution reached.

In our opinion, under present law such an option is not available to property owners in the district. The controlling statutes in this area, K.S.A. 19-2731 et seq., empower the board of county commissioners to establish and develop both main and lateral sewer districts, which developments may be financed through the issuance of general obligation bonds. The principal and interest payments on such bonds are paid through the levying of special assessments. In speaking to the manner of collecting such assessments, K.S.A. 19-2735 (concerning main sewer districts) and 19-2737 (lateral sewer districts) contain virtually identical wording. For example, K.S.A. 19-2735 states that:

"The amount to raise such fund shall be levied and collected annually as one tax in addition to other taxes and assessments and shall be by the county clerk, and when so ordered by the board of county commissioners, placed upon the tax roll for collection, subject to the same penalties,

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entitled to the same rebate, and collected  
in the same manner as other taxes." (Emphasis  
added.)

From the above, it is clear that special assessments for such sewer districts should be treated for collection purposes in the same manner as ad valorem taxes levied by governmental units pursuant to general taxing authority. This principle has been established in Kansas since at least 1890, when the Supreme Court decided Sanger v. Rice, 43 Kan. 580. At issue there was an assessment made by the city of Fort Scott for the surfacing of streets, which assessment was to be "levied and collected as one tax, in addition to the taxes for general revenue purposes." 43 Kan. at 588. The court viewed the assessment as identical to a tax for purposes of collection, a conclusion which we reach here as well. General authorities, it may also be noted, also recognize the similar nature of the two types of levies. See 14 McQuillin, Municipal Corporations, §§38.255, 38.311 (1970).

As this is the case, one may look to those statutes which govern the collection of ad valorem taxes. Specifically, K.S.A. 1981 Supp. 79-2001 et seq. provide the manner in which a county treasurer collects taxes on real property. Pursuant to this procedure, a tax statement is sent to each taxpayer by December 15, with the latter given two options (by K.S.A. 1981 Supp. 79-2004) as to payment, namely payment in full by December 20 or one-half on that date and one-half on the following June 20. No discretion is given a taxpayer to tender, nor the county treasurer to accept, any payments other than the above. Rather, if a taxpayer feels that all or a part of the taxes are based on illegal or void assessments, he is limited to paying the amounts due, and then initiating protest procedures. K.S.A. 1981 Supp. 79-2005. [Alternatively, injunctive relief may be available under K.S.A. 60-907(a).] In our opinion, the same would be true here, i.e., a property owner could not withhold payment of the disputed amount pending some type of future resolution.

Your second question concerns the possible result if the special assessment imposed for the sewer district is not paid. As the statutes authorizing such assessments state that they are to be subject to the same penalties as other taxes, we may again look to general law on the subject. Such statutes are found at K.S.A. 79-2301 et seq., wherein are set out the procedures to be followed if taxes on real estate are not paid. K.S.A. 79-2302 provides that affected parcels may be sold for the amount of the delinquent taxes and legal charges which are due thereon. In light of the wording of K.S.A. 19-2735 and 19-2737 concerning the collection of sewer district assessments, there can be no question that the

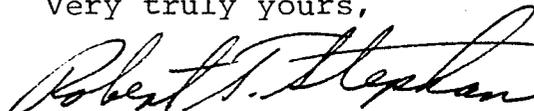
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county is empowered to proceed with the sale of properties on which such assessments are not paid, pursuant to K.S.A. 79-2301 et seq. See, e.g. Challiss v. Parker, 11 Kan. 384, 393 (1873).

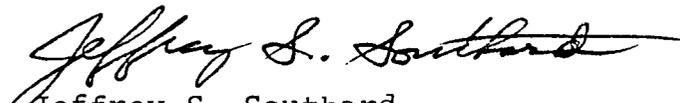
Nor in our opinion is the protection of K.S.A. 1981 Supp. 60-2301 available. That statute, creating an exemption from forced sales for a homestead, states that "no property shall be exempt from sale for taxes." (Emphasis added.) Given all of the above authorities, special assessments would again clearly be considered as "taxes," and so be excluded from the general homestead exemption.

In conclusion, a board of county commissioners is empowered to raise money for the construction of both main and lateral sewers through the issuance of general obligation bonds. Said bonds shall be paid for through the making of special assessments on the land in the district, and, at the option of the board of county commissioners, on the improvements thereto (K.S.A. 19-27,153). These assessments are to be collected in the same manner as other property taxes. Accordingly, the failure by a property owner to pay such an assessment subjects the property to sale by the county. In the event of a dispute over the amount or validity of such an assessment, a property owner must follow procedures established by statute for challenging the assessment, and cannot as an alternative withhold the disputed portion from the total taxes and assessments due on the property.

Very truly yours,



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