



STATE OF KANSAS

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May 4, 1982

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ATTORNEY GENERAL OPINION NO. 82- 101

The Honorable David L. Webb
State Representative, Twenty-Seventh District
Box 163
Stilwell, Kansas 66085

Re: Taxation--Kansas Retailers' Sales Tax--
Constitutionality of Tax Imposed Upon Gross
Receipts Received from the Sale of Newspapers

Synopsis: The Kansas retailers' sales tax imposed upon the gross receipts received from the sale of newspapers at retail does not abridge the freedom of the press guaranteed by the First and Fourteenth Amendments to the Federal Constitution. Cited herein: U. S. Const., Amends. I and XIV, §1.

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Dear Representative Webb:

You request our opinion as to the constitutionality of the Kansas Retailers' Sales Tax Act. Specifically, you ask whether the tax imposed upon the gross receipts received from the sale of newspapers at retail abridges the freedom of the press guaranteed by the First and Fourteenth Amendments to the Federal Constitution.

The constitutionality of a state sales tax which included within its scope sales from the publication of newspapers was considered in Giragi v. Moore, 64 P.2d 819, appeal dismissed, 301 U.S. 670 (1936). In that case, it was contended that the imposition of a sales tax at the rate of 1% upon the gross proceeds received

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from the publication of newspapers constituted "a previous restraint upon the business of publishing a newspaper." In rejecting said contention, the Arizona Supreme Court stated as follows:

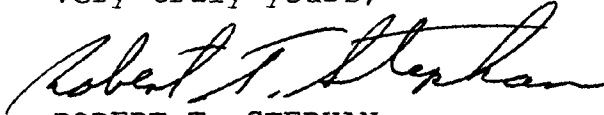
"It is obvious the tax will reduce to its extent the net income of all persons required to pay it, including newspaper publishers. Every business taxed faces the same problem. If security of life and property were possible without expense, taxes could be forgotten, but, since that is not possible, all who share the protection given by the government should also share the expense of that protection in proportion to their ability, regardless of the business they are engaged in, if it is for profit. The mere fact that a tax reduces a person's net income is no legal restraint on him or his business. If the taxpayer is a newspaper publisher, it must appear that the law not only 'takes money from the pockets,' but also that the law was adopted by the state as a 'form of previous restraint upon printed publications, or their circulation.' If it is so adopted, then, however small the tax may be, it is bad and in violation of due process. It is not the amount of the tax, but the use of it as a means to abridge the freedom of the press, that is forbidden. The adoption of chapter 77, supra, was for the sole purpose of raising revenue and is, therefore, not within the spirit of the prohibition of the Fourteenth Amendment against depriving one of the fundamental right of due process." (Emphasis added.)
64 P.2d at 822.

In our opinion, the Kansas retailers' sales tax, like the Arizona sales tax considered in Giragi, was imposed for the sole purpose of raising revenue, and was not enacted as a means of abridging the freedom of the press. Therefore, in our judgment, the Kansas retailers' sales tax imposed upon the gross receipts received from the sale of newspapers at retail does not abridge

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the freedom of the press guaranteed by the First and Fourteenth
Amendments to the Federal Constitution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm