



STATE OF KANSAS

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July 12, 1982

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ATTORNEY GENERAL OPINION NO. 82-156

Mr. Lynn Burris, Jr., Director
Kansas State Park and Resources
Authority
503 Kansas Avenue, P. O. Box 977
Topeka, Kansas 66601

Re: Taxation--Kansas Retailers' Sales Tax--Sales to
Contractors on Projects of Kansas Park and
Resources Authority

Synopsis: Sales of tangible personal property to contractors
working on a construction project of the Kansas
Park and Resources Authority are not exempt from
the Kansas retailers' sales tax. Cited herein:
K.S.A. 12-635, K.S.A. 1981 Supp. 74-4510 (as amended
by 1982 House Bill No. 3026), K.S.A. 79-3601, K.S.A.
1981 Supp. 79-3602 (as amended by 1982 House Bill
No. 2665), 79-3603, 79-3606 (as amended by 1982
Senate Bill No. 738 and House Bill Nos. 2744 and
3174).

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Dear Mr. Burris:

You request our opinion regarding tax exempt status for contractors
doing construction work for the Kansas State Park and Resources
Authority (Authority). Specifically, you note that sales of
materials purchased by contractors doing construction work for
other governmental entities, including the U.S. Army Corps of
Engineers, are exempt from the tax imposed under the Kansas
Retailers' Sales Tax Act (K.S.A. 79-3601 et seq.), but you have
been advised by the State Department of Revenue that similar
purchases by contractors doing construction work for the Authority
do not enjoy such exempt status.

Mr. Lynn Burris
Page Two

There is imposed by K.S.A. 1981 Supp. 79-3603(1), "a tax at the rate of 3% upon the gross receipts received from the sales of tangible personal property to all contractors, subcontractors or repairmen of materials and supplies for use by them in erecting structures for others, or building on, or otherwise improving, altering, or repairing real or personal property for others." However, K.S.A. 1981 Supp. 79-3606 (as amended by 1982 Senate Bill No. 738 and House Bill Nos. 2744 and 3174) enumerates those sales which are exempt from such tax. Subsection (e) thereof affords such exemption to sales of tangible personal property to contractors doing work for the federal government.

This provision is consistent with the well-established principle of constitutional law that a state may not impose a sales tax upon purchases by the United States government and its agencies, because a sales tax so imposed would impair the sovereignty of the federal government. 140 A.L.R. Sales or Use Tax 621. K.S.A. 1981 Supp. 79-3606(e) (as amended) simply extends this privilege to "all sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for the government of the United States, its agencies or instrumentalities, which would be exempt from taxation if purchased directly by the government." (Emphasis added.) Therefore, it is apparent that purchases by a contractor working on the El Dorado State Park Project for the United States Army Corps of Engineers, which is specifically referred to in K.S.A. 12-635 et seq. as an agency of the United States government, are exempt from the Kansas retailers' sales tax.

By contrast, all sales of tangible personal property or services "purchased directly by the state of Kansas" (including the Authority) are exempted (subject to certain exceptions) from the sales tax under K.S.A. 1981 Supp. 79-3606(b), but this subsection does not extend the exemption to sales of such property purchased by a contractor working for the state. We also note that K.S.A. 1981 Supp. 79-3606(d) (as amended) exempts

"all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state the total cost of which is paid from funds of such political subdivision and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision." (Emphasis added.)

Mr. Lynn Burris
Page Three

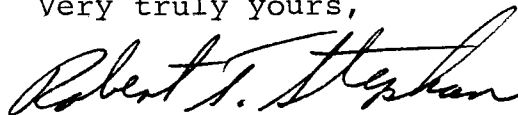
However, in our opinion such exemption is not applicable to the Authority's projects. "Political subdivision" is defined for the purposes of the Kansas Retailers' Sales Tax Act in subsection (n) of K.S.A. 1981 Supp. 79-3602 (as amended by 1982 House Bill No. 2665) as

"any municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state or which certifies a levy to a municipality, agency or subdivision of the state which is, or shall hereafter be, authorized to levy taxes upon tangible property within the state."

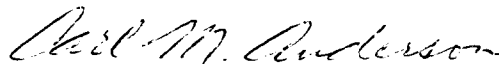
Thus, to qualify for the exemption in K.S.A. 1981 Supp. 79-3606(d) (as amended), the purchases must be made by a contractor working on a construction project for a governmental entity which has the power to levy taxes on tangible property or certify a tax levy. The Authority is empowered by K.S.A. 1981 Supp. 74-4510 (as amended by 1982 House Bill No. 3026) to collect "fees, tolls, rentals, and charges," but has no authority to levy taxes. Thus, since the Authority does not qualify as a "political subdivision" for the purposes of K.S.A. 1981 Supp. 79-3606(d) (as amended), sales of tangible personal property to a contractor working for the Authority are not tax exempt thereunder.

Accordingly, since we are unaware of any other provisions of K.S.A. 1981 Supp. 79-3606 (as amended) having any apparent application to contractors working on the Authority's construction projects, it is our opinion that sales of tangible personal property to such contractors are not exempt from the Kansas retailers' sales tax.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Carl M. Anderson
Assistant Attorney General

RTS:WEH:CMA:jm