



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 26, 1982

MAIN PHONE 19131 296-2215
CONSUMER PROTECTION 296-3751
ANTITRUST 296-5299

ATTORNEY GENERAL OPINION NO. 82-230

Honorable Norma L. Daniels
Senator, Thirty-First District
Room 462-East, Capitol
Topeka, Kansas 66612

Re: Taxation--Intangibles Tax--Petition to Repeal

Synopsis: A petition, prepared and filed under the supposed authority of K.S.A. 1981 Supp. 79-3109(b), which was filed after March 5, 1982, is legally ineffective, since the Kansas Supreme Court, on said date, declared that subsection of law unconstitutional.

Also, to be valid, a petition authorized under section 1 of 1982 House Bill No. 3142 must comply with the requirements of K.S.A. 25-3601 et seq. Cited herein: K.S.A. 25-3601, 25-3602, K.S.A. 79-3108 (now repealed), K.S.A. 1981 Supp. 79-3109 (now repealed); L. 1982, ch. 63; L. 1982, ch. 407.

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Dear Senator Daniels:

You have submitted to us a petition which was circulated in Valley Center and which attempts to request the governing body of the city to submit to a vote of the electors, the question of whether the city should eliminate its intangibles tax levy. The petition is addressed to the governing body of the city of Valley Center, Kansas, and contains the following request: "We the undersigned voters of the City of Valley Center, Kansas, do hereby petition you to place on a referendum the question of eliminating the intangibles tax."

You indicate that the petition was filed with the Sedgwick County Election Commissioner on March 15, 1982. You then note that the date of filing was nearly two months before the date that legislation repealing the former intangibles tax law, K.S.A. 79-3108 et seq., and providing for a local option gross earnings tax, became effective. Of course, the laws to which you refer are 1982 House Bill No. 3130 (L. 1982, ch. 407) and 1982 House Bill No. 3142 (L. 1982, ch. 63), respectively, each of which became effective May 13, 1982. Finally, you explain that the city's current "gross earnings" or "intangibles" tax was imposed under the provisions of 1982 House Bill No. 3142.

Based upon these facts, you ask:

"1. Is the form of the request stated on the petition sufficient to require a referendum on the intangibles tax, assuming all other legal requirements have been fulfilled?

"2. As the petition was filed prior to the effective date of the new statute, does the petition have the legal effect of requiring the City Council to place the question on the ballot?"

We shall respond to your questions in reverse order.

On the date this petition was filed, March 15, 1982, the statutory provisions which authorized its filing were no longer in existence, legally. The Kansas Supreme Court, on March 5, 1982, handed down its decision in Von Ruden v. Miller, 231 Kan. 1 (1982), holding subsection (b) of K.S.A. 1981 Supp. 79-3109 (now repealed), which had authorized the filing of such a petition, to be unconstitutional. Id. at Syl. ¶7. Moreover, while the Court specified that its decision "shall apply prospectively" (231 Kan. at 15), we note that its decision clearly was rendered prior to the time this petition was filed. Thus, while the legislature did not repeal K.S.A. 1981 Supp. 79-3109 until May 13, 1982, the provisions of that statute were void as of March 5, 1982, due to the decision of the Kansas Supreme Court. Consequently, K.S.A. 1981 Supp. 79-3109(b) supplied no authority for the filing of this petition.

In addition, we also call your attention to the provisions of subsection (e) of section 1 of HB 3142, which state, in relevant part:

"On or after January 1, 1983, upon submission of a petition signed by not less than 5% of the qualified electors of a

Honorable Norma L. Daniels
Page Three

county, city or township levying a tax under the provisions of this act requesting the same, the governing body of such taxing subdivision shall be required to submit to the electors . . . [the question provided in this statute]." (Emphasis added.)

Thus, under the "new" intangibles tax law, HB 3142, a petition cannot be filed until "on or after January 1, 1983." Thus, the petition filed on March 15, 1982, has no effect under the provisions of HB 3142.

Based upon the foregoing rationale, we must conclude that the petition about which you inquire does not require the governing body of Valley Center, Kansas, to submit to a vote of the electorate the question of whether its current intangibles tax levy should be eliminated.

Your other inquiry is whether the form of the request on the petition is legally sufficient to require a vote by the city electors. In light of our conclusion that the petition in question is of no legal force or effect, it, technically, is unnecessary to respond to this question. However, given the public interest in this matter, you should be advised that, since the "new" intangibles tax law (HB 3142) prescribes no details regarding the content or procedure for circulating and filing the petitions authorized under the new law, we believe the provisions of K.S.A. 25-3601 et seq. are applicable.

K.S.A. 25-3601, in relevant part, provides:

"Whenever under the laws of this state a petition is required or authorized as a part of the procedure applicable to any county, city, school district or other municipality, or part thereof, the provisions of this act shall apply, except as is otherwise specifically provided in the statute providing for such petition."

K.S.A. 25-3602(b) provides, in part: "Each petition shall, unless otherwise specifically required: (1) Clearly state the question which petitioners seek to bring to an election." (Emphasis added.) We note that the petition you submitted does not state any question. Instead, it merely contains a sentence requesting that the governing body take certain action. Therefore, we must conclude that this petition does not fulfill the requirement of K.S.A. 25-3602 (b)(1), quoted above. Also, neither the prior law nor the provisions

of HB 3142 provide for an election merely on the question of whether a county, city or township shall eliminate its intangibles tax. The question to be submitted is required to be in substantially the following form:

"'Shall _____ (county) (city) (township) eliminate the tax on gross earnings derived from money, notes and other evidence of debt and be authorized to impose and levy property taxes, in addition to any aggregate levy amount limitation on the taxing subdivision's ad valorem tax levy authority, as may be necessary to offset the revenue lost from elimination of the tax on gross earnings derived from money, notes and other evidence of debt?'" (Emphasis added.)
L. 1982, ch. 63, §1(e).

Thus, the question to be submitted to the voters is not merely whether the tax on gross earnings should be eliminated, but also whether authority should be given to increase property taxes. The petition you submitted makes no mention of this fact.

We also call your attention to the fact K.S.A. 25-3602(b) prescribes, in great detail, other requisites a petition must meet in order to be valid. The petition here under review fails to comply with two of these additional requirements. Specifically, K.S.A. 25-3602(b) (3) requires that each petition shall "contain the following recital above the spaces provided for signatures: 'I have personally signed this petition; I am a registered elector of the state of Kansas and of _____ (here insert the name of political or taxing subdivision), and my residence address is correctly written after my name.'" (Emphasis added.) This recital is not contained in the petition you submitted.

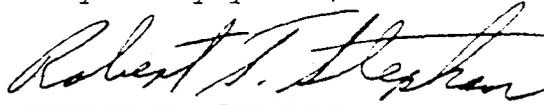
In addition, K.S.A. 25-3602(b) (3) also states: "Such recital [i.e., the above-quoted recital] shall be followed by blank spaces for the signature, residence address and date of signing for each person signing such petition." (Emphasis added.) In the petition you submitted, no space is provided in which each person can indicate the date on which he or she signed the petition.

The matter of circulating a petition to seek that a particular question be submitted to a vote is a serious matter. Thus, it is important that each of the clearly-stated requirements of K.S.A. 25-3602 be met. Persons desiring to prepare and circulate a petition can obtain a copy of this law from the county or district attorney, or from this office.

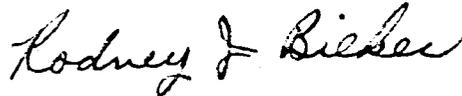
Honorable Norma L. Daniels
Page Five

In summary, therefore, it is our opinion that a petition, prepared and filed under the supposed authority of K.S.A. 1981 Supp. 79-3109(b), which was filed after March 5, 1982, is legally ineffective, since the Kansas Supreme Court, on said date, declared that subsection of law to be unconstitutional. We also conclude that a petition, to be valid, must comply with the requirements of K.S.A. 25-3601 et seq.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm