



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

November 4, 1982

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 82-234

Honorable Homer E. Jarchow
Representative, Ninety-Fifth District
2121 West Douglas
Wichita, Kansas 67213

Re: Kansas Constitution--Finance and Taxation--
Uniform and Equal Rate of Assessment and Taxation

Taxation--Property Exempt From Taxation--Property
Constructed or Purchased in Part with Industrial
Revenue Bond Proceeds

Synopsis: Based upon the Kansas Supreme Court's differentiation of "permissible" and "impermissible" partial exemptions, and the declaration of public purpose provided in K.S.A. 1981 Supp. 12-1740, it cannot be concluded, as a matter of law, that the portion of K.S.A. 1981 Supp. 79-201a, Second, (as amended by L. 1982, ch. 389, §1), which grants a partial exemption from taxation to property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, is prohibited by Article 11, Section 1, of the Kansas Constitution. Cited herein: K.S.A. 1981 Supp. 12-1740, 12-3418, 79-201a, as amended by L. 1982, ch. 389, §1, 79-3120a (now repealed), L. 1982, ch. 63, §9, Kan. Const., Art. 11, §1.

*

*

*

Honorable Homer E. Jarchow
Page Two

Dear Representative Jarchow:

You seek an opinion concerning the constitutional validity of the following two sentences of K.S.A. 1981 Supp. 79-201a, Second, (as amended by L. 1982, ch. 389, §1):

"Any property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, shall be exempt from taxation to the extent of the value of that portion of the property financed by the revenue bonds and only for a period of 10 calendar years after the calendar year in which the bonds were issued. The exemption of that portion of the property constructed or purchased with the proceeds of revenue bonds shall terminate upon the failure to pay all taxes levied on that portion of the property which is not exempt and the entire property shall be subject to sale in the manner prescribed by K.S.A. 79-2301 et seq., and amendments thereto." (Emphasis added.)

You question whether the above-quoted provisions violate Article 11, Section 1, of the Kansas Constitution, which, in part relevant to your inquiry, states: "The legislature shall provide for a uniform and equal rate of assessment and taxation"

Under the statutory provisions quoted above, certain property is exempt from taxation to a limited extent. Thus, conversely, the same property is subject to taxation to a limited extent. The property is exempt from taxation only "to the extent of the value of that portion of the property financed by the revenue bonds." It follows, therefore, that the property is subject to taxation only to the extent of the value of that portion of the property which is not financed with the revenue bonds. Hence, under these provisions, the full value of certain property is not used as the basis of assessment for such property for purposes of property taxation.

On two separate occasions within recent years, the Kansas Supreme Court has held that Article 11, Section 1, of the Kansas Constitution prohibits the legislature from prescribing that a value, other than the full fair market value, of farm machinery and equipment shall be used as the basis of assessment for such property for purposes

of property taxation. See State ex rel. Stephan v. Martin (Martin III), 230 Kan. 759 (1982), and State ex rel. Stephan v. Martin (Martin I), 227 Kan. 456 (1980). Accordingly, until the Court rendered its decision in Von Ruden v. Miller, 231 Kan. 1 (1982), we believed the Martin cases established that Article 11, Section 1, of the Kansas Constitution prohibits the granting of partial exemptions from property taxation.

However, in Von Ruden, the Court upheld the constitutionality of the property tax exemption granted in K.S.A. 1980 Supp. 79-3120a(c) (now repealed, see L. 1982, ch. 407, §5, but see also L. 1982, ch. 63, §9). This statute provided in part:

"The following shall be and are hereby exempt from taxes levied under the provisions of K.S.A. 1979 Supp. 79-3109, and amendments thereto, and from all other property or ad valorem taxes levied under the laws of the state of Kansas:

. . . .

"(c) money, notes and other evidences of debt, to the extent of the tax liability hereinafter provided, which is owned by a person who has a disability or was sixty (60) years of age or older on January 1 of the year in which an exemption is claimed hereunder. The exemption allowable under this subsection shall be in an amount equal to the lesser of the following: (1) The amount of the tax liability on the first three thousand dollars (\$3,000) of gross earnings from said money, notes and other evidence of debt; or (2) the amount of the tax liability on the first three thousand dollars (\$3,000) of gross earnings from said money, notes and other evidences of debt reduced by the amount that the owner's income exceeds twelve thousand five hundred dollars (\$12,500), including in such owner's income the income of such person's spouse, in the year next preceding that in which the exemption is claimed under this subsection." (Emphasis added.)

It is clear that these provisions grant a partial exemption from taxation for certain money, notes and other evidences of debt. However, the Court upheld the validity of these provisions, saying:

"It is reasonable to assume that persons in this category use the income generated by this property as a primary means of support. By exempting [a limited amount of] the income generated by intangibles owned by low income persons, more funds remain in their households and the amount of public assistance outlay is thereby reduced. Obviously, the statute serves a public purpose It is of note that this exemption differs from the provision reducing the assessed [appraised] value of certain farm machinery and equipment found unconstitutional in State ex rel. Stephan v. Martin, 227 Kan. 456, 608 P.2d 880 (1980). That provision did not exempt such property from taxation based on a purpose promoting the general welfare. Rather, it purposefully sought to alter the assessment rate of particular property for the purpose of benefiting a particular class of persons" (Emphasis added.) Id. at 14-15.

In Martin I, supra, the Court specifically found that "the provision reducing the appraised valuation of certain farm machinery and equipment" was a partial exemption from taxation. See 227 Kan. at 467-468. Then, the Court said: "In this respect [i.e., in granting a partial exemption], the law violates the requirements of art. 11, §1 of the Kansas Constitution mandating uniformity and equality in the basis of assessment." (Emphasis added.) Id. at 468.

Notwithstanding this clear and unambiguous statement of the Court in Martin, we must conclude from the above-quoted statements of the Court in Von Ruden, that it was not the fact that the provisions of K.S.A. 1979 Supp. 79-342 granted a partial exemption from taxation which rendered that law unconstitutional, but instead, the law was unconstitutional because the partial exemption was "for the purpose of benefiting a particular class of persons," and not for the "purpose [of] promoting the general welfare." Von Ruden, supra at 15.

Thus, notwithstanding the fact that the above-quoted provisions of K.S.A. 1981 Supp. 79-201a, Second, as amended, grant a partial exemption from taxation, we are constrained, under the statement made by the Court in Von Ruden, from concluding, as a matter of law, that these provisions are constitutionally prohibited merely because they prescribe a partial exemption from taxation.

However, the Supreme Court has consistently held that any statutory exemption of property from property taxation must "have a public purpose and promote the general welfare." See Von Ruden v. Miller,

supra at 14; State ex rel. Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, Syl. ¶3 (1981); State, ex rel., v. Board of Regents, 167 Kan. 587, 596 (1949); and Sumner County v. Wellington, 66 Kan. 590, 593 (1903). The question, therefore, arises whether this statutory exemption has a public purpose and promotes the general welfare. In regard to this issue, the Court has said: "Within the scope of legislative power, the legislature itself is the judge of what exemptions are in the public interest and will conduce to the public welfare." Gunkle v. Killingsworth, 118 Kan. 154, 157 (1925). Accord, State ex rel. Tomasic v. Kansas City, Kansas Port Authority, supra at 412; and State, ex rel., v. Board of Regents, supra at 596.

In the recent case of State ex rel. Tomasic v. Kansas City, Kansas Port Authority, supra, the Supreme Court upheld the constitutionality of a statute which exempted property owned by a port authority from taxation. Moreover, the Court upheld the statute, even though it also provided that the exemption was to continue if the property was leased to a non-governmental entity. In upholding the validity of this tax exemption statute, the Court said:

"It cannot be seriously contended the port authority property or bonds will be 'used exculsively' for one of the constitutionally enumerated exemptions. Therefore, the exemption, if valid, must meet the criteria for statutory exemption. The legislature has declared an exemption because the 'exercise of the powers granted by this act will be in all respects for the benefit of the people of this state.' K.S.A. 1980 Supp. 12-3418. Certainly economic benefits flow from the powers vested in port authorities, and the court cannot say there is not public purpose and promotion of the general welfare in such benefits. The exemption is constitutionally valid." (Emphasis added.)
Id. at 412-413.

Hence, it can be seen that the Court upheld the exemption because the "Port Authority Act," K.S.A. 1981 Supp. 12-3401 et seq., contained a legislative declaration that the act will promote the general welfare. Following this rationale of the Court, we note that the legislature has declared the purpose of the "Industrial Revenue Bond Act," K.S.A. 12-1740 to 12-1749, inclusive, as follows:

"It is the purpose of this act to promote, stimulate and develop the general welfare and economic prosperity of the

state of Kansas through the promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources and of recreational development in the state; to encourage and assist in the location of new business and industry in this state and the expansion, relocation or retention of existing business, industry and health development; and to promote the economic stability of the state"
(Emphasis added.) K.S.A. 1981 Supp. 12-1740.

If it is "certain" that "economic benefits flow from the powers vested in port authorities" under the provisions of K.S.A. 1981 Supp. 12-3401 et seq., and, thus, the exemption provided in K.S.A. 1981 Supp. 12-3418 is constitutionally permissible, we cannot conclude, as a matter of law, that economic benefits do not also flow from the powers vested in cities and counties under the provisions of K.S.A. 1981 Supp. 12-1740 et seq. Moreover, just as the Court could not say "there is not public purpose and promotion of the general welfare" which flow from the powers vested in port authorities, we cannot say there is not public purpose and promotion of the general welfare which flow from the powers vested in cities and counties under K.S.A. 1981 Supp. 12-1740 et seq.

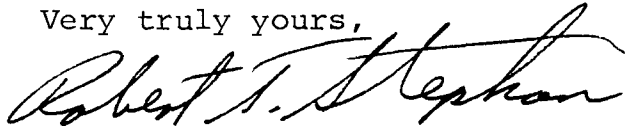
Thus, we cannot conclude, as a matter of law, that the partial exemption from taxation granted to certain property under the above-quoted provisions of K.S.A. 1981 Supp. 79-201a, Second, as amended, is not "based on a purpose promoting the general welfare," and is granted merely "for the purpose of benefiting a particular class of persons." Von Ruden, supra at 15. Hence, based upon the Court's differentiation, in Von Ruden, of "permissible" and "impermissible" partial exemptions, and the declaration of public purpose provided in K.S.A. 1981 Supp. 12-1740, we cannot conclude, as a matter of law, that the portion of K.S.A. 1981 Supp. 79-201a, Second, as amended, which grants a partial exemption from taxation to property constructed or purchased in part with the proceeds of revenue bonds issued on or after July 1, 1981, under the authority of K.S.A. 12-1740 to 12-1749, inclusive, and amendments thereto, violates Article 11, Section 1, of the Kansas Constitution.

In concluding, we note that the distinction made in Von Ruden, supra, between "permissible" and "impermissible" partial exemptions represents a significant departure from prior interpretations of Article 11, Section 1 of our constitution, developed nearly from statehood, holding that this constitutional provision requires

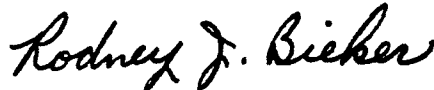
Honorable Homer E. Jarchow
Page Seven

uniformity and equality in the burden of taxation. See Martin I, supra, and the cases cited therein at 461. While the total exemption of property from taxation does not disturb this principle, the partial exemption of property from taxation creates non-uniformity and inequality in the burden of taxation. Clearly, when property is subject to taxation, but such property is valued for purposes of taxation at less than its fair market value, such property is burdened by taxation to a lesser extent than property valued for purposes of taxation at fair market value. Such is the case here. Property constructed or purchased in part by industrial revenue bond proceeds is valued for taxation purposes at less than its fair market value. It is valued at its fair market value less the value of that portion of the property financed by the revenue bonds. Thus, some of that property's tax burden is shifted to other property subject to taxation. However, until the Supreme Court clarifies or retracts its statement in Von Ruden, supra, we must conclude that Article 11, Section 1, of the Kansas Constitution permits the granting of partial exemptions from taxation, so long as the exemption is "based on a purpose promoting the general welfare" and is not merely "for the purpose of benefiting a particular class of persons." Von Ruden, supra at 15.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm