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April 1, 1983

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ATTORNEY GENERAL OPINION NO. 83-44

Honorable Jack Steineger
Senate Minority Leader
State Senator, Sixth District
Room 347-N, State Capitol
Topeka, Kansas

Re: Amendments to U.S. Constitution--Rights and
Immunities of Citizens--Fourteenth Amendment;
Equal Protection; Due Process

Kansas Constitution--Legislative--Not More than
One Subject in a Bill

Taxation--Severance or Mineral Production Tax--
Imposition and Administration

Synopsis: "Royalty interest owners" may be exempted from
tax liability under a severance or mineral pro-
duction tax. If, however, a royalty interest owner
exemption is provided, the exemption must be granted
to all persons who indeed are royalty interest owners,
regardless of the size of their royalty interest.

Additionally, the inclusion of reasonable provisions
in a severance tax bill prescribing the manner in
which the proceeds of the tax are to be handled
when collected and the purposes for which those
proceeds are to be used is not in violation of that
part of Article 2, Section 16, of the Kansas Constitution
which requires each bill to contain only one subject.

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Finally, the provisions of 1983 Substitute for Senate Bill No. 267 relating to a credit for property taxes are not so vague and indefinite that those provisions would be declared void for vagueness. Cited herein: 1983 Substitute for Senate Bill No. 267, U.S. Const., XIV Amend., Kan. Const., Art. 2, §16.

* * *

Dear Senator Steineger:

Just prior to the Senate's passage of 1983 Substitute for Senate Bill No. 267 (Sub. for SB 267), you asked for our opinion concerning several issues relating to various aspects of the proposed severance tax. Although the bill passed by the Senate does not provide for some of the aspects to which you refer, we shall respond to all of your questions, as each may become relevant in subsequent action on this proposed legislation.

The questions you pose are: (1) Is a "royalty exclusion" constitutional; (2) does "capping" the royalty exclusion at 12.5 percent violate equal protection; (3) is a "low-production" exemption constitutional; (4) does the inclusion of a trust fund or a county rebate fund violate the "one subject in a bill" requirement of Article 2, Section 16, of the Kansas Constitution; and (5) are the provisions in Sub. for SB 267, providing a credit for property taxes unconstitutional for vagueness.

As you know, legislation to impose a "severance" or "mineral production" tax in the state of Kansas has been considered on numerous occasions over the last several decades. The Office of the Attorney General, therefore, has been requested on previous occasions to render opinions on various issues raised by such proposed legislation. One of the reoccurring questions is whether the legislature, constitutionally, can exclude "royalty interest owners" from tax liability under a severance or mineral production tax.

In an unpublished letter opinion, dated March 30, 1957, issued to Representative Paul A. Wolf, Attorney General John Anderson, Jr., expressed the opinion "that a severance tax bill, properly worded, could constitutionally tax the producer and exempt the royalty interest owner." We concur in this opinion.

The proposal to exempt only certain royalty interest owners, however, in our judgment, might well be held unconstitutional.

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The basis for exempting certain royalty interest owners from the severance or mineral production tax, in our opinion, would be applicable to all royalty interest owners, regardless of the amount of the royalty they are to receive.

The Fourteenth Amendment to the United States Constitution, in part, provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." This is commonly referred to as "the equal protection clause of the Fourteenth Amendment." Essentially, this clause of the constitution requires a state to treat all persons similarly situated in the same manner. See Stevens Enterprises, Inc. v. State Commission of Revenue & Taxation, 179 Kan. 696, 704 (1956). Moreover, both the Kansas Supreme Court and United States Supreme Court have recognized that the equal protection clause applies in regard to matters of taxation. See Northern Natural Gas Co. v. Williams, 208 Kan. 407, 412 (1972), cert. denied 406 U.S. 964 (1972) and Hillsborough Township v. Cromwell, 326 U.S. 620, 66 S.Ct. 445, 90 L.Ed. 358 (1946). Specifically in Cromwell, the United States Supreme Court held: "The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class." (Emphasis added.) 326 U.S. at 623. Also, in Oliver Iron Mining Co. v. Lord, 262 U.S. 172, 43 S.Ct. 526, 67 L.Ed. 929 (1923), the Supreme Court said that a state, without violating the constitutional provision requiring equal protection of the laws, may select for taxation those engaged in one class of business and exclude others, "if all similarly situated are brought within the class, and all members of the class are dealt with according to uniform rules." (Emphasis added.) 67 L.Ed. at 930.

The size of a person's royalty interest, in our judgment, is not a rational basis for singling out such person from other royalty owners and imposing the severance or mineral production tax on such person, while not imposing it on other royalty interest owners. Thus, in our judgment, while all royalty interest owners may form a proper class for certain purposes germane to a severance or mineral production tax, we seriously doubt that a subclass of royalty interest owners may be subjected to such tax, while other such owners are not.

Turning to your question concerning the "low production" exemption, we note the Kansas Supreme Court has upheld similar exemptions provided in regard to other tax laws, including the Kansas Retailers' Sales Tax Act, wherein not all sales are taxable (Stevens Enterprises, Inc. v. State Commission of Revenue & Taxation, supra), the "intangibles" tax law, wherein not all earnings were taxed [see Von Ruden v. Miller, 231 Kan. 1 (1982)], and the mortgage registration fee (tax)

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law, wherein not all debts secured by mortgages on real property are subject to the tax. See Citizens Bank v. State Tax Commission, 132 Kan. 5, 8-10 (1931). See, also, Oliver Iron Mining Co. v. Lord, supra. Upon the authority of these cases, we perceive no constitutional problem with a "low-production" exemption.

You also ask whether inclusion of provisions in the bill creating a trust fund or a county rebate fund in the state treasury, into which proceeds of the tax will be deposited, violates the "one subject in a bill" requirement of Article 2, Section 16, of the Kansas Constitution. This section, in relevant part, provides: "No bill shall contain more than one subject"

In general terms, the Supreme Court has stated that this provision of the state constitution prohibits the legislature from "intermixing objects of legislation in the same act which have no relation to each other." State ex rel. v. Thiessen, 228 Kan. 136, 142 (1980), quoting Garten Enterprises, Inc. v. City of Kansas City, 219 Kan. 620, 622 (1976). Of course, a determination as to whether a bill impermissibly intermixes objects having no relation to each other necessarily requires close scrutiny of the various provisions of the particular bill. See Cashin v. State Highway Commission, 137 Kan. 744 (1933). Since the wording of a particular trust fund or county rebate fund has not been finalized, we are constrained to confine our response to a general answer. We are of the opinion, however, that the inclusion of reasonable provisions in a tax bill which direct the manner in which the proceeds of the tax are to be handled when collected and the purposes for which those proceeds are to be used is not in violation of Article 2, Section 16. The use of tax proceeds is as integral a part of a tax law as is the object or rate of the tax. After all, taxes are imposed to provide the funds with which to accomplish some public purpose or purposes. Thus, in our judgment, reasonable specifications as to the purposes for which the proceeds of a tax are to be used do not add an unrelated matter to the bill pursuant to which the tax is imposed, and such specification of purpose would not violate the one subject in a bill requirement of Article 2, Section 16.

Your last inquiry is whether the section in Sub. for SB 267 providing credits for property taxes is unconstitutional for vagueness.

In State, ex rel., v. Gaitskill, 133 Kan. 389 (1931), the Supreme Court said:

"While an act of the legislature should not be declared invalid for uncertainty if susceptible of a reasonable construction

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which will give it support and effect, it may be so . . . indefinite in its provisions as to be incapable of reasonable interpretation and application. In 25 R.C.L. 810 the rule is stated thus:

"Where an act of the legislature is so vague, indefinite and uncertain that the courts are unable to determine, with any reasonable degree of certainty, what the legislature intended, or is so incomplete . . . in its provisions that it cannot be executed, it will be declared to be inoperative and void.'" Id. at 395.

Thus, if the terms of a statute are so vague that the legislative intent cannot be discerned and the statute applied by the courts, the statute will be held void for vagueness. See State v. Goza, 4 Kan.App.2d 309 (1980). However, the Supreme Court also has determined that "[m]athematical certainty in language is not to be expected in a statute" and "[a] statute is not to be struck down as vague only because marginal cases could be put where doubts might arise." In re Brooks, 228 Kan. 541, Syl. ¶'s 3, 8 (1980).

We have reviewed the provisions of Sub. for SB 267 relating to the credit for property taxes and are of the opinion that said provisions are not so vague and indefinite that those provisions cannot be applied by the court. Thus, we do not believe the court would declare those provisions void for vagueness.

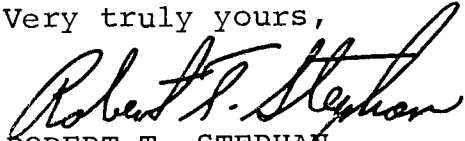
In summary, we are of the opinion that "royalty interest owners" may be exempted from tax liability under a severance or mineral production tax. We also are of the opinion, however, that, if a royalty interest owner exemption is provided the exemption must be granted to all persons who indeed are royalty interest owners.

Additionally, we are of the opinion that the inclusion of reasonable provisions in a severance tax bill prescribing the manner in which the proceeds of such tax are to be handled when received and the purposes for which those proceeds are to be used is not in violation of that part of Article 2, Section 16, of the Kansas Constitution which requires each bill to contain only one subject.

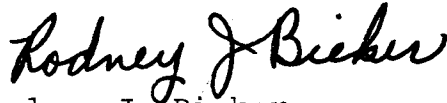
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Finally, we believe the provisions of Sub. for SB 267 relating to a credit for property taxes are not so vague and indefinite that those provisions would be declared void for vagueness.

Very truly yours,



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Attorney General of Kansas



Rodney J. Bieker
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RTS:BJS:RJB:jm