



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 175

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Re: Taxation--Property Exempt from Taxation--Business
Aircraft

Synopsis: K.S.A. 1982 Supp. 79-201k, which exempts aircraft used actually, regularly and exclusively in business or industry from property or ad valorem taxes, is not unconstitutional as a matter of law on the ground that the law lacks a rational basis. Cited herein: K.S.A. 1982 Supp. 79-201k, Kan. Const., Bill of Rights §1, U.S. Const., Amend. XIV.

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Dear Mr. Suelter:

As legal counsel for the city of Great Bend, you seek our opinion on the constitutionality of the property tax exemption granted by the provisions of K.S.A. 1982 Supp. 79-201k. This statute provides:

"(a) It is the purpose of this section to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of commerce within the state; to encourage the location of new business and industry in this state and the expansion,

relocation or retention of existing business and industry when so doing will help maintain or increase the level of commerce within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by exempting aircraft used in business and industry, from imposition of the property tax or other ad valorem tax imposed by this state or its taxing subdivisions. Kansas has long been a leader in the manufacture and use of aircraft and the use of aircraft in business and industry is vital to the continued economic growth of the state.

"(b) The following described property, to the extent herein specified, is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

"First. For all taxable years commencing after December 31, 1982, all aircraft actually and regularly used exclusively in the conduct of a business or industry."

The exemption prescribed by these provisions is commonly referred to as "the business aircraft exemption." The exemption was enacted by the 1982 Legislature and became effective for tax years 1983 and thereafter. See L. 1982, ch. 390, §4.

In your letter of inquiry, you question whether there is a rational basis upon which the legislature could have concluded that this exemption would promote the general welfare. If not, the law would violate the due process clause of the Fourteenth Amendment to the United States Constitution and Section 1 of the Bill of Rights of the Kansas Constitution, each of which protects persons residing in this state from arbitrary governmental action. See, e.g., Baker v. List and Clark Construction Co., 222 Kan. 127, 134 (1977) and Manzanares v. Bell, 214 Kan. 589, Sy. ¶5 (1974). However, to successfully challenge this tax exemption statute on this ground, it would be necessary to convince the courts that the legislature could have had no reasonable basis for believing this exemption would accomplish the public purposes expressed in subsection (a) of the statute. See, e.g., State ex rel. Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, 413 (1981) and State ex rel. v. Board of Regents, 167 Kan. 587, 596 (1949). In addition, in any case where the legislative judgment is drawn into question, the

inquiry will be restricted to the issue of whether any state of facts, either known or which could reasonably be assumed, affords support for the act. See State ex rel. v. Sage Stores Co., 157 Kan. 404 (1943) and the numerous cases cited therein at 413.

In any constitutional challenge of this statute, certain basic principles would be applied by the court. These principles are stated in City of Baxter Springs v. Bryant, 226 Kan. 383, Syl. ¶¶1-4 (1979), as follows:

"The constitutionality of a statute is presumed, all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution.

"In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it and, if there is any reasonable way to construe the statute as constitutionality valid, that should be done.

"Statutes are not stricken down unless the infringement of the superior law is clear beyond substantial doubt.

"The propriety, wisdom, necessity and expedience of legislation are exclusively matters for legislative determination and courts will not invalidate laws, otherwise constitutional, because the members of the court do not consider the statute in the public interest of the state, since, necessarily, what the views of members of the court may be upon the subject are wholly immaterial and it is not the province nor the right of courts to determine the wisdom of legislation touching the public interest as that is a legislative function with which courts cannot interfere."

Also, in State ex rel. Tomasic v. Kansas City, Kansas Port Authority, supra, the Supreme Court quoted with approval its prior determination in Gunkle v. Killingsworth, 118 Kan. 154, 157 (1925) that:

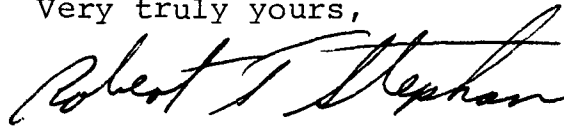
"Within the scope of legislative power, the legislature itself is the judge of what

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exemptions are in the public interest and will conduce to the public welfare." 230 Kan. at 412.

Due to the presumption of validity of legislative acts, the burden of proof required to overcome this presumption and the last quoted statement of the Kansas Supreme Court, we sincerely doubt that a challenge to this statute on the ground asserted in your inquiry would be successful. Regardless of our beliefs, however, our opinion in response to your inquiry is that we certainly cannot state, as a matter of law, that the legislature could have had no rational basis for believing this exemption would accomplish the public purposes prescribed in the statute and, thus, promote the public welfare. Therefore, it is our opinion that K.S.A. 1982 Supp. 79-201k, which exempts aircraft used actually, regularly and exclusively in business or industry from property or ad valorem taxes, is not unconstitutional as a matter of law on the ground that the law lacks a rational basis.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm