



STATE OF KANSAS

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January 16, 1985

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ATTORNEY GENERAL OPINION NO. 85- 5

David C. All  
City Attorney  
6th & School  
P.O. Box 489  
Augusta, Kansas 67010

Re: Taxation--Collection and Cancellation of Taxes--  
Action for Debt to Collect Taxes

Synopsis: K.S.A. 79-2015 does not authorize a city to collect special assessments in the same manner as a personal debt of the property owner. State laws generally provide that such assessments are to be levied against the real property benefited, and are to be collected by initiating a tax foreclosure action under K.S.A. 79-2801 et seq. Cited herein: K.S.A. 12-608, 12-6a10, 79-2015, 79-2801.

\* \* \*

Dear Mr. All:

You request our opinion as to the remedies available to a municipality for the enforcement of delinquent special assessments. Specifically, you advise that the City of Augusta is experiencing a "short fall" in the payment of special assessments which threatens to leave the city without means to pay bond and interest payments, and ask whether K.S.A. 79-2015 authorizes the city to collect such assessments in the same manner as a personal debt of the property owner. If that statute does not provide such authority, you request our opinion as to whether there is any other provision whereby the city may proceed against the property owner personally.

K.S.A. 79-2015 prescribes remedies available for the collection of state taxes. Specifically, that statute provides as follows:

"The taxes, fees, interest and penalties, levied and assessed by any state law administered by the director of revenue may be collected in the same manner as a personal debt of the taxpayer to the state of Kansas from the time same shall become due, and shall be recoverable in any court of competent jurisdiction in any action in the name of the state of Kansas, on relation of the director of revenue. Such suit may be maintained, prosecuted, and all proceedings taken to the same effect and extent as for the enforcement of a right of action for debt. All provisional remedies available in such actions shall be, and are hereby made available to the state of Kansas in the enforcement of the payment of any state tax: Provided, That the remedy herein provided shall be in addition to the various warrant and lien procedures now provided by law for the collection of delinquent taxes."  
(Emphasis added.)

Special assessments are not "state taxes," nor are they assessed by any state law administered by the Secretary of Revenue. Therefore, in our judgment, K.S.A. 79-2015 does not authorize a city to collect special assessments in the same manner as a personal debt of the property owner.

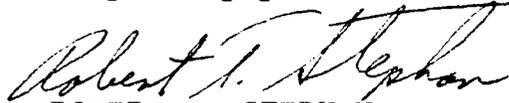
Having determined that K.S.A. 79-2015 does not provide for the collection of special assessments by imposing personal liability against the property owner, we address your question as to whether any other provision provides such authority. In this regard, we note that while numerous statutes authorize cities to levy special assessments for local improvements, such statutes generally provide that the assessments are to be levied against the real property benefited, and that they are to be collected "in the same manner as other taxes." (See, e.g., K.S.A. 12-608 and 12-6a10.) Other taxes levied against real property are collected by initiating a tax foreclosure action under K.S.A. 79-2801 et seq., and such an action is a proceeding in rem. See Phillips Petroleum Co. v. Moore, 179 Kan. 482, 489 (1956). We are unaware of any statute which makes a property owner personally liable for special assessments levied against real property.

Even if the legislature enacted a law imposing such personal liability, or the governing body of a city passed (pursuant to

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city home rule powers) an ordinance whereby special assessments could be levied and become a personal liability of the property owner, the constitutionality of such action is unclear. Although imposition of personal liability was upheld in A.T. & S.F. Rld. Co. v. Peterson, 5 Kan.App. 103 (1897), aff'd 58 Kan. 818 (1897), courts in other states, constituting a "slight weight of authority," have more recently held that statutes imposing personal liability for special assessments constitute a taking of property without compensation. (See 127 A.L.R. 551; 70 Am.Jur.2d, Special or Local Assessments §171.) Due to the conflicting decisions of various state courts, and the conclusion of at least one authority that there is "considerable weight . . . in favor of the denial of the fundamental power of the legislature to provide for . . . personal liability" (see 127 A.L.R. 551, 594), there appears to be some doubt as to whether the Kansas Supreme Court would affirm in all respects the conclusions it reached in 1897 in the Peterson case, supra.

Very truly yours,



ROBERT T. STEPHAN  
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RTS:JSS:TRH:jm