



STATE OF KANSAS

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July 8, 1985

ATTORNEY GENERAL OPINION NO. 85-79

Micheal A. Ireland  
Jackson County Attorey  
Jackson County Courthouse  
Room 205  
Holton, Kansas 66436

Re: Cities and Municipalities--General Provisions--  
Tax Upon Gross Earnings Derived from Money, Notes  
and Other Evidence of Debt

Synopsis: Where voters approve elimination of intangibles  
tax at a referendum held pursuant to subsection (e) of  
K.S.A. 1984 Supp. 12-1,101, as amended, a city  
governing body must enact an ordinance eliminating the  
tax. However, under the provisions of the statute,  
the governing body may subsequently overturn the  
results of the referendum and reimpose the tax through  
the passage of a new ordinance. Cited herein:  
K.S.A. 1984 Supp. 12-1,101 (as amended by 1985 House  
Bill No. 2347), K.S.A. 60-802.

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Dear Mr. Ireland:

You request our interpretation of K.S.A. 1984 Supp. 12-1,101,  
as amended by 1985 House Bill No. 2347. Specifically, you  
advise that voters of the City of Denison elected, on April 2,  
1985, to eliminate the local tax upon earnings from moneys,  
notes and other evidence of debt. You advise that the governing  
body of Denison has not yet passed an ordinance providing that no

intangibles tax shall be levied, and request our opinion as to the effect of such inaction and whether the tax may be levied in 1985.

Subsection (e) of K.S.A. 1984 Supp. 12-1,101 (as amended) prescribes a procedure whereby a referendum may be held on the question of eliminating the intangibles tax. The statute provides that if a majority of electors shall vote in favor of eliminating the tax, the governing body of any city

"shall provide by ordinance that no tax shall be levied upon gross earnings derived from money, notes and other evidence of debt as follows: When such election is held prior to August in any year, the resolution or ordinance shall provide that no such tax shall be levied thereon in the calendar year following the year of such election and in each year thereafter, and when such election is held in August or thereafter of any year, the resolution or ordinance shall provide that no such tax shall be levied thereon in the second calendar year following the year of such election or in any year thereafter."  
(Emphasis added.)

Pursuant to the above-quoted statutory excerpt, the governing body of the City of Denison must adopt an ordinance providing that no intangibles tax shall be levied in calendar year 1986 and each year thereafter. However, the ordinance levying the tax remains effective for calendar year 1985.

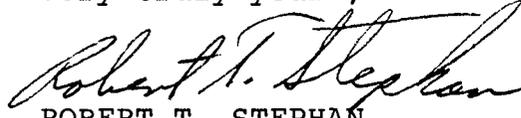
We need not speculate as to legal effect of the failure of the governing body to adopt the ordinance required by subsection (e) K.S.A. 1984 Supp. 12-1,101, as amended. In our judgment, you should inform the governing body of its duty to provide by ordinance that no intangibles tax shall be imposed in 1986 and each year thereafter, and if the governing body fails to adopt such an ordinance, you are entitled to seek a peremptory order of mandamus (under K.S.A. 60-802) compelling such action.

It should be noted that adoption of the ordinance referred to above (i.e., an ordinance reflecting the results of the referendum) does not prevent a city governing body from subsequently reimposing the tax. Specifically, the last sentence of K.S.A. 1984 Supp. 12-1,101(e) provides as follows:

"Notwithstanding the provisions of this subsection to the contrary, the governing body

of a county, city or township may either reimpose or submit to the electors of such subdivision a proposition to reimpose a tax on gross earnings derived from money, notes and other evidence of debt in the manner and at the rate prescribed by this section."

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JSS:TRH:jm