



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 85- 81

The Honorable Ginger Barr  
State Representative, Fifty-First District  
P.O. Box 58  
Auburn, Kansas 66402

Re: Taxation -- Collection and Cancellation of Taxes --  
Time for Payment of Real Estate Taxes

Counties and County Officers -- Register of Deeds --  
Book of Plats; Receipt for Taxes Required

Synopsis: K.S.A. 79-1804 provides that all taxes on real property shall be due on the first day of November of each year, although K.S.A. 79-2004 allows the first half of the taxes to be paid on or before December 20 before becoming delinquent. The second half may be paid on or before June 20 of the following year. In that K.S.A. 19-1207 requires a register of deeds to obtain a receipt showing payment of all real estate taxes due and owing before a plat may be filed, a person seeking to file a plat must pay such taxes in full, and cannot exercise the payment option given by K.S.A. 79-2004. Cited herein: K.S.A. 19-1207; 79-1804; 79-2004.

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Dear Representative Barr:

As State Representative for the Fifty-First District, you request our opinion on a question concerning two sets of statutes. The first concerns the procedures for payment of real estate taxes, while the second deals with the filing of real estate plats with the register of deeds. In that filing of such plats is made contingent upon a showing that all real estate taxes due and

owing on the land have been paid, you inquire whether a developer is precluded from exercising the installment payment procedure allowed by K.S.A. 79-2004.

Since 1876, Kansas statutes have provided that all taxes on real and personal property shall be due on November 1 of each year. (L. 1876, ch. 34, §85, now at K.S.A. 79-1804). In the same 1876 act, the legislature permitted the payment of such taxes in two equal installments (L. 1876, ch. 34, §91). Now at K.S.A. 79-2004(a), the statute continues to state:

"Any person charged with real estate taxes on the tax books in the hands of the county treasurer may pay, at such person's option, the full amount thereof on or before December 20 of each year, or 1/2 thereof on or before December 20 and the remaining 1/2 on or before June 20 next ensuing. If the full amount of the real estate taxes listed upon any tax statement is \$10 or less the entire amount of such tax shall be due and payable on or before December 20."

If payment is not made by these dates, the statute goes on to provide penalties for delinquency.

An entirely separate statute, K.S.A. 19-1207, concerns the duties of the register of deeds, and states at subsection (b) that:

"The register of deeds shall not record any plat unless such plat is accompanied by a receipt from the county treasurer for all real estate taxes due and owing on land to be platted." (Emphasis added.)

Your question arises from the interpretation given the above language by at least one county, which requires all of the real estate taxes on a particular parcel to be paid before a plat will be filed, regardless of whether the owner is prepared to tender one-half by December 20 and the rest by the following June 20.

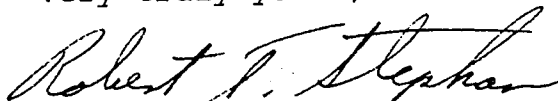
Our research has disclosed no prior opinions of this office or Kansas court decisions which are of relevance in answering your inquiry. However, there exists an appellate decision from New Mexico, Evans v. Mortgage Investment Co., of El Paso, 84 N.M. 32, 507 P.2d 793 (1973), which contains similar questions of law. There, New Mexico law provided for payment of real estate taxes on November 1 (such taxes are "due and payable annually November

first." §72-5-1, N.M.S.A. 1953). An installment procedure was provided similar to that found in this state, although the dates of the payments were December 1 and May 1. After these dates, any unpaid real estate taxes were delinquent and subject to penalty (§72-7-3, N.M.S.A. 1953). In construing these statutes together, the court found that the November 1 date was controlling where a mortgage provision provided for an escrow amount to be complete "on or before the date when payment of such taxes . . . shall be due." While the installment procedure allowed for later payments which would not be counted as delinquent, as a matter of law the taxes were due as of November 1. (Evans, supra, 507 P.2d at 794-95).

Applying the same reasoning here, K.S.A. 19-1207 requires the payment of all real estate taxes due and owing at the time a plat is offered for filing. If such a situation arises between November 1, when K.S.A. 79-1804 makes such taxes due, and June 20, when any unpaid amount becomes delinquent, full payment of any outstanding amount is required. This would be the case even if a payment of one-half the amount due has been made on or before December 20, pursuant to K.S.A. 79-2004(a). While real estate taxes may be deferred for a period of time under this latter statute, they are nonetheless due as of November 1, and it is this statute, rather than K.S.A. 79-2004, which should be referenced when reading K.S.A. 19-1207.

In conclusion, K.S.A. 79-1804 provides that all taxes on real property shall be due on the first day of November of each year, although K.S.A. 79-2004 allows the first half of the taxes to be paid on or before December 20 before becoming delinquent. The second half may be paid on or before June 20 of the following year. In that K.S.A. 19-1207 requires a register of deeds to obtain a receipt showing payment of all real estate taxes due and owing before a plat may be filed, a person seeking to file a plat must pay such taxes in full, and cannot exercise the payment option given by K.S.A. 79-2004.

Very truly yours,



ROBERT T. STEPHAN  
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