



STATE OF KANSAS

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February 28, 1986

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ATTORNEY GENERAL OPINION NO. 86- 28

Curtis E. Campbell
Gray County Attorney
222 South Main
Cimarron, Kansas 67835

Re: Taxation -- Listing Property for Taxation --
Listing of Cattle Held in Feedlots; Payment of
Collection Fee

Synopsis: A personal property tax is imposed by K.S.A. 79-307b upon cattle which are held in feedlots. The statute permits the operator of the feedlot to collect the tax, which is calculated on a daily basis for each head of livestock present in the lot, and remit the same to the county along with the monthly report which is required by the same statute. Such taxes may not be released, discharged, remitted or commuted by the board of county commissioners or any other county officer. Accordingly, a resolution by a county commission which rebates part or all of the tax to the owner of the cattle either directly or indirectly through a collection fee to the feedlot operator is invalid. However, a collection fee which is not based on the amount of tax collected and which is reasonable in size is permissible. Cited herein: K.S.A. 79-307b; 79-1703.

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Dear Mr. Campbell:

As Gray County Attorney, you have requested our opinion regarding the legality of a proposed resolution by the Gray County board of commissioners. The resolution allows payment of a collection fee to feedlot operators based on the amounts of tax they "collect." It is our opinion that a collection fee which is in fact a rebate is unlawful, as it is in effect a release, discharge, remission or commutation of a portion of the taxes assessed. On the other hand, a fee which is not linked to the amount of the tax, but instead reflects compensation for services performed, would be permissible.

K.S.A. 79-307b imposes a duty on feedlot operators to report the number of cattle in the feedlot on a monthly basis to the county appraiser, listing the cattle owner's name and address, and the number, sex and approximate weight of the cattle. The filing of the report is required for compliance with the statutes regarding listing of property for taxation. In addition to filing the report, the feedlot operator may include with the report the tax due on the cattle, but there is no obligation for him to do so. The statute is silent as to payment of a collection fee to the operator.

Gray County Board of Commissioners Resolution No. 16-85 authorizes payment of four-tenths of one cent per head per day as a collection fee, out of a total due per day of \$1.15 per head. This amount, which represents only three-tenths of one percent of the tax due, is de minimis and can be viewed as reasonably related as compensation for the collection of the tax.

However, it has been suggested that a much higher fee (i.e. 25 cents per day) be paid by the county to each feedlot. The impetus for such a change is apparently a recent increase in the amount of tax due per head from 75 cents to \$1.15 each day, with the "fee" intended to cushion the increase to the owner of the cattle, who would pay 90 cents, with the extra 25 cents returned by the county to the feedlot owner. In this respect, such a resolution would be repugnant to K.S.A. 79-1703, which states in part:

"(a) Except as . . . otherwise provided by law, no board of county commissioners or any officer of any county shall have power to release, discharge, remit or commute any

portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason whatever"

Further, it has long been the law in this state that revenues produced from taxation must be used for a public, and not merely a private benefit. Leavenworth County Comm's v. Miller, 7 Kan. 479, 518 (1871), State ex rel. Griffith v. Davis, 113 Kan. 4, 8 (1923). A typical example of such a "private purpose" is found in the case of In re Page, 60 Kan. 842 (1899), where 40% of the revenue generated by a tax was to be used for the benefit of paid or volunteer fire departments. It was the inclusion of these latter, private individuals which the court found rendered the statute defective, stating that:

"The taxing power of the state, however, can hardly be exercised in order to bestow public money on a department made up of volunteers who are not employed by the municipality, and for whose services no expense is assumed or incurred by it. However commendable the object of such an organization may be, it is clear that public money can only be used to discharge a public liability. As will be observed, the money when collected is to be applied to the benefit of such a department and not for the benefit of the municipality, but taxes cannot be imposed nor public money expended for the benefit of private individuals or enterprises, nor can it be given away for such purposes." 60 Kan. at 848. (Emphasis added.)

Therefore, we perceive both statutory barriers and strong policy reasons which preclude the payment of a collection fee which is intended to be a rebate of a portion of the taxes collected.

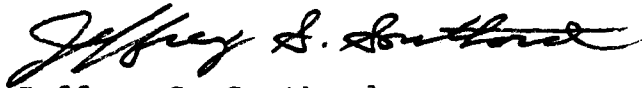
In conclusion, a personal property tax is imposed by K.S.A. 79-307b upon cattle which are held in feedlots. The statute permits the operator of the feedlot to collect the tax, which is calculated on a daily basis for each head of livestock present in the lot, and remit the same to the county along with the monthly report which is required by the same

statute. Such taxes may not be released, discharged, remitted or commuted by the board of county commissioners or any other county officer. Accordingly, a resolution by a county commission which rebates part or all of the tax to the owner of the cattle either directly or indirectly through a collection fee to the feedlot operator is invalid. However, a collection fee which is not based on the amount of tax collected and which is reasonable in size is permissible.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Deputy Attorney General

RTS:JSS:crw