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March 7, 1986

ATTORNEY GENERAL OPINION NO. 86-30

Deanne Watts Hay  
Sloan, Listrom, Eisenbarth, Sloan & Glassman  
714 Capitol Federal Building  
700 Kansas Avenue  
Topeka, Kansas 66603

Re: Taxation--Levy of Taxes--Change in Boundary of  
Taxing District; Effect of Annexation

Cities and Municipalities--Additions, Vacation,  
and Lot Frontage--Taxation of Annexed Territory

Synopsis: K.S.A. 79-1807 and K.S.A. 12-503a provide for a smooth transition of governmental services, and the financing of those services, in territory which is annexed to a city from a township. Pursuant to K.S.A. 79-1807(a), if the annexation occurs prior to April 1, 1986, it will be deemed to have taken effect for tax purposes on December 31, 1985. The township annexed shall collect and distribute taxes which were due on November 1, 1985, but thereafter the city is responsible for levying, collecting and distributing taxes in the territory annexed. If the annexation occurs after April 1, 1986, it will take effect on December 31, 1986, and taxes due on November 1, 1986, will be collected and distributed by the township. Thereafter, the city will assume those duties.

K.S.A. 12-503a allows the township to choose either to continue furnishing governmental services in the annexed territory until the city begins levying or collecting taxes, or alternatively to surrender to the city both the taxes collected and the

obligation to furnish services in the annexed territory. The taxes surrendered are to be used by the city specifically for the purposes for which they were collected. Cited herein: K.S.A. 12-503a; 79-1807.

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Dear Ms. Hay:

As the attorney for Topeka Township, Shawnee County, Kansas, you request our opinion regarding allocation of taxes upon annexation of a portion of the township by the City of Topeka. Specifically, you request an interpretation of K.S.A. 79-1807 and K.S.A. 12-503a.

K.S.A. 79-1807(a) provides as follows:

"Except as provided in subsection (b) of this section, whenever any of the territory of a municipality or other taxing district is annexed, attached, or transferred to another municipality or other taxing district on or before April 1 of any year, or whenever an entire municipality or other taxing district is merged or consolidated with another municipality or taxing district on or before April 1 of any year, such annexation, attachment, transfer, merger, or consolidation shall take effect for tax purposes as of the last day of December preceding such annexation, attachment, transfer, merger or consolidation: Provided, That the taxes due on November 1 next preceding the date said organization, incorporation, or change takes effect for taxation purposes shall be collected and distributed as before assessed and levied; . . ."  
(Emphasis added.)

K.S.A. 79-1807(b) provides for the attachment or transferral of the territory of school districts or community junior college districts and therefore does not pertain to the present inquiry. However, the language employed in the

proviso of subsection (b) parallels that in subsection (a), so an analogy may be drawn between the two subsections.

A 1969 attorney general's opinion (VI Atty. Gen. Op. 644), discusses K.S.A. 79-1807(a), and states that "boundary alterations occurring before April 1 of any year shall be effective as of the preceding December 31, while presumably any such alteration taking place thereafter would have tax import only for the succeeding taxable year." Thus, "alterations made after April 1, 1969, would affect for the first time the budgets which will be adopted in . . . 1970." A 1970 opinion (VI Atty. Gen. Op. 604), in applying K.S.A. 79-1807(b) to the attachment of non-unified school districts to neighboring unified school districts, opined that since the attachment took effect July 1, 1969, K.S.A. 79-1807(b) mandated that "those territories were to be considered 'attached for tax purposes' as of December 31, 1968. Consequently, the newly acquired territories should have been included in the property subjected to tax levies for unified school district budgets prepared in August of 1969, and following years." [The cut-off date is July 1 in subsection (b), as opposed to April 1 in subsection (a)].

Finally, a 1971 opinion (VII Atty. Gen. Op., 1102) involved a situation where territory was transferred from Unified School District No. 459 to Unified School District No. 443, effective July 1, 1971. Attorney General Miller interpreted the proviso of what was then K.S.A. 79-1807(f) to mean that "the taxes due on November 1, 1970, shall be collected and distributed in the same fashion as they were collected and distributed before the transfer took place." The opinion went on to define when taxes are due, and determined that even though

"K.S.A. 79-2004 allows the payment of tax for the first half of a given year on or before the twentieth of December and the second half on or before the twentieth day of June of the next ensuing year[,] [t]axes, nevertheless, are due on November 1. . . . This means that the transferee district, School District No. 443, will not receive any of the 1970 taxes attributed to the transferee territory despite the fact that the second half of 1970 taxes will be paid by many taxpayers during the year 1971, or more specifically, on or before June 20, 1971."

We are in agreement with the interpretations contained in these previous opinions. Thus, under the instant circumstances, if the City of Topeka were to complete annexation of a portion of Topeka Township on or before April 1, 1986, such annexation would be deemed to have taken effect, for tax purposes, as of December 31, 1985. The taxes which were due on November 1, 1985, whether or not paid at that time, would be collected and distributed as if the annexation had never occurred, i.e., by the township. The taxes due on November 1, 1986, would be collected and distributed by the city.

Conversely, if the annexation occurs after April 1, 1986, for tax purposes it will take effect as of December 31, 1986, and taxes due on November 1, 1986 shall be collected and distributed by the township. The city would first assess and levy taxes due in November of 1987.

K.S.A. 12-503a provides as follows:

"Whenever all or any part of any township, improvement district, or other governmental unit is annexed to any city, such township, improvement district or other governmental unit may, continue to furnish services for the year for which taxes have been levied or collected in those areas of the district annexed, or in the alternative, shall surrender the taxes collected to the annexing city to be used specifically for the purposes for which the tax was collected. No improvement district shall continue to make a levy for its general fund upon territory annexed to any city, from and after the effective date of such annexation." (Emphasis added.)

When read in conjunction with K.S.A. 79-1807, this statute indicates that the township may continue to furnish services for as long as it is still levying or collecting the taxes. Attorney General Opinion No. 81-213 opined that "the primary objectives of the legislature prompting the enactment of K.S.A. 12-503a were to prevent the interruption of governmental services being provided in areas annexed by a city, and to provide for the transition of the obligation to finance such services." When the city begins to levy taxes

for the territory annexed, it will also assume the obligation of furnishing services to that territory.

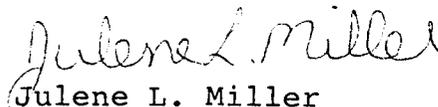
The language of K.S.A. 12-503a appears to be, and has been regarded as, permissive and thus discretionary on the part of the territory being annexed, in this case the township. See Attorney General Opinion No. 81-213. It is our opinion that the township may choose either to provide the services for the years for which taxes have been levied or collected, or alternatively, to surrender the taxes collected and thereby relinquish the continuing obligation to furnish services.

In conclusion, K.S.A. 79-1807 and K.S.A. 12-503a provide for a smooth transition of governmental services and the financing of those services in territory which is annexed to a city from a township. Pursuant to K.S.A. 79-1807(a), if the annexation occurs prior to April 1, 1986, it will be deemed to have taken effect on December 31, 1985. The township from which the territory is removed shall collect and distribute taxes which were due on November 1, 1985, but thereafter the city is in charge of levying, collecting and distributing taxes. If the annexation occurs after April 1, 1986, it will take effect on December 31, 1986, and taxes due on November 1, 1986 will be collected and distributed by the township. Thereafter, the city will assume those duties. K.S.A. 12-503a allows the township to choose either to continue furnishing services in the annexed territory until the city begins levying or collecting taxes, or to surrender to the city both the taxes collected by the township and the obligation to furnish services therein. The taxes surrendered are to be used by the city specifically for the purposes for which they were collected.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



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