



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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July 7, 1986

ATTORNEY GENERAL OPINION NO. 86-98

Douglas F. Martin  
Shawnee County Counselor  
Shawnee County Courthouse  
200 E. 7th Street, Room 203  
Topeka, Kansas 66603-3922

Re: Taxation -- Levy of Taxes -- Change of Boundary of  
Taxing District; Effect on Motor Vehicle Taxes

Synopsis: Pursuant to K.S.A. 79-1807(a), because the  
annexation of Topeka Township occurred prior to  
April 1, 1986, it is 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. In our opinion,  
this would include motor vehicle taxes. Such taxes  
collected by the city are to be used specifically  
for the purposes for which they were budgeted.  
Cited herein: K.S.A. 79-1807; 79-5106; 79-5110;  
79-5111.

\* \* \*

Dear Mr. Martin:

As County Counselor for Shawnee County, Kansas, you request  
our opinion regarding the taxing district to which certain tax  
proceeds should be distributed. Specifically, you ask whether  
Topeka Township or the City of Topeka should receive motor  
vehicle taxes due and owing after December 31, 1985.

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.)

Prior to April 1, 1986, territory of Topeka Township was annexed into the City of Topeka. Thus, pursuant to the provisions of K.S.A. 79-1807(a), cited above, that annexation took effect for tax purposes as of December 31, 1985.

To determine the taxing district to which motor vehicle taxes should be distributed, it is necessary to examine the statutes which relate specifically to the taxation of motor vehicles, and which provide the time period in which those taxes become due. K.S.A. 79-5106(a) states in part, as follows:

"Taxes imposed upon motor vehicles under the provisions of this act shall be levied annually for the period prescribed by article 1 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto, as the registration year for the motor vehicle taxed. Except as provided in K.S.A. 79-5107, and amendments thereto, the tax upon each motor vehicle shall be due on or before the date in each year prescribed by law for the regular annual registration of such motor vehicle." (Emphasis added.)

The difficulty with determining which entity should receive these taxes lies in the fact that their receipt is budgeted in the year prior to that in which they are actually received. K.S.A. 79-5111 indicates that taxes from motor vehicles are budgeted by each taxing subdivision as follows:

"For the purpose of preparing budgets, the county treasurer of each county shall estimate the amount of money the state, county and each taxing subdivision in the county will receive during the ensuing budget year from taxes levied under the provisions of K.S.A. 79-5101 et seq. The amount estimated to be received by the state, county and each taxing subdivision shall be that portion of the total amount estimated to be received by the state, county and all taxing subdivisions which is equal to the proportion which the general ad valorem property tax levies of the state, county and each taxing subdivision in the county bear to the sum of all such tax levies of the state, county and all taxing subdivisions in the county made in the preceding year for expenditure in the current year. On or before May 10 of each year the county treasurer of each county shall notify the clerk and the treasurer of each taxing subdivision of the total amount in dollars which it is estimated such subdivision will receive during the ensuing budget year from the receipts from such tax. In the case of the state, such notice shall be given to the director of accounts and reports. The amount estimated to be received by taxing subdivisions from receipts from such tax shall be apportioned among the general ad valorem property tax funds of such subdivisions in the proportion that the amount levied for each such fund in the preceding year for expenditure in the current year bears to the total amount levied for all of such funds in such year and shall be set out separately as an item of income for each such fund. The director of accounts and reports shall make suitable provision in

the budget forms to be used by such subdivisions for income received from taxes levied under the provisions of this act." (Emphasis added.)

Pursuant to the provisions of K.S.A. 79-5111, taxes from motor vehicles, although not due until the following year, are budgeted during the current year. K.S.A. 79-5110 provides for the apportioning of those funds and states as follows:

"Moneys received by taxing subdivisions from taxes levied under the provisions of K.S.A. 79-5101 et seq. shall be apportioned to each tangible property tax levy fund of each taxing subdivision in the proportion that the same was budgeted. In crediting funds which have been distributed pursuant to this section, the county treasurer shall credit each tangible property tax levy fund of each taxing subdivision at such times as the treasurer makes current tax distributions, and in addition each county treasurer shall make a distribution in the month of December of any moneys collected from taxes levied under the provisions of this act which have been collected subsequent to the last regular current tax distribution." (Emphasis added.)

K.S.A. 79-5110 indicates that moneys are to be apportioned to each fund in the proportion that the same were budgeted. Although K.S.A. 79-5110 and 5111 indicate a basis for concluding that 1986 motor vehicle taxes should be distributed (as they are budgeted) to Topeka Township, it is the position of this office that these funds should be distributed to the City of Topeka in accordance with the provisions of K.S.A. 79-1807(a).

It is important in this respect to note that K.S.A. 79-1807(a) provides that "the taxes due on November 1 next preceding the date said . . . change takes effect for tax purposes shall be collected and distributed as before assessed and levied" (emphasis added). In our recent opinion No. 86-30, this office opined as follows:

"[I]f 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."

Therefore, taxes levied on motor vehicles for distribution to Topeka Township which are due after December 31, 1985 should be distributed to the City of Topeka. In our judgment, however, these taxes should be spent in the manner in which they were originally budgeted by Topeka Township. This should alleviate the problem of not having the moneys to use for the purpose for which they were budgeted.

In conclusion, pursuant to K.S.A. 79-1807(a), because the annexation of Topeka Township occurred prior to April 1, 1986, it is 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. In our opinion, this would include motor vehicle taxes. Such taxes collected by the city are to be used specifically for the purposes for which they were budgeted.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Julene L. Miller  
Deputy Attorney General