



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

August 22, 1986

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 86- 119

The Honorable Edward F. Reilly, Jr.
State Senator, Third District
430 Delaware, Box 9
Leavenworth, Kansas 66048

Re: Taxation--Property Exempt from Taxation--Church
Parsonages; Application for Exemption

Synopsis: It is well-settled that parsonages are not tax-exempt under the Kansas Constitution. Thus, parsonages have been taxable property since the 1969 legislature dropped the specific provision granting parsonages an exemption. By passing Senate Bill No. 400, the 1986 legislature once again granted parsonages an exemption. However, churches must affirmatively reapply to the Board of Tax Appeals to be granted such an exemption. In addition to this application being mandated by statute, it is necessary in light of the fact that, through 1986 Senate Bill No. 400, the legislature changed the test to be applied in determining a parsonage's tax exempt status from its pre-1969 test. Because of this, it is imperative that the Board of Tax Appeals have the applications in order to make an informed decision. Cited herein: K.S.A. 1985 Supp. 79-201, as amended by L. 1986, ch. 368, §1 Seventh, and L. 1986, ch. 369, §1 Seventh; K.S.A. 79-213; Kan. Const., Art. 11, §1; Gen. Stat. of 1909, Sec. 9216; L. 1929, ch. 283, §1; K.S.A. 1968 Supp. 79-201 First; L. 1969, ch. 429, §1.

*

*

*

Dear Senator Reilly:

As Senator for the Third District, you request our opinion regarding the application of 1986 Senate Bill No. 400, which provides a tax exemption for church parsonages. See L. 1986, Ch. 368, §1 Seventh, as amended by L. 1986, ch. 369, §1 Seventh. More specifically, you ask whether all churches owning property used as parsonages must make affirmative reapplication to the Board of Tax Appeals to be eligible for this exemption from the state and local property tax.

The Kansas Constitution has, since its inception, exempted from property tax ". . . all property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes. . . ."

(Emphasis added.) Kan. Const., Art. 11, §1. However, in 1872 the Kansas Supreme Court held that this constitutional provision did not exempt a church parsonage from taxation. Vail v. Beach, 10 Kan. 166 (1872). The property in question in that case was a house in Lawrence that was owned by the Protestant Episcopal Diocese of Kansas and used by its Bishop as a residence. Id. The Court stated that, "the property is used as any other dwelling, and the use is not distinguishable from that of the residence of any other Christian pastor or Christian gentleman. It is clear that it is not the purpose of the section referred to to relieve such property from the burden of taxation. . . ." Id. at 166-167.

The holding in Vail, supra, was the law of Kansas until 1909 when the Kansas Legislature enacted the following specific exemptions for properties owned and used by religious organizations:

"First, all buildings used exclusively as places of public worship, as public schoolhouses, or both, with the furniture and books therein contained and used exclusively for the accommodation of schools and religious meetings, together with the grounds owned thereby not exceeding in any one case 10 acres, if not leased or otherwise used with view to profit; and also any parsonage or dwelling owned by any church society and occupied by its pastor as a residence, together with the ground on which it is situated, not exceeding in any one case

1/2 acre." Gen. Stat. of 1909, Sec.
9216 (Emphasis added.)

In 1916, the Kansas Supreme Court construed this statute to deny an exemption for a church-owned residence of a Bishop who was not a pastor of the church. Griswald v. Quinn, 97 Kan. 611 (1916). Then, in 1929, the Kansas Legislature amended section 79-201 First of the Revised Statutes of Kansas 1923 to extend the parsonage exemption to include the residences of district church officials. L. 1929, ch. 283, §1. The effect of this amendment was to vitiate the Court's decision in Griswald, supra.

In 1968, the Kansas Legislature created a Joint Committee on State Tax Structure to study the property tax in Kansas. The committee's interim report, which was filed for consideration by the 1969 legislature, specifically addressed the exemption of church-owned parsonages. See Journal of The Senate, January 30, 1969, page 104, et seq. It was the committee's conclusion that, whenever possible, tax exemptions should be based on the State Constitution. Id. at 132-133. Thus, the committee recommended to the legislature that K.S.A. 1968 Supp. 79-201 First be amended to strike the 10 acre limitation and all references to parsonages and residences of chaplains. Id. at 133. This recommendation was adopted by the legislature at that time. L. 1969, ch. 429, §1.

Despite this 1969 revision, counties did not add parsonages to their tax rolls, and the State Board of Tax Appeals continued to exempt parsonages in its rulings. These rulings were not challenged until 1984, when Johnson County appealed an exemption decision granted by the Board of Tax Appeals. In Matter of the Application of First Assembly of God Church, 84 CV 965 (Shawnee Co. 1984), Judge Buchele held that, absent a specific statutory exemption, parsonages were not tax exempt. Id. at 9. In his decision, Judge Buchele noted that, "when the legislature revises an existing statute it is presumed that the legislature intends to make some change in the existing laws." Id. at 6. Furthermore, it is the accepted rule of statutory construction that, when a statute is revised, some part being omitted, the omitted parts are ordinarily to be considered annulled. See Hauserman v. Clay County, 89 Kan. 555 (1913), Schmeling v. F.W. Woolworth Co., 137 Kan. 573 (1933); State, ex rel., v. Richardson, 174 Kan. 382 (1953). "These rules of statutory construction and the published Committee Report make it obvious that the legislature intended to eliminate the statutory exemption for parsonages". First Assembly of God

Church, supra at 6. Additionally, Judge Buchele reaffirmed the holding in Vail v. Beach, supra and held that a church-owned parsonage is not entitled to an exemption under Section 1, Article 11 of the Kansas Constitution. First Assembly of God Church, supra at 8.

Following the district court ruling, the Director of the Division of Property Valuation, Kansas Department of Revenue, issued a memorandum, which directed all counties to restore parsonages to their tax roles effective January 1, 1986. See Attachment 1. The Legislature responded to the 1984 ruling by passing 1986 Senate Bill No. 400, which re-established church-owned parsonages as tax-exempt, effective December 31, 1985. L. 1986, Ch. 368, §1 Seventh. The division of property valuation is now requiring all churches to make affirmative reapplication to the Board of Tax Appeals for exemption from the state and local property tax pursuant to K.S.A. 79-213.

You contend that such affirmative reapplication is unnecessary, and that it creates an undue financial burden upon all churches that seek to exempt their parsonages from taxation. Clearly, complying with this directive will cost the churches monies for costly surveys and title work. However, it is our opinion that, despite this burden, such reapplication is indeed a necessity.


It is clear that when the legislature removed the parsonage exemption from K.S.A. 79-201 First in 1969, parsonages were no longer exempt from state and local taxes under either the Kansas statutes or Constitution. See First Assembly of God Church, supra at 6; Vail v. Beach, supra. Thus, while it has been argued that 1986 Senate Bill No. 400 was passed in order to "maintain the longstanding policy in this state," [see Attachment 2, p. 2], 1986 Senate Bill No. 400, in effect, created a new tax exemption. As such, churches are required to file an initial application with the Board of Tax Appeals in order to be granted a parsonage exemption. K.S.A. 79-213.

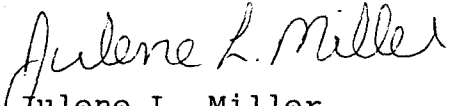
The provisions of K.S.A. 79-213 notwithstanding, it could be argued that churches should not have to reapply if such reapplication was duplicitous in nature. However, in drafting 1986 Senate Bill No. 400, the legislature changed the "test" that must be used when determining whether a parsonage should be tax exempt. Compare L. 1986, ch. 369, §1 with L. 1929, ch. 283, §1. Thus, parsonages that had been considered tax exempt in the past might no longer be entitled

to such status. This determination can be made only by the Board of Tax Appeals, and they must have the applications in order to make an informed determination.

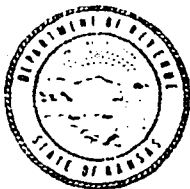
In conclusion, it is well-settled that parsonages are not tax-exempt under the Kansas Constitution. Thus, parsonages have been taxable property since the 1969 legislature dropped the specific provision granting parsonages an exemption. By passing 1986 Senate Bill No. 400, the legislature once again granted parsonages an exemption. However, churches must affirmatively reapply to the Board of Tax Appeals to be granted such an exemption. In addition to this application being mandated by statute, it is necessary in light of the fact that, by passing 1986 Senate Bill No. 400, the legislature changed the test to be applied in determining a parsonage's tax exempt status from its pre-1969 test. Because of this, it is imperative that the Board of Tax Appeals have the applications in order to make an informed decision.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

RTS:JLM:jm



Kansas
DEPARTMENT OF REVENUE

State Office Building
TOPEKA, KANSAS 66625

MEMORANDUM

TO: All County Appraisers
And County Commissioners

FROM: Victor W. Miller, ^WDirector
Division of Property Valuation

DATE: September 19, 1985

SUBJECT: Parsonages

Our office has received a number of inquiries concerning the tax exempt status of church parsonages. We have reviewed existing statutes as well as case law and can find no basis for exempting parsonages from ad valorem taxation.

The exempt status this property once enjoyed was repealed by the 1969 legislature. We have attached a copy of the Shawnee County District Court decision which is most explicit on controlling Kansas law.

By way of this memorandum, you are asked to review your exempt property rolls and be prepared to restore to the tax rolls on January 1, 1986 (with 1986 property tax liability) any church parsonage not already on the rolls.

Attachment

VWM:bkh

We are following this memorandum and District Court decision and placing your parsonage back on the tax rolls effective January 1, 1986.

Don Gordon
Don Gordon C.K.A.
Douglas County Appraiser

Attachment 1

State of Kansas

Senate Chamber

Attachment 1

MICHAEL L. JOHNSTON
SENATE MINORITY LEADER
SENATOR, FOURTEENTH DISTRICT
LABETTE COUNTY AND PARTS OF
CRAWFORD, MONTGOMERY AND
NEOSHO COUNTIES
P O BOX A
PARSONS, KANSAS 67357-0040



COMMITTEE ASSIGNMENTS
MEMBER ELECTIONS
GOVERNMENTAL ORGANIZATION
INTERSTATE COOPERATION
LEGISLATIVE BUDGET
LEGISLATIVE AND CONGRESSIONAL
APPORTIONMENT
LEGISLATIVE COORDINATING COUNCIL
WAYS AND MEANS

Office of Minority Leader

STATE CAPITOL
TOPEKA, KANSAS 66612-1565
913-296-3245

Joint Committee on Assessment and Taxation
Senate Bill 399, Tax Exemption of Church Parsonages
January 30, 1986

Statement by Senator Michael Johnston

The tax exemption of parsonages is nothing new in this state. The issue of whether a church parsonage was exempt from taxation was considered by the Kansas Supreme Court in 1872. The Court held that the Kansas Constitution did not exempt parsonages because they did not meet the exclusive religious use test of the Constitution.

In 1909, the Kansas Legislature created a statutory exemption for properties including parsonages which were owned and used by religious organizations. In 1969, the Kansas Legislature revised the 1909 exemption law and removed the parsonage exemption from that law. In spite of the 1969 revision, counties did not add parsonages to their tax rolls and the State Board of Tax Appeals continued to exempt

Attachment 2

1/30/86 Sen. A+J
Attachment 1

parsonages in their rulings. These rulings were not challenged until 1984 when Johnson County appealed an exemption decision granted by the Board of Tax Appeals. The District Court, on appeal, reversed the decision and held that, absent a specific statutory exemption, parsonages were not tax exempt.

Since the 1984 district court ruling, a few counties have added parsonages to their tax rolls and all counties have been directed by the State Division of Property Valuation to place parsonages on their 1986 tax rolls.

A bill specifically exempting parsonages must be passed this session in order to maintain the longstanding policy in this state. I am not proposing a new exemption. There will be no negative financial impact on the state since we are currently not receiving tax revenue from parsonages.

I realize that there will be some problems in interpreting which residences should be exempted under this bill. Most of the bills we pass are subject to various interpretations. My intent in introducing this bill is to assure the continuance of the current practice of exempting church parsonages from taxation. This bill is necessary to clear up the confusion and restore what has been the practice in Kansas for many years. I urge your support of Senate Bill 399.