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ATTORNEY GENERAL OPINION NO. 86-132

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

Re: Taxation--Property Exempt From Taxation--Farm  
Machinery and Equipment Held as Inventory

Synopsis: The exemption from property and ad valorem taxes of farm machinery and equipment held as inventory **does** not violate the uniform and equal rate of taxation requirement of the Kansas Constitution, as such exemption meets the public purpose test. The exemption for hand tools exclusively used by a mechanic on the construction or repair of machinery is somewhat suspect, but due to the presumption of constitutionality of legislative acts, we conclude that this section also meets the constitutional requirement of Art. 11, §1. In any event, the statutory sections containing each of these exemptions are severable and therefore one may be upheld though the other is found unconstitutional. Cited herein: Kan. Const., Art. 11, §1; K.S.A. 79-201i; K.S.A. 1985 Supp. 79-201j; L. 1986, ch. 364, §§1, 2, 3 and 4.

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Dear Mr. Martin:

As Shawnee County Counselor, you have requested our opinion concerning L. 1986, ch. 364. Specifically you have inquired

whether the provisions of the Kansas Constitution, Art. 11, §1 are violated by the act.

The purpose of L. 1986, ch. 364 is stated in section one of the act. In language parallel to that of K.S.A. 79-201i, the legislature sets forth a public purpose of promoting the general welfare of the state by fostering the growth and development of agricultural endeavors within the state. It is noted that:

"[a]griculture, as conducted in farming and ranching operations throughout the state, is the primary basis of the Kansas economy. . . . It is a benefit to agriculture and the economy of the state generally to preserve readily available and affordable farm machinery and equipment within the farming communities of this state." L. 1986, ch. 364, §1.

To further the above-stated purpose, section two of chapter 364 provides that farm machinery and equipment, as defined in K.S.A. 1985 Supp. 79-201j, which is held as inventory by a merchant, and which has been taxed in the merchant's inventory in any preceding year, shall be exempt from all property or ad valorem taxes levied under the laws of this state. Such property "shall be listed by the merchant as exempt property in all succeeding tax years during which the machinery or equipment remains in that merchant's inventory." L. 1986, ch. 364, §2. Section three of the act extends a similar exemption to hand tools used "exclusively by a mechanic in the construction or repair of machinery and equipment, including motor vehicles." L. 1986, ch. 364, §3.

You have expressed your concern that these statutory provisions violate the equal taxation clause of article 11, §1 of the Kansas Constitution, which states in relevant part: "[t]he legislature shall provide for a uniform and equal rate of taxation. . . ." For the reasons stated below, it is our opinion that the exemption for farm machinery in inventory and for hand tools used by mechanics in the construction and repair of machinery are not invalidated by the constitutional mandate.

Article 11, §1 of the Kansas Constitution "prohibits favoritism, and requires uniformity in valuing property for assessment purposes so that the burden of taxation will be equal. "State, ex rel. v. Martin, 227 Kan. 456, 468

(1980). In holding unconstitutional a statute which reduced by 20% the fair market value of farm machinery, the court in Martin, stated:

"all property which is subject to general property taxation must be valued or assessed on an equal basis. . . . When the rate of property assessment is uniform throughout a taxing district, the constitutional mandate of uniform and equal taxation has been fulfilled."  
(Emphasis added.) 227 Kan. at 461-62.

However, the constitution does not preclude the legislature from exempting property in addition to that specifically exempted in the constitution. See, e.g. Harper v. Fink, 148 Kan. 278, 280 (1938), and cases cited therein. Statutory exemptions may be broader than the constitutional exemptions. State, ex rel., v. Board of Regents, 167 Kan. 587, 595-96 (1949).

In State ex rel, Tomasic v. City of Kansas City, 237 Kan. 572 (1985), the Kansas Supreme Court discusses and applies the public purpose exception to uniform taxation. Four key elements are considered:

"(1) whether the exemption furthers the public welfare . . .; (2) whether the exemption provides a substantial, peculiar benefit . . .; (3) whether the exemption provides for large accumulations of tax-exempt property . . .; and (4) whether the exemption is an improper or preferential classification of property."  
Id. at 579. [citations omitted]

We believe that the exemption for farm machinery held as inventory, as provided in L. 1986, ch. 364, §2, meets the test quoted above.

In determining whether or not the exemption furthers the public welfare, the court stated in Tomasic that judicial restraint must be exercised unless the legislature's judgment was "entirely devoid of a rational basis." 237 Kan. at 579. The court held in that case that concern for economic growth was a legitimate public purpose. 237 Kan. at 580. As previously indicated, the purpose of L. 1986, ch. 364 is to promote the general welfare of the state by fostering the

growth and development of agricultural endeavors, the basis of the state's economy. We believe that such a purpose is not devoid of a rational basis.

The second requirement set forth in Tomasic is that the exemption provide a substantial, peculiar benefit to the state. In L. 1986, ch. 364, §1, the legislature notes:

"the property tax burden has become a deterrent to the operation of an implement business and, in many instances, an encouragement to abandonment of that business."

Encouraging implement merchants to continue doing business in the state may provide a benefit to the state peculiar to that business. The exemption attempts to go beyond favoritism, as the legislature has indicated a need to protect the supply of equipment necessary to the economic basis of the state. In Tomasic, it was held that enabling an industry to construct factories in the state assisted in economic growth and provided a means of livelihood for the people. 237 Kan. at 581. The court further stated that when the legislature determines that the public welfare would benefit, unless the determination is "capricious or without foundation in reason" the judiciary would not interfere. 237 Kan. at 580.

The third element for consideration is whether the exemption provides for large accumulations of tax-exempt property. The purpose of this consideration is to avoid disturbing general equality and uniformity. 237 Kan. at 581. This factor has been contemplated by the legislature. L. 1986, ch. 364, §4 states that the provisions of §2 shall expire on December 31 of 1988. Section four may be dispositive of the issue, however further support for the validity of the act is found in the mechanics of the exemption itself. The exemption applies to "[a]ll farm machinery and equipment held in a merchant's inventory which has been listed for tax purposes and taxed in such merchant's inventory in any preceding tax year." (Emphasis added.) L. 1986, ch. 364, §2. In short, the exemption is not total. The act requires that at least one year of taxes be assessed and paid before the exemption applies. Thus, the act protects against large accumulations of tax-exempt property by merchants who might otherwise use the guise of public purpose to their advantage when that purpose is no longer benefiting the public because of market saturation.

The final consideration is whether the exemption is an improper or preferential classification of property. The purpose of this consideration is grounded in equal protection analysis. In Tomasic, the relator argued that a classification which discriminated among private investors in favor of those who can obtain financing through internal revenue bonds violated Art. 11, §1 of the Kansas Constitution. It was noted, however, that the exemption in question was based on municipal ownership of the property, not on what type of entity leases the property. In essence, the court held that the exemption was not based on who could take advantage of the exemption, but rather on the type of property involved. The exemption for farm machinery and equipment held in inventory is not limited to certain merchants; the exemption is directed at the merchandise itself. Any merchant who holds defined farm machinery and equipment in his inventory, if the other provisions of the act are satisfied, is eligible to list the property as exempt.

In Topeka Cemetery Association v. Schnellbacher, 218 Kan. 39 (1975), the court invalidated a statute which gave an exemption to persons who owned cemetery lands, but did not extend the exemption to persons who held cemetery lands for future sale. The court stated:

"We have consistently held that where public property is not involved, a tax exemption must be based upon the use of the property and not on the basis of ownership alone. The reason for the rule is that a classification of private property for tax purposes based solely upon ownership unlawfully discriminates against one citizen in favor of another and therefore is a denial of equal protection of the law." 218 Kan. at 42-43.

Section two of L. 1986, ch. 364 satisfies the anti-bias requirement. The problem addressed in Topeka Cemetery Association is actually remedied by the act. Tax exempt status is no longer based on whether the farm machinery is owned by a consumer or a merchant. K.S.A. 1985 Supp. 79-201j already provides that farm machinery and equipment which is "actually and regularly used exclusively in farming or ranching operations" is exempt from property or ad valorem taxes. There is, therefore, no discrimination in the taxation of farm machinery and equipment based on whether the property

is used or held for future sales. Thus, section two of the act has a public benefit and purpose, and complies with the "uniform and equal assessment and taxation" requirement of art. 11, §1, of the Kansas Constitution.

In considering section three of the act, we opine that the exemption for hand tools used by a mechanic in the construction or repair of machinery also meets the requirement of Art. 11, §1 of the Kansas Constitution. Because the legislature did not specifically state the public purpose for which this exemption was created, its constitutionality is somewhat suspect. However, the Kansas Supreme Court has set forth certain basic principles to be applied in determining the constitutionality of a statute. These principles are stated in City of Baxter Springs v. Bryant, 226 Kan. 383, Syl. §§1-4 (1979), as follows:

"The constitutionality of a statute is presumed, all doubts must be resolved in favor of its validity, and before the statute may be stricken down, it must clearly appear the statute violates the constitution.

"In determining constitutionality, it is the court's duty to uphold a statute under attack rather than defeat it and, if there is any reasonable way to construe the statute as constitutionality valid, that should be done.

"Statutes are not stricken down unless the infringement of the superior law is clear beyond substantial doubt.

"The propriety, wisdom, necessity and expedience of legislation are exclusively matters for legislative determination and courts will not invalidate laws, otherwise constitutional, because the members of the court do not consider the statute in the public interest of the state, since, necessarily, what the views of members of the court may be upon the subject are wholly immaterial and it is not the province nor the right of courts to determine the wisdom of legislation touching the public interest as that is a

legislative function with which courts cannot interfere."

Also, as stated by the court in Sumner County v. Wellington, 66 Kan. 590, 593 (1903):

"Our constitution limits, rather than confers, power, and, hence, we look to it to see what it prohibits, instead of what it authorizes. Unless the sovereign power of taxation, which includes the power to make exemptions, is actually prohibited by the constitution it may be exercised by the legislature. In the absence of constitutional restrictions, the general rule is that the legislature has full power to grant exemptions from taxation, and, there being no such limitation, we cannot say that property like that in question, owned by a city, may not be exempted by the legislature."

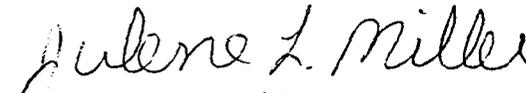
Due to the presumption of validity of legislative acts, we cannot say, as a matter of law, that the exemption for all hand tools used exclusively by a mechanic in the construction or repair of machinery and equipment is unconstitutional. We note, however, that it may be wise for the legislature to amend this exemption to state its public purpose.

In light of our opinion that section three is somewhat suspect, we feel compelled to comment on that section's severability from the rest of the act. It is well-established that if an invalid or unconstitutional part of a statute can readily be severed from the valid parts, that which is constitutional may stand. But if the legislative purpose were violated by such separation, then the entire statute must fail. See, e.g., State ex rel, v. City of Overland Park, 215 Kan. 700, Syl. §7 (1974); State, ex rel, v. Consumers Warehouse Market, 185 Kan. 363, Syl. §2 (1959); State v. Smiley, 65 Kan. 240, 247 (1902). The legislative purpose and justification for L. 1986, ch. 364 is easily discernible by section one of the act. Section two logically follows that justification and furthers the purpose. Sections one, two and four are logically interrelated. We believe that, as the legislative intent is clearly expressed, and section three of the act is not necessary to the fulfillment of the other sections, section three is severable.

In conclusion, the exemption from property and ad valorem taxes of farm machinery and equipment held as inventory does not violate the uniform and equal rate of taxation requirement of the Kansas Constitution, as such exemption meets the public purpose test. The exemption for hand tools exclusively used by a mechanic on the construction or repair of machinery is somewhat suspect, but due to the presumption of constitutionality, we conclude that this section also meets the constitutional requirement of Art. 11, §1. In any event, the statutory sections containing each of these exemptions are severable and therefore one may be upheld though the other is found unconstitutional.

Very truly yours,

  
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