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ATTORNEY GENERAL OPINION NO. 86- 168

Charles J. Schwartz
Secretary
Kansas Department of Economic Development
400 W. 8th, Fifth Floor
Topeka, Kansas 66603-3957

Re: Taxation--Property Exempt From Taxation--Claim to
be Filed Each Year

Kansas Constitution--Finance and
Taxation--Exemption of Property for Economic
Development Purposes

Synopsis: While cities and counties may grant economic
development tax exemptions pursuant to Article 11,
Section 13 of the Kansas Constitution, the Board of
Tax Appeals is authorized under K.S.A. 79-213 (as
amended) to examine the legal and factual basis of
any such exemption and to determine its merits.
Additionally, under K.S.A. 79-210 an economic
development tax exemption must be claimed (by the
property owner) in each year after approval thereof
by the board of tax appeals. Cited herein: K.S.A.
79-210, 79-213 as amended by L. 1986, ch. 370,
§2; Kan. Const., Art. 11, §13 (L. 1986, ch.
423, §1).

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Dear Mr. Schwartz:

You request our opinion as to whether the tax exemption
procedure prescribed by K.S.A. 79-210 and K.S.A. 79-213 (as

amended by L. 1986, ch. 370, §2) applies to tax exemptions granted under the provisions of Article 11, Section 13 of the Kansas Constitution (Chapter 423 of the 1986 Session Laws of Kansas). That constitutional provision permits the board of county commissioners of any county or the governing body of any city to exempt property satisfying certain economic development criteria from property taxation for a period not to exceed 10 years. Subsection (c) of the aforesaid provision provides that the legislature may limit or prohibit the exemption of property for economic development purposes "by enactment uniformly applicable to all cities or counties."

K.S.A. 79-213 (as amended by L. 1986, ch. 370, §2) prescribes the procedure under which property owners file requests for tax exemptions, and provides as follows:

"(a) Any property owner requesting an exemption from the payment of ad valorem property taxes assessed, or to be assessed, against their property shall be required to file an initial request for exemption, on forms approved by the board of tax appeals and provided by the county appraiser.

"(b) The initial exemption request shall identify the property for which the exemption is requested and state, in detail, the legal and factual basis for the exemption claimed.

"(c) The request for exemption shall be filed with the county appraiser of the county where such property is principally located.

"(d) After a review of the exemption request, and after a preliminary examination of the facts as alleged, the county appraiser shall recommend that the exemption request either be granted or denied, and, if necessary, that a hearing be held. If a denial is recommended, a statement of the controlling facts and law relied upon shall be included on the form.

"(e) The county appraiser, after making such written recommendation, shall file

the request for exemption and the recommendations of the county appraiser with the board of tax appeals.

"(f) Upon receipt of the request for exemption, the board shall docket the same and notify the applicant and the county appraiser of such fact."

"(g) After examination of the request for exemption, and the county appraiser's recommendation related thereto, the board may fix a time and place for hearing, and shall notify the applicant and the county appraiser of time and place so fixed. In any case where a party to such request for exemption requests a hearing thereon, the same shall be granted. In all instances where the board sets a request for exemption for hearing, the county shall be represented by its county attorney or county counselor.

"(h) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the request for exemption with the board.

"(i) When a determination is made as to the merits of the request for exemption, the board shall enter its order thereon and give notice of the same to the applicant, the county attorney and the county appraiser by sending to each a certified copy of its order.

"(j) The date of the order, for purposes of filing an appeal to the district court, shall be the date that a certified copy of the order is mailed to the party seeking to appeal.

"(k) During the pendency of a request for exemption, and in the event that taxes have been assessed against the subject property, no interest shall accrue on any unpaid tax for the year or years in question from the date the request is

filed with the county appraiser until the expiration of 30 days after the board issued its order thereon.

"(l) In the event the board grants the initial request for exemption, the same shall be effective beginning with the date of first exempt use.

"(m) In conjunction with its authority to grant exemptions, the board shall have the authority to abate all unpaid taxes that have accrued from and since the date of first exempt use. In the event that taxes have been paid during the period where the subject property has been determined to be exempt, the board shall have the authority to order a refund of taxes for a period not to exceed three years.

"(n) The provisions of this section shall not apply to farm machinery and equipment exempted from ad valorem taxation by K.S.A. 79-201j, and amendments thereto, or to personal property exempted from ad valorem taxation by section 1."

K.S.A. 79-210 requires the owners of all property which is exempt for a specified period of years to claim the exemption "in each year after approval thereof by the board of tax appeals." The statute further provides as follows:

"All claims for exemption from the payment of property taxes shall be made upon forms prescribed by the director of property valuation and shall identify the property sought to be exempt, state the basis for the exemption claimed and shall be filed in the office of the assessing officer of the county in which such property is located. The assessing officers of the several counties shall list and value for assessment, all property located within the county for which no claim for exemption has been filed in the manner hereinbefore provided."

K.S.A. 79-210 and K.S.A. 79-213 (as amended) were enacted prior to the adoption of Article 11, Section 13 of the Kansas Constitution by voters on August 5, 1986, and committee minutes and other records of legislative proceedings are not helpful in determining whether the legislature intended, in submitting the constitutional amendment to voters, that economic development tax exemptions would be subject to the tax exemption procedures prescribed by the aforesaid statutes. In our judgment, subsection (c) of the constitutional amendment, which allows the legislature to limit or prohibit the application of the amendment by enactments which are uniformly applicable to all cities or counties, does not imply that pre-existing tax exemption procedures are inapplicable to economic development tax exemptions. Therefore, in determining the applicability of such statutory procedures to economic development tax exemptions, we are guided by the following principles of constitutional law:

"[A]n amendment of the constitution must be held to amend the existing statute law to agree with such an amendment. An amendment operates to supersede or modify statutory provisions relating to the same subject matter only insofar as the statutory provisions are repugnant to, or inconsistent with, the controlling organic provisions contained in the amendment. The exception must be noted, however, that where the constitutional provision is not self-executing, in some instances an inconsistent state statute is not thereby superseded. If it is self-executing, it necessarily annuls all inconsistent acts of the legislature passed prior to its adoption.

"Implied repeals of statutes by later constitutional provisions are not favored any more than in the case of implied repeal of one statute by another. An enlarged meaning, beyond the import of its words will not be given to a constitutional provision in order to repeal a statute by implication. To effect a repeal by implication the inconsistency between existing legislation and a new constitutional provision must be

irreconcilable; that is, the inconsistency must be obvious, clear, and strong. If the statute and constitutional provision by any fair course of reasoning can be reconciled or harmonized this must be done and the statute allowed to stand. The final test in determining whether a statute is repealed by implication by a constitutional provision is: Has the legislature, under the new constitutional provision, the present right to enact statutes substantially like the statutes in question? If the legislature has that right, then clearly, the statute survives under the new constitution." (Emphasis added.) 16 Am.Jur.2d, Constitutional Law §68.

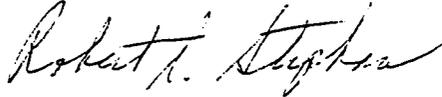
Although the Kansas Supreme Court has not recently considered the question, a case from early statehood indicates that Kansas adheres to the principal that previously enacted statutes must, if possible, be reconciled and harmonized with later constitutional provisions. See Prouty v. Stover, 11 Kan. 235 (1873).

In accordance with the above-cited authorities, it is our opinion that K.S.A. 79-213 (as amended) and Article 11, Section 13 of the Kansas Constitution may be harmonized. In our judgment, while cities and counties may grant economic development tax exemptions pursuant to the constitutional amendment, the Board of Tax Appeals is authorized under K.S.A. 79-213 (as amended) to examine the legal and factual basis of any such exemption and to determine its merits. Additionally, under K.S.A. 79-210 an economic development tax exemption must be claimed (by the property owner) in each year after approval thereof by the board of tax appeals.

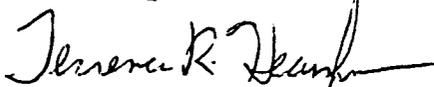
In conclusion, it is our opinion that the tax exemption procedure prescribed by K.S.A. 79-210 and K.S.A. 79-213 (as amended by L. 1986, ch. 370, §2) applies to economic

development tax exemptions granted under the provisions of
Article 11, Section 13 of the Kansas Constitution.

Very truly yours,



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