ATTORNEY GENERAL OPINION NO. 87- 5

E. A. Mosher
Executive Director
League of Kansas Municipalities
112 West Seventh Street
Topeka, Kansas 66603

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

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

Synopsis: Under the provisions of K.S.A. 1986 Supp. 79-213, the Board of Tax Appeals is authorized to examine the legal and factual basis of an economic development tax exemption granted pursuant to Article 11, Section 13 of the Kansas Constitution. However, the Board has no authority to review the advisability of granting a proposed exemption, as that policy decision has been delegated to the governing body of the city or county by Article 11, Section 13 of the Kansas Constitution. Cited herein: K.S.A. 1986 Supp. 79-213; Kan. Const., Art. 11, §13.

Dear Mr. Mosher:

You request clarification of Attorney General Opinion No. 86-168. Specifically, you ask whether the Board of Tax Appeals is authorized under K.S.A. 1986 Supp. 79-213 to review
the advisability of an economic development tax exemption
granted pursuant to Article 11, Section 13 of the Kansas
Constitution.

In Attorney General Opinion No. 86-168, we concluded, in part,
as follows:

"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." (Emphasis
added.)

The underscored portion of the above-quoted excerpt emanated
from language in subsection (i) of K.S.A. 1986 Supp. 79-213,
and was included in the opinion to emphasize that the Board of
Tax Appeals could deny an exemption if it found that there was
no legal or factual basis therefor. We did not intend to
imply that the Board has discretion to review the advisability
of a proposed exemption, as we believe that policy decision
has been delegated to the governing body of the city or county
by Article 11, Section 13 of the Kansas Constitution.

In summary, it is our opinion that under the provisions of
K.S.A. 1986 Supp. 79-213, the Board of Tax Appeals is
authorized to examine the legal and factual basis of an
economic development tax exemption granted pursuant to Article
11, Section 13 of the Kansas Constitution. However, the Board
has no authority to review the advisability of granting a
proposed exemption, as that policy decision has been delegated
to the governing body of the city or county by Article 11,
Section 13 of the Kansas Constitution.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm