



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89-103

Curtis E. Campbell  
Gray County Attorney  
222 S. Main  
Cimarron, Kansas 67835

Re: Taxation--Judicial Foreclosure and Sale of Real  
Estate by County--Apportionment of Proceeds of Sale

Synopsis: Pursuant to K.S.A. 79-2805, the proceeds of a tax sale should be distributed only to those funds or entities that had a lien included in the foreclosure action. Such proration may be based upon each entity's interest in the tax lien or upon the levy made in the year the sale occurred. Cited herein: K.S.A. 79-2804, as amended by L. 1989, ch. 294, §3; 79-2804f; 79-2805.

\* \* \*

Dear Mr. Campbell:

You request our opinion regarding apportionment of the proceeds of a tax sale pursuant to K.S.A. 79-2805. The information you have provided indicates that the county bid for and obtained the property in question at the tax foreclosure sale as authorized by K.S.A. 79-2804. Apparently, the county subsequently sold the property pursuant to K.S.A. 79-2804f. Thus, as you have indicated, the county is operating under the following provision of K.S.A. 79-2805:

"If the proceeds of the sale of any particular tract, lot or piece of real

estate sold by the board of county commissioners after the county has bid the same in at the tax foreclosure sale shall not equal or shall exceed the amount necessary to pay the entire lien for taxes, interest and costs which were included in the foreclosure action plus any and all subsequent taxes and special assessments and interest on said real estate due and unpaid at the time of such sale, the amount collected shall be apportioned as follows:

"(a) First in the payment of the advertising, commission and other costs incident to the sale;

"(b) the balance prorated, if practicable to each fund, in proportion to its interest in the entire lien for taxes and interest which were included in the foreclosure action.

"If such proration is impracticable such balance shall be prorated to each fund on the basis of the levy made for the year in which such sale is made by the county."

The county has determined that it is impracticable to prorate to each fund in proportion to its interest in the entire lien included in the foreclosure action. The county must therefore prorate "to each fund on the basis of the levy made for the year in which such sale is made by the county." You question whether the county should prorate to funds in taxing units which had no interest in the property sold, or only to "funds within the taxing units where the real estate was located when it was sold."

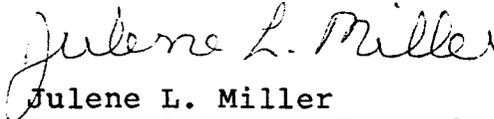
The language of K.S.A. 79-2805 in question was enacted in 1945. L. 1945, ch. 362, §8. We have been unable to locate any authority discussing this language. However, K.S.A. 79-2805 begins by stating that "[t]he proceedings so authorized by this act in the name of the board of county commissioners of the county shall be for the benefit of the state of Kansas, any city, township, school district or other taxing unit interested in such taxes to be recovered." (Emphasis added.) The fundamental rule of statutory construction is that the purpose and intent of the

legislature governs when the intent can be ascertained from the language of the statute. State v. Adee, 241 Kan. 825, 829 (1987); Harris Enterprises, Inc. v. Moore, 241 Kan. 59, 65 (1987). Further, legislative intent is to be determined from general consideration of the entire act. Adee, 241 Kan. at 829. K.S.A. 79-2801 et seq is a procedure whereby taxing units may recoup properly assessed outstanding taxes by sale of the property subject to those taxes. We find nothing in the act which indicates an intent to benefit taxing units which have no legal interest in or ability to levy taxes on the property being sold. It is therefore our opinion that, in the situation you describe, the amount left after payment of the advertising, commission and other costs incident to the sale should be prorated to each interested fund on the basis of the levy made for the year in which the sale occurred.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm