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ATTORNEY GENERAL OPINION NO. 89- 145

The Honorable Al Ramirez
State Representative, Fortieth District
913 Sheidley
Bonner Springs, Kansas 66012

Re: Constitution of the State of Kansas--Finance and
Taxation--System of Taxation; Classification

Synopsis: In considering possible alternatives for providing property tax relief, the Legislature may not postpone or alter procedures required by article 11, section 1 of the Kansas Constitution. The Legislature may limit local units of government in the total amount of property tax moneys they collect, or adjust payment schedules, with the possible repercussion of private lawsuits based on the local units' inability to meet contractual or other obligations. Cited herein: K.S.A. 1988 Supp. 79-1476 et seq.; Kan. Const., Art. 11, § 1.

* * *

Dear Representative Ramirez:

You request our opinion on the Legislature's ability to enact certain property tax relief measures. Your specific questions are as follows:

"1.) Does the Legislature have the authority by simple legislative action to delay implementation of any or all of the requirements of Section 1, Article 11 of the Kansas Constitution?

"2.) If the Legislature does have such power, how long of a delay would be permissible?

"3.) Does the Legislature have the power by simple legislative action to either allow or require payment of property taxes at 1988 assessments at 1988 mill levies?

"4.) Does the Legislature have the power by simple legislative action to either allow or require payment of property taxes at 1988 assessments at 1989 mill levies?

"5.) Does the Legislature have the power by simple legislative action to require rolling back of local jurisdictions' property tax rates to such an extent that the local jurisdictions collect no more in property taxes in 1989 than each did in 1988?

"6.) If the Legislature does not have the power by simple legislative act to roll back the property tax revenue of local jurisdictions to 1988 figures, may the Legislature roll back the property tax revenue of local jurisdictions at least partially?

"7.) Does the Legislature have the power by simple legislative action to allow or require payment of property taxes, at whatever rate, in quarterly instead of biannual payments?

"8.) I have attached a copy of an order issued November 27th by a district judge in Wyandotte County. The judge rules that taxpayers could pay 1/2 of their 1988 property taxes when filing a protest and still be in compliance with various statutes. Does the Legislature have the power by simple legislative action to make the judge's ruling statewide?"

The first of your questions has previously been addressed by this office. In Attorney General Opinion No. 87-8, attached, we concluded that the January 1, 1989 date set forth in article 11, section 1 of the Kansas Constitution may not be altered by simple legislative action. To postpone the effective date of classification, an amendment to the Constitution would be required. Your second question hinged on an affirmative answer to the first and so need not be addressed.

You next ask whether the legislature may by statute allow or require payment of property taxes based on 1988 assessments

and 1988 mill levies. Property taxes are calculated using property valuations, assessment rates and mill levy rates. Assessed valuations are determined by applying the appropriate assessment rate to the appraised valuation. The assessment rates are set out in the constitution which, as noted above, may only be altered by constitutional amendment. Therefore, the assessed valuations for 1988 may not be used in 1989 as they in many cases were not calculated at the current constitutionally prescribed rates.

Appraised valuations on the other hand are reached pursuant to statutory and administrative guidelines. Reappraisal was mandated at this particular time by statute rather than the constitution. K.S.A. 1988 Supp. 79-1476 et seq. Therefore, no constitutional provision would specifically prohibit a delay in the use of reappraised values; however, the constitution does provide for a "uniform and equal basis of valuation and rate of taxation of all property subject to taxation," except as otherwise specifically provided in the constitution. It is a question of fact whether the 1988 valuations would provide a more uniform and equal basis than the 1989 valuations. Absent further statistical information, we cannot predict with any certainty whether a court would uphold a legislative determination that 1988 valuations are more uniform and equal than 1989 valuations. It should also be kept in mind that article 11, section 1 of the constitution provides for certain tax exemptions. Thus, there is property which was on the tax rolls in 1988 which cannot be placed on the rolls in 1989. This could result in a drastic reduction in revenues and inability to fund certain required services. In short, because of the classification amendment, it is not possible to revert entirely to the tax scheme as it existed in 1988.

Your fourth question can be answered in much the same way. Using a different mill levy rate would not alter the fact that use of the 1988 assessments may not be possible.

Your fifth question is whether the legislature may by statute require local units of government to collect no more in property taxes in 1989 than each did in 1988. This would require local units of government to amend their budgets, recalculate their mill levies, reissue tax statements, and return some of the moneys which have already been collected. While this may be argued by county officials to be burdensome, costly and time consuming, and would result in a loss of income to local units of government, it appears to be within the Legislature's authority. The Kansas Supreme Court has

held that counties are not protected by the constitutional principles of due process. Albright v. Douglas County, 198 Kan. 184, 190 (1921). This general rule applies to other political subdivisions of the state as well. City of Safety Harbor v. Birchfield, 529 F.2d 1251, 1254 (5th Cir. 1976) ("municipal corporations have repeatedly been denied the right to challenge state legislation allegedly violative of the Federal Constitution. Williams v. Mayor and City Council of Baltimore, [289 U.S. 56, 53 S.Ct. 431, 77 L.Ed. 1015 (1933)]"). See also Pawhuska v. Pawhuska Oil & Gas Co., 250 U.S. 394, 398, 39 S.Ct. 526, 528, 63 L.Ed. 1054, 1057 (1919) ("as respects grants of political or governmental authority to cities, towns, counties, and the like the legislative power of states is not restrained by the contract clause of the Constitution"); Newark v. New Jersey, 262 U.S. 192, 193, 196, 43 S.Ct. 539, 540, 67 L.Ed. 943 (1923) ("city cannot invoke the protection of the Fourteenth Amendment against the State"); City of Moore, Oklahoma v. Atchison, Topeka & Santa Fe Ry. Co., 699 F.2d 507, 511 (10th Cir. 1983). These authorities indicate that local units of government would have no standing to challenge legislation requiring them to rework their budgets. Individual taxpayers or entities contracting with the local units may, however, have some standing if contractual or other obligations cannot be met. The merits of these possible law suits would have to be determined on a case-by-case basis.

Since we have answered your fifth question affirmatively, we need not address your sixth question.

You next ask whether the Legislature may by statute allow or require payment of property taxes in quarterly instead of biannual payments. The analysis of this question is much the same as that of the previous question. Local units of government may suffer from loss of interest because moneys traditionally invested before being used might no longer be available. As noted above, however, political subdivisions of the state generally have no authority to challenge such legislation. Further, this alternative may be less intrusive as to individual taxpayers or entities which may be affected by a local unit of government's decrease in revenues because the underlying taxes would eventually be paid.

Finally, you question whether the Legislature may by statute adopt the order issued by Judge Meeks in Wyandotte County. That order provides in pertinent part:

"1. That such property owners be allowed to pay their taxes under protest and appeal that part of their taxes which exceeds what these same property owners paid for the year 1988 on their real estate without being required to pay into the Treasurer that portion of their taxes which have been increased over and above their 1988 taxes.

"2. That said defendants are required and ordered to allow the appeal process to go forward without the necessity of having to pay the increased taxes to the end that all property owners shall be accorded due process and shall have a fair, full and complete hearing on any and all increases that may have been added to their taxes over and above the tax they paid in 1988." Sullwold v. Hamblin, Case No. 89C5187, Wyandotte County District Court (Nov. 27, 1989).

The order does not forgive payment of increases occurring in 1989 property taxes, but merely allows taxpayers to pursue appeals prior to having to pay such increases. This too would appear to be a valid exercise of legislative authority. Local units of government would eventually receive all lawfully assessed property taxes, though maybe not for a long time depending upon the volume of appeals. Again, private parties may have a cause of action if the local units of government fail to meet contractual or other obligations, though whether any such actions would be successful is difficult to determine at this time.

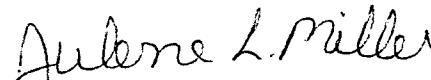
In conclusion, in considering possible alternatives for providing property tax relief, the Legislature may not postpone or alter procedures required by article 11, section 1 of the Kansas Constitution. The Legislature may limit local units of government in the total amount of property tax moneys they collect, or adjust payment schedules, with the possible

repercussion of private lawsuits based on the local units' inability to meet contractual or other obligations.

Very truly yours,



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