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ATTORNEY GENERAL OPINION NO. 89- 146

The Honorable Dale M. Sprague
State Representative, Seventy-Third District
P.O. Box 119
McPherson, Kansas 67460

Re: Taxation--Homestead Property Tax Refunds--
Extending the Deadline for Payment of Property
Taxes; Equal Protection

Synopsis: Classifying taxpayers on the basis of eligibility
under "residential circuit breaker guidelines" for
purposes of determining when property tax payments
must be made does not violate the Equal Protection
Clause of the United States Constitution or article
11, section 1 of the Kansas Constitution. Cited
herein: K.S.A. 79-4501 et seq.; L. 1989, ch.
303, § 5; Kan. Const., Art. 11, § 1, U.S.
Const., Amend. XIV.

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Dear Representative Sprague:

Along with Representative Aldie Ensminger you request our
opinion on the following proposal for property tax relief:

"Relating to the issues of property tax payments to be
considered by the 1989 Special Session, it would be proposed
that individual and business/corporate taxpayers who meet the
guidelines and restrictions of the 'Residential Circuit
Breaker Guidelines' would be allowed to pay their 1989 taxes
in quarterly payments, the first payment due on January 16,
1990, the second on March 20th, and the last half on June

20th. In the case of business/corporate taxpayers, adjusted net income would be the standard for meeting the \$35,000.00 test of the residential circuit breaker guidelines.

"All other taxpayers would pay taxes under current statutes, a minimum one-half (1/2) payment due on December 20, 1989, and the last half on June 20, 1990."

Recognizing that this proposal creates a bifurcation of classes of taxpayers, you question its legality under current statutory and constitutional standards. Due to time constraints, we limit this opinion to a discussion of the validity of the proposal under the Equal Protection Clause of the United States Constitution and article 11, section 1 of the Kansas Constitution.

The Equal Protection Clause, Amend. XIV, U.S. Const., prohibits states from denying to any person within their jurisdiction the equal protection of the laws. The equal protection clause does not forbid discrimination with respect to things that are different. The test is whether the difference in treatment is an invidious discrimination. 16A Am.Jur.2d Constitutional Law § 738 (1979).

"But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.' [citation omitted]. 'If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.' [Citation omitted]. That a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction, or difference in state policy." Allied Stores of Ohio v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480, 485 (1959).

The classification here involved is based on the qualifications established in the homestead property tax refund act, K.S.A. 79-4501, and the "circuit breaker" act, L. 1989, ch. 303, § 5. The object of the legislation would be to provide relief to those persons and entities most severely affected by property tax increases by allowing them more time to pay those taxes. In ruling on a state revenue act which required property taxpayers in larger counties to pay their taxes on an accelerated basis but allowing taxpayers in smaller counties to pay on an unaccelerated basis, the Appellate Court of Illinois upheld the classification holding that the "plaintiff [had] not met his burden of proving that section 224 of the Revenue Act is clearly unreasonable or palpably erroneous." The court noted that statutes are to be presumed valid and that it was unable to find that there was no rational basis for the enactment. Fox v. Rosewell, 371 N.E.2d 287 (Ill. App. 1977). The Georgia Supreme Court has held that state provision of direct benefits for a certain group to the exclusion of other citizens does not, unless done by arbitrary standards, constitute a violation of the constitutional guarantee of equal protection under the laws. Williamson v. Housing Authority of Augusta, 199 S.E. 43 (Ga. 1938). See also Jefferson v. Hackney, 406 U.S. 535, 92 S.Ct. 1724, 32 L.Ed.2d 285 (1972); Hiatt Grain & Feed, Inc. v. Bergland, 446 F.Supp. 457, aff'd, 602 F.2d 929, cert. den. 444 U.S. 1073, 100 S.Ct. 1019, 62 L.Ed.2d 755 (D.C. Kan. 1978); Annot, 67 L.Ed.2d 883 (1982).

"Many problems must be attacked piecemeal, and it is not a denial of equal protection that defendant does not aid all those who need aid with every program he promulgates. Few programs would ever be adopted if they were required to aid all who need assistance equally." Hiatt Grain, 446 F.Supp. at 508.

Based on these authorities, it is our opinion that the classification you propose would be upheld under an equal protection challenge.

In delaying the payment deadline for some and not others, the situation may arise where one person must pay interest if his property taxes are not paid by December 20, 1989, while another person will owe no interest as long as he pays prior to January 16, 1990. This may be argued to violate the uniform and equal provision of the Kansas Constitution.

Kan. Const., Art. 11, § 1. However, the Kansas Supreme Court has held that "[w]here constitutional challenges have been made to tax exemption schemes as violative of Article 11, Section 1, of the Kansas Constitution, this court has consistently held that the uniform and equal rate of assessment and taxation provision is, in principle and effect substantially identical to the principle of equality embodied in the Equal Protection Clause of the United States Constitution," State ex rel. Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, 426 (1981), and "in general, what violates one will contravene the other and vice versa." Topeka Cemetery Association v. Schnellbacher, 218 Kan. 39, 43 (1975). Since we have found no equal protection violation, we also find no violation of the uniform and equal taxation provision of the Kansas Constitution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm