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December 18, 1989

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ATTORNEY GENERAL OPINION NO. 89- 148

The Honorable Debara K. Schauf
State Representative, Eighty-First District
P.O. Box 68
Mulvane, Kansas 67110

Re: Taxation--Property Exempt from Taxation--Property
Exempt from Taxation; Merchants' and Manufacturers'
Inventory

Synopsis: Because the Kansas Constitution does not define the term "merchants' and manufacturers' inventory" for purposes of the property tax exemption in article 11, section 1, it is appropriate to rely on common understanding of the terms at the time the constitutional provision was adopted, and the statutory definitions contained in K.S.A. 1988 Supp. 79-201m. The scope of these definitions does not include real estate, such as houses constructed on-site for later sale. Therefore, such property is not eligible for the merchants' and manufacturers' inventory exemption from property tax under article 11, section 1. Cited herein: K.S.A. 79-102; K.S.A. 1988 Supp. 79-201m, as amended by L. 1989, ch. 289, § 1; Kan. Const., Art. 11, § 1.

* * *

Dear Representative Schauf:

You request our opinion concerning whether the construction of housing constitutes "manufacturing" under article 11, section 1 of the Kansas Constitution. Specifically, you ask whether

houses constructed on-site for sale by a builder may qualify for exemption from property tax as "manufacturers' inventory" until sold or occupied.

Article 11, section 1 of the Kansas Constitution provides that "merchants' and manufacturers' inventories . . . shall be exempt from property taxation." However, article 11, section 1 does not define the term "merchants' and manufacturers' inventories." K.S.A. 1988 Supp. 79-201m, which was adopted two years after the constitutional provision, contains almost identical language exempting merchants' and manufacturers' inventories from property tax. The statute contains the following definitions:

"(a) 'merchant' means . . . every person . . . who shall own or hold . . . any tangible personal property . . . for resale in the ordinary course of business without modification or change in form or substance. . . .

"(b) 'manufacturer' means . . . every person . . . who is engaged in the business of transforming, refining or combining materials and labor to convert tangible personal property from one form to another. . . .

"(c) 'inventory' means . . . those items of tangible personal property that: (1) are primarily held for sale in the ordinary course of business (finished goods); (2) are in process of production for such sale (work in process); or (3) are to be consumed either directly or indirectly in the production of finished goods (raw materials and supplies). . . ." (Emphasis added).

The statutory definitions limit both merchants' and manufacturers' inventories to "tangible personal property." As used in the tax statutes, personal property includes "every tangible thing which is the subject of ownership, not forming part or parcel of real property . . ." K.S.A. 79-102. Real property includes "not only the land itself, but all buildings . . . appertaining thereto." *Id.* Houses constructed on-site by a builder clearly do not satisfy the statutory definition of personal property. Therefore, they cannot be

considered merchants' or manufacturers' inventory for purposes of the statutory exemption under K.S.A. 1988 Supp. 79-201m.

It remains to determine whether such houses can be considered merchants' or manufacturers' inventory for purposes of the constitutional exemption. In construing a constitutional provision, consideration should be given to what appears to have been the intendment and understanding of the people at the time of its adoption. State ex rel. Frizzell v. Highwood Services, Inc., 205 Kan. 821, 825, 826 (1970). Its language should be interpreted to mean what the words imply to men of common understanding." Id. at 825.

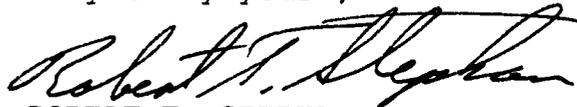
K.S.A. 1988 Supp. 79-201m was enacted two years after the current version of article 11, section 1. While it is arguable that the definitions contained in the statute do not coincide with the intendment and understanding of the people at the time the constitutional provision was adopted, we find nothing in recorded legislative history to support such a conclusion. The fact that statutory definitions were adopted soon after the passage of the constitutional amendment suggests the legislature intended to clarify the scope of the constitutional exemption, rather than to alter it.

Furthermore, the statutory definitions are consistent with definitions of "merchant" and "manufacturer" commonly used at the time of the constitutional amendment. The American Heritage Dictionary 821, 796 (New College Edition 1976) defines "merchant" as a person whose occupation is the wholesale purchase and retail sale of goods; "manufacturer" as a person or enterprise that manufactures, especially the owner or operator of a factory; and "manufacture" as the making or processing of raw material into a finished product, especially by means of a large-scale industrial operation. These definitions, like the statutory definitions, would not appear to include builders or sellers of site-constructed houses such as you describe. This conclusion is further supported by case law in other jurisdictions, which has generally held that, for purposes of tax exemptions, the term "manufacturing" does not include the construction of buildings. Annot. 17 A.L.R.3d 7, 116 (1968).

We conclude that site-constructed houses are not "merchants' and manufacturers' inventories" as that term was commonly understood at the time article 11, section 1 was amended, and

therefore, do not qualify for exemption from property taxes under the Kansas Constitution.

Very truly yours,



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Julene L. Miller
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