



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

September 7, 1990

ATTORNEY GENERAL OPINION NO. 90- 105

Norman G. Manley
Butler County Counselor
116 North Star
El Dorado, Kansas 67042

Re: Automobiles and Other Vehicles -- General
 Provisions; Registration of Vehicles --
 Registration of Vehicles; Proof of Assessment;
 Unpaid Personal Property Tax

Counties and County Officers -- General Provisions
-- Home Rule

Synopsis: K.S.A. 1989 Supp. 8-173 directs the county
 treasurer to refuse an application for registration
 of a vehicle if the applicant is delinquent and
 owes personal property taxes levied against the
 applicant for any preceding year. If a vehicle
 license plate or decal is inadvertently given to
 such an applicant any remedial procedure to recover
 unpaid personal property tax moneys, or the license
 plate or decal, must be prescribed by an authorized
 court order, the legislature, or by valid
 administrative rules and regulations. We find no
 statutory authority permitting the county treasurer
 to request the county sheriff to retrieve a license
 plate or decal inadvertently issued to someone who
 has not paid personal property tax. Cited herein:
 K.S.A. 8-145a; K.S.A. 1989 Supp. 8-173; K.S.A.
 8-176; 19-515; 79-1411a; 79-2004a, as amended by L.
 1990, ch. 7, § 2 (1989 Special Session); 79-2015.

* * *

Dear Mr. Manley:

As county counselor for Butler county you request our opinion concerning what remedial actions are available when automobile license plates are inadvertently issued to persons who have not paid their personal property taxes as required by K.S.A. 1989 Supp. 8-173. Specifically, you ask whether that or any other statute authorizes the county treasurer to request that the sheriff contact such persons and either collect the property taxes or retrieve the license plates. In addition, you ask whether K.S.A. 1989 Supp. 8-173 authorizes the treasurer to demand payment of all unpaid personal property taxes before issuing license plates or decals.

K.S.A. 1989 Supp. 8-173 states in part:

"(a) An application for registration of a vehicle . . . shall not be accepted unless the person making such application shall exhibit:

"(1) A receipt showing that such person has paid all personal property taxes levied against such person for the preceding year. . . , or

"(2) evidence that such vehicle was assessed for tax purposes by a state agency, or was assessed as stock in trade . . . or was exempt from taxation. . . .

"(b) An application for registration of a vehicle . . . shall not be accepted if . . . the applicant is delinquent and owes personal property taxes levied against the applicant for any preceding year."
(Emphasis added).

Prior to the addition of subsection (b), the statute did not mention unpaid taxes for years other than the immediately preceding year. The legislature amended the statute to its current form in 1989. L. 1989, ch. 37, § 3(b). As the underlined language shows, the current version expressly authorizes the county treasurer to demand payment of unpaid personal property taxes for any preceding year. While K.S.A. 1989 Supp. 8-173(a)(1) refers to "the preceding year . . ." (emphasis added), K.S.A. 8-173(b) permits the treasurer to refuse an application if the applicant is

delinquent and owes personal property tax for any preceding year. Thus, if the treasurer is aware that such taxes are owed, K.S.A. 1989 Supp. 8-173(b) directs the treasurer to decline the application.

However, K.S.A. 1989 Supp. 8-173 does not provide for remedial action in the event the county treasurer inadvertently accepts an application from someone who has not paid personal property taxes. Although the statute does not expressly authorize the county treasurer to recover license plates or decals mistakenly issued to persons with unpaid property taxes, it is clear that the legislature did not intend for such persons to obtain such indicia of registration. It is possible the legislature simply did not foresee that license plates or decals might be issued inadvertently. If so, it is arguable that the authority to retrieve license plates or decals in such cases should be implied in order to give full effect to the statute's purpose.

We are unwilling to construe K.S.A. 1989 Supp. 8-173 this liberally. Under K.S.A. 8-145a, the legislature provided express authority to retrieve license plates in cases of insufficient or no-fund checks. If the legislature had intended to authorize a similar procedure in cases where license plates were issued inadvertently, it could have provided express authority under K.S.A. 8-173. "The function of liberal construction is called into use when there is ambiguity in the language of the statute. . . . But the court cannot delete vital provisions or supply vital omissions in a statute." Russell v. Cogswell, 151 Kan. 793, 795 (1940). Furthermore, statutes which govern the collection of taxes are to be strictly construed against the state in favor of the taxpayer. In re Tax Protest of Strayer, 239 Kan. 136, 141 (1986). It has often been stated that the entire matter of taxation, including the method prescribed for the collection of delinquent property taxes, is statutory and does not exist apart from statute. Board of Johnson County Comm'rs v. Roberts, 231 Kan. 135, 139 (1982); Board of Sedgwick County Comm'rs v. Matlock, 192 Kan. 272, 272 (1963); Cunningham v. Blythe, 155 Kan. 689, 694 (1942); Ness County v. Light and Ice Co., 110 Kan. 501, 503 (1922). Following these rules of statutory construction, we conclude that K.S.A. 1989 Supp. 8-173 provides neither express nor implied authority to retrieve license plates or decals mistakenly issued to persons with unpaid personal property taxes.

K.S.A. 79-2004a, as amended by L. 1990, ch. 2, § 2 (1989 Special Session), and K.S.A. 79-2015 discuss actions for the collection of unpaid taxes. These and other statutory remedies remain available to a county that seeks to recover unpaid personal property taxes. Any remedial procedure to obtain unpaid personal property taxes or retrieve license plates or decals issued to delinquent taxpayers must be prescribed by the legislature, by a properly authorized court order or by rules and regulations adopted by the secretary of revenue under K.S.A. 8-176.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas