



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 5

Mr. Henry H. Blase  
Sedgwick County Counselor  
County Courthouse  
Suite 359  
Wichita, Kansas 67203-3709

Re: Taxation--Correction of Irregularities--Unlawful  
Release, Discharge, Remission or Commutation of  
Taxes; Release or Waiver of Tax Lien

Taxation--Collection and Cancellation of  
Taxes--Collection of Delinquent Taxes in Certain  
Counties; Tax Lien; Release or Waiver by Sedgwick  
County

Synopsis: Release or waiver of a tax lien arising pursuant to  
K.S.A. 1990 Supp. 79-2017 does not violate the  
provisions of K.S.A. 79-1703. However, an  
unconditional waiver or release is outside the  
authority granted to Sedgwick county officials.  
Cited herein: K.S.A. 1989 Supp. 8-173; K.S.A. 1990  
Supp. 19-101a; K.S.A. 79-1703; K.S.A. 1990 Supp.  
79-2017.

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Dear Mr. Blase:

As county counselor for Sedgwick county you request our  
opinion on whether K.S.A. 79-1703 prohibits a board of county  
commissioners, or other county officers, from waiving or  
releasing a lien on real property which has attached pursuant  
to K.S.A. 79-2017. You note that, quite often, in the course

of mortgage foreclosure actions or actions to cancel contracts for deed, your county is asked to take such action and that while this waiver does not release or otherwise discharge the underlying tax liability the question remains whether or not the waiver could be considered a violation of K.S.A. 79-1703 in that an apparent ability to collect the tax is being released.

K.S.A. 79-1703 states in part:

"(a) Except as . . . otherwise provided by law, no board of county commissioners or any officer of any county shall have power to release, discharge, remit or commute any portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason whatever. . . ."

A release of taxes assessed or levied would involve "the relinquishment, concession, or giving up of a right, claim, or privilege . . . [or] abandonment of claim to the party against whom it exists, and is a surrender of a cause of action and may be gratuitous or for consideration." Black's Law Dictionary 1159 (5th ed. 1979). Discharge means "to release; liberate; annul; unburden; disencumber; dismiss. To extinguish an obligation. . . ." Id. at 416. To remit is "to send or transmit . . . to send back . . . to give up; to pardon or forgive; to annul; to relinquish. . . ." Id. at 1163. A commutation of taxes occurs when there is a "payment of a designated lump sum (permanent or annual) for the privilege of exemption from taxes, or the settlement in advance of a specific sum in lieu of an ad valorem tax." Id. at 254.

Based upon these definitions, it does not appear that actions to release or waive a valid tax lien result in a release, discharge, remittance or commutation of taxes assessed or levied. The tax continues to be owed after the lien is released. The right or claim to that tax is not released by waiving a tax lien, rather the county gives up the claim to priority status and the benefits of a judgment lien. Thus, actions to release or waive a tax lien do not necessarily result in an action prohibited by K.S.A. 79-1703. However, we must examine whether county officials are otherwise vested with the authority to grant such a release or waiver.

Once property tax owed on property in Sedgwick county goes unpaid, a lien arises pursuant to K.S.A. 1990 Supp. 79-2017. That lien gives the county rights with regard to the property of a tax debtor:

"The total amount shall become a lien on real estate from and after the time of the filing thereof . . . and when the judgment is entered in the manner provided above, the judgment shall become a lien upon real estate located in such county as is provided in the case of other judgments. . . ."

K.S.A. 1990 Supp. 79-2017 also provides Sedgwick county with authority to allow judgments to become dormant if the judgment remains uncollected after 20 years or if the original amount of the judgment was less than \$50.00. These directives do not appear to be discretionary on the part of county officials. Rather, as evidenced by the recent amendment to K.S.A. 79-2017, tax collection mechanisms are statutorily provided and procedures for relief from such tax debts is included in those statutes. Pursuant to K.S.A. 1990 Supp. 79-2017 the legislature has authorized and directed Sedgwick county officials to take certain actions with regard to collection of unpaid taxes and such directives and authority do not appear to include the ability to waive or release a tax lien which has attached pursuant to K.S.A. 1990 Supp. 79-2017. Thus, we must determine if such authority exists outside K.S.A. 1990 Supp. 79-2017.

K.S.A. 1990 Supp. 19-101a permits counties to exercise home rule authority in order to "transact all county business and perform all powers of local legislation and administration it deems appropriate." There is some question as to whether taxes required to be collected and lien procedures set forth under K.S.A. 1990 Supp. 79-2017 are subjects of local legislation. Moreover, K.S.A. 1990 Supp. 19-101a(a)(11) prohibits the exercise of county home rule with regard to certain taxation matters. The entire matter of taxation is legislative and does not exist apart from statute, and the legislature is empowered to provide the means and agencies for carrying out its responsibilities in matters of taxation. Joseph v. McNeive, 215 Kan. 270 (1974). Neither the assessing official nor the state board of tax appeals has the discretion to waive or excuse penalties provided by law for failure to comply with tax laws. See Walkemeyer v. Stevens County Oil and Gas Co., 205 Kan. 486 (1970). One

of the penalties for not paying taxes is a tax lien. Such a lien aids in the ultimate collection of a tax debt and was provided by the legislature to insure such collection.

Attorney General Opinion No. 85-100 opined that Shawnee county officials possessed the implied power to take reasonable actions as were necessary for the effective exercise of the powers conferred and the duties imposed pursuant to K.S.A. 79-2017. Thus, we concluded that the Shawnee county board of commissioners could defer payment of taxes and accrued interest for a reasonable period of time. In the situation presented to us by Shawnee county officials, the procedures required by the statute were followed, however, because of chapter 11 bankruptcy proceedings, no further action could be taken by the county. The county therefore had to decide how best to collect the taxes; either deferring tax payment until it could be collected or collecting little if any of the tax debt from property involved in the bankruptcy proceedings. Based on the specific facts of that situation, we did not believe that the county acted ultra vires in deferring payment of taxes. However, the situation presented by Sedgwick county does not provide specific facts concerning the degree of compliance with the procedures required by K.S.A. 79-2017 et seq. nor the impact of a release or waiver of a tax lien upon the ultimate recovery of a certain unpaid tax debt.

K.S.A. 1990 Supp. 79-2017 specifically discusses dormancy of tax liens. Thus, it appears that the legislature realized that some tax debts may go uncollected or unpaid for great periods of time. However, K.S.A. 1990 Supp. 79-2017 does not appear to contemplate, permit or authorize the discretionary release, commutation or discharge of a valid tax lien. Moreover, we have thus far not located specific statutory authority or case law permitting such a release or waiver by Sedgwick county officials. [Note: K.S.A. 1989 Supp. 8-173(b) states that a county treasurer shall not accept registration of a vehicle "if the records of the county treasurer show that the applicant is delinquent and owes personal property taxes levied against the applicant for any proceeding year."] Once a tax lien is properly obtained by a county subject to K.S.A. 1990 Supp. 79-2017 the statutes provide when that lien may become dormant and, if not revived, it ceases to operate as a lien on the real estate of the delinquent taxpayer. However, until such time as that statutorily provided dormancy occurs, it is our opinion that neither the board of county commissioners nor other county officials have the authority to release or waive a valid tax

lien which as arisen and attached to property pursuant to  
K.S.A. 1990 Supp. 79-2017.

As discussed in Attorney General Opinion No. 85-100, there may be situations wherein county officials conclude that it is in the best interests of the county to defer enforcement of their collection rights. Attorneys involved in mortgage foreclosures or contracts for deeds may attempt to include or provide for some guarantee or transfer of liability with regard to a tax lien. However, authority to defer collection on or enforcement of a tax lien does not, in our opinion, include the authority to abolish or relinquish either the debt itself or the statutory remedy provided to enforce collection of that debt.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Theresa Marcel Nuckolls  
Assistant Attorney General

RTS:JLM:TMN:jm