



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 91- 6

Mr. Gene Sharp
Liberal City Attorney
419 North Kansas
P.O. Box 2619
Liberal, Kansas 67905-2619

Re: Taxation--Correction of Irregularities--Unlawful
Release, Discharge, Remission or Commutation of
Taxes; Interests and Penalties Owed by City

Taxation--Property Exempt from Taxation--Claim to
be Filed Each Year

Synopsis: A board of county commissioners is without authority to forgive interest and penalties lawfully owed as a result of unpaid taxes. Moreover, county officials and school district officials cannot decline receipt of tax moneys which should be received by operation of law. Tax moneys must be collected and distributed in the manner and to the entities prescribed by law. Once such collection and distribution has occurred and a county or school district receives tax moneys, such moneys may only be spent according to the procedures applicable to all expenditures by those entities. Unless statutorily exempted for a specified number of years, property need not be exempted on a yearly basis. Rather, K.S.A. 79-214 requires a property owner to notify taxing officials if the exempt use ceases. Cited herein: K.S.A. 79-201; 79-201a; K.S.A. 1990 Supp. 79-210; 79-213; K.S.A. 79-214; 79-301; 79-306; 79-1703; 79-1704; 79-2934; Kan. Const., art. 11, § 13.

Dear Mr. Sharp:

As city attorney for the city of Liberal you request our opinion concerning ad valorem tax matters. You inform us that the city owes approximately \$100,000 in ad valorem tax for the years 1984 through 1988. You first ask whether the county has the authority to forgive interest and penalties on this tax debt, and you cite K.S.A. 79-1703 and Attorney General Opinion No. 85-100.

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

"(a) Except as provided in subsection (b) or as otherwise provided by law, no board of county commissioners or other 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. . . ."

[Subsection (b) concerns taxes owed by a railroad.]

Attorney General Opinion No. 85-100 dealt with a tax debtor involved in bankruptcy proceedings and opined that a deferment of payment of the taxes owed did not rise to the level of a release, discharge, remittance or commutation of the tax. Rather, it was our opinion that if such collection was merely postponed, the county was not required to attempt collection when such attempts would be futile. The tax debt remained owed and the county continued to possess an enforceable right. Thus, it was our opinion that the deferment in question did not violate K.S.A. 79-1703.

K.S.A. 79-1703 forbids certain actions with regard to "taxes assessed or levied." Thus, the issue you present requires definition of the terms "taxes assessed or levied". Attorney General Opinion No. 87-21 concluded that "penalties and interest owed on delinquent taxes are to be treated in the same manner as the tax itself, unless punitive in nature." See also Attorney General Opinions No. 82-3, 76-158, 76-132 and 74-98. In Re Tax Protest of Rice, 228 Kan. 600, 602 (1980) reaffirms the rule that penalties imposed for nonpayment of tax become part of the taxes. See also In Re

Tax Protest of Liston Foundation, 13 Kan.App.2d 353 (1989); Walkemeyer v. Stevens County Oil and Gas Co., 205 Kan. 486, 490 (1970). In Re Application of U.S.D. No. 437 for Tax Relief, 243 Kan. 555 (1988) recognizes that the board of county commissioners has a statutory duty to collect taxes on property which escapes taxation and the county must correct errors upon discovery. "Methods of collecting taxes are wholly statutory, and whatever remedies or procedures are available in connection therewith are to be found in the statutes . . ." Kucera v. State, 160 Kan. 624, 626 (1945). 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. Walkemeyer v. Stevens County Oil and Gas Co., 205 Kan. 486 (1970). Based upon the aforementioned authority it is our opinion that a board of county commissioners may not forgive interest and penalties lawfully accrued as a result of unpaid taxes. However, we would note that K.S.A. 79-1704 permits the state board of tax appeals to abate taxes owed by cities under some circumstances.

Your second question concerns mechanisms whereby other public entities (either the county or a school district) may give back a portion of the ad valorem tax, interest or penalties, possibly for use by the city in regards to the city airport. Alternatively, you ask whether the county may include a budgetary item supporting such a use.

The entire matter of taxation is legislative and does not exist apart from statute. Joseph v. McNieve, 215 Kan. 270 (1974). The collection and distribution of ad valorem tax moneys is statutorily established. The state legislature has provided counties with a procedure and established the proportions for distribution of tax moneys. We have thus far been unable to locate statutory authority or case law permitting a public entity to decline acceptance of tax moneys which the statutory taxation scheme declares must be paid over to that entity. Thus, it is our opinion that the county and the school district must first accept and properly account for moneys which the statutes declare must be distributed to those entities pursuant to ad valorem tax collection procedures. Once tax moneys have been properly received and accounted for by a county or a school district, they may be expended for any legally permissible purpose within the scope of authority of those public entities. Limitations upon both entities include the provisions of K.S.A. 79-2934; ". . . and the appropriation thus made shall not be used for any other purpose. . . ."

Home rule authority or the provisions of K.S.A. 3-308 et seq. may permit county expenditures for the purpose of supporting an airport. However, a school district is generally directed to expend tax moneys allocated to such districts for certain educational purposes. We have thus far been unable to locate authority allowing unified school districts to expend tax moneys for support of an airport where such expenditure is wholly unrelated to the educational purposes for which those school districts were created. Thus, such expenditure of school district moneys does not appear to fall within the scope of authority granted to Kansas school districts.

It is our opinion that tax moneys must be collected and distributed in the manner and to the entities prescribed by statute. Once a county or school district receives such tax moneys, expenditures may only occur in the manner and for the purposes applicable to those entities.

The third issue you present for our opinion concerns exemptions from taxation for property owned by a city. You state:

"The County has taken the position that any City owned property that does not have a specific exemption is taxable and that the burden lies on the City of Liberal to have its property annually exempted even if it is not assessed by the County. However, as I read K.S.A. 79-210 and 79-213, the City must ask for an exemption each year on its real and intangible personal property if and only if:

"1. The property has not previously been exempted and it is assessed by the County;
or

"2. The property has previously been exempted by the Board of Tax Appeals."

K.S.A. 79-201 et seq. list property that is exempt from taxation. K.S.A. 1990 Supp. 79-210 and 79-213 set forth the procedures and requirements involved in obtaining exempt status:

"The owner or owners of all property which is exempt from the payment of property taxes under the laws of the state

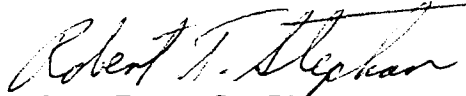
of Kansas for a specified period of years shall in each year after approval therefor by the board of tax appeals claim such exemption on or before March 1 of each year in which such exemption is claimed in the manner hereinafter provided. All claims for exemption from the payment of property taxes shall be made upon forms prescribed by the director of property valuation and shall identify the property sought to be exempt, state the basis for the exemption claimed and shall be filed in the office of the assessing officer of the county in which such property is located. The assessing officers of the several counties shall list and value for assessment, all property located within the county for which no claim for exemption has been filed in the manner hereinbefore provided. The secretary of revenue shall adopt rules and regulations necessary to administer the provisions of this section. The provisions of this section shall apply to property exempted pursuant to the provisions of section 13 of article 11 of the Kansas constitution. The claim for exemption annually filed by the owner of such property with the assessing officer shall include a written statement, signed by the clerk of the city or county granting the exemption, that the property continues to meet all the terms and conditions established as a condition of granting the exemption." K.S.A. 1990 Supp. 79-210. (Emphasis added).)

[Article 11, § 13 of the Kansas constitution discusses exemption of property for economic development purposes and permits the county or city to exempt ad valorem taxation on certain buildings or real property used for such purposes.]

K.S.A. 1990 Supp. 79-213 requires that exempt status for most property be obtained from the Kansas board of tax appeals, but does not require an annual request for exemption. Rather, if exempted property ceases to be used for the exempt purpose, K.S.A. 79-214 requires the property owner to file a statement within 30 days. The burden of notification that such exempt

use has ceased rests on the property owners and the penalties for failure to notify are set forth at K.S.A. 79-1422. Thus, unless the statutory exemption is for a specified numbers of years, owners of exempt property are not required to file annually for exemption, but need only file initially as provided by K.S.A. 1990 Supp. 79-213.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:jm