



STATE OF KANSAS

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ATTORNEY GENERAL OPINION 92- 20

J. Stanley Hill
Counselor for Reno County
Education Cooperative #610
Suite 802, First National Center
P.O. Box 2027
Hutchinson, Kansas 67504-2027

Re: Taxation--Property Exempt from Taxation--Property
Acquired by School District Education Cooperatives
Pursuant to Lease Purchase Agreement

Synopsis: The property of a cooperative created pursuant to
K.S.A. 1991 Supp. 72-8230 is not entitled to a
property tax exemption under K.S.A. 79-201 First
or K.S.A. 79-201a Second during the term of a
lease purchase agreement. Cited herein: K.S.A.
10-1101; 12-105a; 12-1218; 12-1679; 17-2339;
31-132; 36-501; K.S.A. 1991 Supp. 65-6113; K.S.A.
68-589; 68-2101; K.S.A. 1991 Supp. 72-8230;
K.S.A. 75-1117; 75-3038; 79-201 First; 79-201a
Second.

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Dear Mr. Hill:

As attorney for Reno county education cooperative #610, you
request our opinion regarding the tax status of property
acquired by that entity. Specifically you inquire whether
property acquired pursuant to a lease purchase agreement is
exempt from property taxes pursuant to K.S.A. 79-201 First
or K.S.A. 79-201a Second.

K.S.A. 79-201 First provides in part:

"The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

"First . . . all buildings used exclusively by school districts organized under the laws of this state. . . ."

Reno county education cooperative #610 was created pursuant to K.S.A. 72-8230. This provision authorizes the boards of education of two or more school districts to enter into cooperative agreements to jointly provide special education and other services. In Attorney General Opinion No. 91-4 we stated:

"[E]ntities created pursuant to K.S.A. 1990 Supp. 72-8230 are not school districts. Rather, they are entities created pursuant to the authority of school districts. While they perform many of the functions of a school district and act on behalf of school districts, they were not created in the same manner as school districts nor do they have the broad authority granted to such districts."

Thus, since Reno county education cooperative #610 is not a school district, the above-quoted exemption would not apply to it.

K.S.A. 79-201 Second provides in part:

"The following described property, to the extent herein specified, shall be exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

. . . .

"Second. All property used exclusively by the state or any municipality or political subdivision of the state. All property owned, being acquired pursuant to a lease-purchase agreement or operated by the state or any municipality or political

subdivision of the state which is used or is to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be 'used exclusively' by the state, municipality or political subdivision for the purposes of this section."

In Attorney General Opinion No. 91-4, we concluded that " a school district service center created pursuant to the authority set forth at K.S.A. 12-2901 et seq. and K.S.A. 1990 Supp. 72-8230 does not qualify as a political or taxing subdivision of the state." Similarly, we do not believe cooperatives created under K.S.A. 1991 Supp. 72-8230 are political subdivisions of the state. The question remains whether such a cooperative is a municipality for purposes of the K.S.A. 79-201a Second tax exemption.

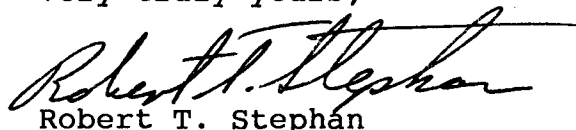
The Kansas Supreme Court has established the following rules and legal principles to be used when construing a statute exempting property from ad valorem taxes:

"Whether particular property is exempt from ad valorem taxation is a question of law if the facts are agreed upon. T-Bone Feeders, Inc. v. Martin, 236 Kan. 641, 645, 693 P.2d 1187 (1985); [citation omitted]. Taxation is the rule, and exemption from taxation the exception under the Kansas Constitution and statutes. T-Bone Feeders, Inc. v. Martin, 236 Kan. at 645; City of Arkansas City v. Board of County Commissioners, 197 Kan. 728, Syl. ¶ 1, 420 P.2d 1016 (1966); [citations omitted]. Constitution and statutory provisions exempting property from taxation are to be strictly construed against the one claiming exemption, and all doubts are to be resolved against exemption. In re Application of Int'l Bhd. of Boilermakers, 242 Kan. 302, 305, 747 P.2d 781 (1987); [citations omitted]. Where the language of a statute, in particular, is relied upon as creating an exemption from taxation, it must be strictly construed against the

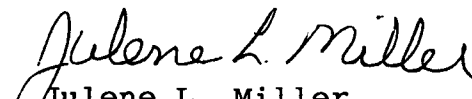
party claiming the exemption, and he must bring himself clearly within the exemption. Meadowlark Hill, Inc. v. Kearns, 211 Kan. 35, 41 (505 P.2d 1127 (1973)); [citation omitted]. Strict construction, however, does not warrant unreasonable construction. Trustees of The United Methodist Church v. Cogswell, 205 Kan. 847, Sy. ¶ 2 [, 473 P.2d 1 (1970)]."

Attorney General Opinion No. 91-4 concluded that an entity created by two or more school districts pursuant to K.S.A. 1990 Supp. 72-8230 was a municipality for purposes of the tort claims act. However, the tort claims act specifically defines municipality to include "any agency, authority, institution or other instrumentality" of a school district. There is no such definition of municipality for purposes of K.S.A. 79-201a Second. The term municipality is defined broadly enough in some statutes to arguably include entities such as the one in question. See K.S.A. 75-1117; 75-3038; 12-105a. Other statutory definitions of the term municipality would not include entities of this sort. See K.S.A. 10-1101; 12-1218; 12-1679; 17-2339; 31-132; 36-501; 68-589; 68-2101; K.S.A. 1991 Supp. 65-6113. Since it is not clear whether Reno county education cooperative #610 is a municipality for purposes of K.S.A. 79-201a Second and all doubts must be resolved against exemption, we must conclude that the cooperative is not entitled to exemption under K.S.A. 79-201a Second for property it acquires pursuant to a lease purchase agreement.

Very truly yours,



Robert T. Stephan
Attorney General



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm