



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 102

Jack A. Quinlan  
Counsel for Unified School District  
No. 450  
3301 Van Buren  
Topeka, Kansas 66611

Re: Taxation--Kansas Retailers' Sales Tax--Exempt  
Sales; Presentation of Project Exemption Certificate

Synopsis: Pursuant to K.A.R. 92-19-66a, purchases made  
without first obtaining a project exemption  
certificate are not entitled to sales tax exemption  
under K.S.A. 1991 Supp. 79-3606(d), as amended.  
Cited herein: K.S.A. 79-3603, as amended by L.  
1992, ch. 280, § 59; 79-3604; 79-3604a; K.S.A.  
1991 Supp. 79-3606, as amended by L. 1992, ch.  
202, § 13, L. 1992, ch. 279, § 5 and L. 1992,  
ch. 380, § 60; K.S.A. 79-3618; K.A.R. 92-19-66a.

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Dear Mr. Quinlan:

As counsel to Shawnee Heights unified school district no. 450 (U.S.D. 450), you request our opinion regarding issuance of project exemption certificates under K.S.A. 1991 Supp. 79-3606(d), as amended by L. 1992, ch. 279, § 5, L. 1992, ch. 202, § 13 and L. 1992, ch. 280, § 60. You explain that U.S.D. 450 failed to timely request exemption certificates for three projects which fall under the provisions of K.S.A. 1991 Supp. 79-3606(d), as amended. The contractors on these projects did not have an exemption certificate number to furnish to suppliers when purchasing

property or services to be used on the projects. The projects are now complete. You ask whether the purchases are nevertheless exempt, or conversely, whether the retailer or contractor must collect and remit sales tax on these purchases.

K.S.A. 1991 Supp. 79-3606(d), as amended, provides in part:

"The following shall be exempt from the tax imposed by this act:

. . . .

"(d) . . . all sales of tangible personal property or services purchased by a contractor for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities for any political subdivision of the state, the total cost of which is paid from funds of such political subdivision and which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision. . . . When any political subdivision of the state, public or private nonprofit hospital, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the purpose of constructing, equipping, reconstructing, maintaining, repairing, enlarging, furnishing or remodeling facilities, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project. The contractor shall furnish the number of such certificate to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate."

Pursuant to authority granted by K.S.A. 79-3618, the secretary of revenue has adopted K.A.R. 92-19-66a to further clarify and implement K.S.A. 79-3606(d). The regulation provides in part:

"(b)(1) If an entity qualifies for a project exemption, but fails to secure a project exemption certificate from the department, all contractors, subcontractors or repairmen purchasing materials for use in a construction project for that entity shall pay sales tax on the total cost of the materials, even though the entity for whom the project is being performed could directly purchase the same materials without sales tax.

. . . .

"(c) Project exemption certificates shall be prospective in nature. A project exemption certificate shall not be granted after a construction project is completed to secure a deduction, exclusion, credit or refund of sales tax previously paid on purchases of materials by contractors, subcontractors or repairmen used in a construction project. . . ."

In addition, the department of revenue issued Revenue Ruling 19-80-1 on August 7, 1980:

"SALES TAX -- PROJECT EXEMPTION CERTIFICATES. A CONTRACTOR HAS NO AUTHORITY TO PURCHASE MATERIALS EXEMPT FROM SALES TAX UNDER THE PROVISIONS OF K.S.A. 79-3606(d) AND (e) UNLESS HE HAS THE PROJECT EXEMPTION CERTIFICATE AND CAN FURNISH THE SUPPLIER WITH THE NUMBER OF SUCH CERTIFICATE. IN THE ABSENCE OF THIS CERTIFICATE, THE CONTRACTOR MUST PAY THE SALES TAX TO THE SUPPLIER AND THE SUPPLIER MUST REMIT THE TAX TO THE STATE.

. . . .


The effective date of the project exemption certificate shall be the date the application for such certificate is received by the Department. Only sales made on or after this date shall be honored as tax exempt by this Department."

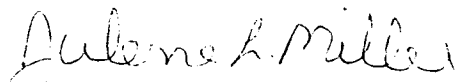
Clearly, pursuant to the department of revenue's regulation and August 7, 1980 ruling, once a construction project is completed, the K.S.A. 79-3606(d) tax exemption is no longer available for that project.

"Usually, the legal interpretation of a statute by an administrative board or agency that is charged by the legislature with the authority to enforce the statute is entitled to great judicial deference." State ex rel. Stephan v. Kansas Racing Commission, 246 Kan. 708, 719-720 (1990). See also United Parcel Service, Inc. v. Arnold, 218 Kan. 102, 107 (1975) (administrative regulations are entitled to great weight unless repugnant to the statutory provisions or clearly erroneous). We cannot say that K.S.A. 92-19-66a or Revenue Ruling 19-80-1 are repugnant to K.S.A. 1991 Supp. 79-3606(d) or clearly erroneous. The statute requires exempt entities to obtain project exemption certificates from the state and to furnish such to the contractor. The contractor is to furnish the number of the certificate to all suppliers from whom purchases for the project are made, and the suppliers are to use that number on their invoices. Thus, certain procedures are statutorily required to obtain the tax exemption granted by K.S.A. 1991 Supp. 79-3606(d), as amended. K.A.R. 92-19-66a makes clear that these procedures must be complied with up front; if not, there is no ability to claim the exemption or a refund. See Warren v. Fink, 146 Kan. 716, 718 (1937) (the rule that one seeking exemption from tax must bring himself clearly within exemption provisions is applicable to the Kansas retailer sales tax act).

In conclusion, pursuant to K.A.R. 92-19-66a, purchases made without first obtaining a project exemption certificate are not entitled to sales tax exemption under K.S.A. 1991 Supp. 79-3606(d), as amended.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Julene L. Miller  
Deputy Attorney General