

June 25, 2010

ATTORNEY GENERAL OPINION NO. 2010- 16

John Vratil, Counsel  
Blue Valley Unified School District No. 229  
Building 82, Suite 1000  
10851 Mastin Blvd.  
Overland Park, Kansas 66210

Michael G. Norris, Counsel  
Olathe Unified School District No. 233  
6800 College Blvd., Suite 620  
Overland Park, Kansas 66211

Re: Schools--School District Finance and Quality Performance; Ad Valorem Tax Levy for Financing Costs of Ancillary School Facilities, Cost of Living Weighting, Declining Enrollment Weighting; Meaning of "Taxable Tangible Property"

Synopsis: Motor vehicles are not "taxable tangible property" as that phrase is used in the ancillary school facilities weighting statute, the cost of living weighting statute, and the declining enrollment weighting statute. Cited herein: K.S.A. 72-6405; K.S.A. 2009 Supp. 72-6407; 72-6410; 72-6412; 72-6414; 72-6415; 72-6441; 72-6443 72-6449; 72-6450; 72-6451 72-6452; K.S.A. 79-5101; 79-5102; 79-5105; Kan. Const., Art. 11, § 1.

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Dear Mr. Vratil and Mr. Norris:

As counsel for the Blue Valley Unified School District and the Olathe Unified School District, you inquire whether motor vehicles are included in the phrase "taxable tangible property" as that phrase is used in three statutes<sup>1</sup> within the School District Finance and Quality Performance Act (Act)<sup>2</sup>.

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<sup>1</sup>K.S.A. 2009 Supp. 72-6441, 72-6449, 72-6451.

<sup>2</sup>K.S.A. 72-6405 *et seq.*

Part of the process for determining the amount of general state aid to school districts is determined by taking the Base State Aid Per Pupil (BSAPP)<sup>3</sup>. That figure is adjusted based on a variety of statutory factors called "weightings." These "weightings" include factors such as low enrollment,<sup>4</sup> the number of at-risk students,<sup>5</sup> new school facilities<sup>6</sup> and the three statutes that are the subject of your inquiry: ancillary school facilities,<sup>7</sup> cost of living,<sup>8</sup> and declining enrollment.<sup>9</sup>

The ancillary facilities statute – K.S.A. 72-6441 – authorizes a school district to petition the Court of Tax Appeals for permission to levy a property tax to defray costs associated with commencing operation of a new facility beyond the cost otherwise financed under the law. The amount authorized by the tax levy divided by the BSAPP amount equals the ancillary school facilities enrollment adjustment.<sup>10</sup>

The cost-of-living statute – K.S.A. 72-6449 – authorizes a school district to levy a property tax for the purpose of financing the cost of living weighting in a district which has higher than the average statewide cost of living based on housing costs. The state board of education determines eligibility and the levy is capped at 5% of the district's state financial aid calculation.<sup>11</sup>

The declining enrollment statute – K.S.A. 72-6451 – permits eligible school districts to seek approval from the Court of Tax Appeals to levy property taxes for up to two years for the purpose of financing the costs incurred by the state that are attributable to the assignment of declining enrollment weighting to enrollment of the district.<sup>12</sup>

All three statutes allow a school district to levy an "ad valorem tax on the taxable tangible property of the district."<sup>13</sup> The proceeds from these tax levies are remitted to the state treasurer for deposit into the school district finance fund.<sup>14</sup>

While motor vehicles are subject to property tax,<sup>15</sup> they are taxed in a different fashion from other types of property.<sup>16</sup>

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<sup>3</sup>\$4,492. K.S.A. 2009 Supp. 72-6410(b)(1).

<sup>4</sup>K.S.A. 2009 Supp. 72-6412.

<sup>5</sup>K.S.A. 2009 Supp. 72-6414.

<sup>6</sup>K.S.A. 2009 Supp. 72-6415.

<sup>7</sup>K.S.A. 2009 Supp. 72-6407(m); 72-6443.

<sup>8</sup>K.S.A. 2009 Supp. 72-6407(l); 72-6450.

<sup>9</sup>K.S.A. 2009 Supp. 72-6407(q); 72-6452.

<sup>10</sup>Heim, *Kansas Local Government Law*, 11-13, (4<sup>th</sup> Ed. 2009).

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup>K.S.A. 72-6449(b) doesn't use the term "ad valorem" but, later, in subsection (d) employs it.

<sup>14</sup>K.S.A. 2009 Supp. 72-6441(c); 72-6449(b); 72-6451(e).

<sup>15</sup>K.S.A. 79-5101 *et seq.*

<sup>16</sup>Kan. Const., Art. 11, § 1.

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A 1974 amendment to Article 11, §1 of the Kansas Constitution added motor vehicles to the list of property permitted to be classified and taxed separately from the general ad valorem property tax. Since 1981, most motor vehicles have been taxed in conjunction with the vehicle registration system, rather than the general ad valorem property tax.<sup>17</sup>

More importantly, state law is clear that "motor vehicles . . . shall not be subject to property or ad valorem taxes levied under any other law of the state of Kansas."<sup>18</sup> Accordingly, the tax authorized by these three weighting statutes cannot be interpreted to include a tax on motor vehicles. Therefore, "taxable tangible property" does not include motor vehicles.

Sincerely,

Steve Six  
Attorney General

Mary Feighny  
Deputy Attorney General

SS:MF:jm

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<sup>17</sup> Heim, *Kansas Local Government Law*, 9-25, (4<sup>th</sup> Ed. 2009). K.S.A. 79-5102; 79-5105.

<sup>18</sup> K.S.A. 79-5102(a).