



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

April 27, 2012

ATTORNEY GENERAL OPINION NO. 2012-12

Robert Moser, M.D.
Secretary
Kansas Department of Health and Environment
1000 SW Jackson St., Suite 540
Topeka, KS 66612

Re: State Departments; Public Officers and Employees—Department of
Revenue—Unlawful to Divulge Tax Information

Taxation—Kansas Retailer's Sales Tax—Confidentiality Requirements

Synopsis: Solid waste tonnage fees are not subject to the confidentiality provisions
of K.S.A. 2011 Supp. 75-5133. Cited herein: K.S.A. 2011 Supp. 65-3402;
K.S.A. 65-3405; 65-3415a; K.S.A. 2011 Supp. 65-3415b; 75-5133; K.S.A.
79-3601; K.S.A. 2011 Supp. 79-3614.

* * *

Dear Dr. Moser:

As Secretary for the Kansas Department of Health and Environment (KDHE), you ask for our opinion on whether solid waste tonnage fees collected by KDHE are subject to the confidentiality provisions of K.S.A. 2011 Supp. 75-5133.

In your letter, you state that KDHE is required to collect a \$1.00 solid waste tonnage fee for each ton of solid waste disposed of at any solid waste disposal area in the state, and for each ton of solid waste transferred out of state by a transfer station.¹ The tonnage

¹ K.S.A. 2011 Supp. 65-3415b(e). K.S.A. 2011 Supp. 65-3402(bb) generally defines "transfer station" as any facility where solid wastes are transferred from one vehicle to another or where solid wastes are stored and consolidated before being transported elsewhere.

fee is paid by the operator of a solid waste disposal area or solid waste transfer station.² The Secretary of KDHE is required to remit all moneys collected from solid waste tonnage fees to the State Treasurer, and upon receipt of such remittance, the State Treasurer deposits the entire amount into the solid waste management fund created by K.S.A. 65-3415a.³ Moneys in the solid waste management fund may only be expended for purposes directly related to solid waste management, such as monitoring, investigation and cleanup of solid waste disposal sites.⁴

You further state that until recently, KDHE maintained solid waste tonnage information on a publicly-available database, including the name and the total weight of solid waste disposed of by each person or entity paying tonnage fees pursuant to K.S.A. 2011 Supp. 65-3415b. Local governmental and planning units use such tonnage information to develop solid waste management plans as required by K.S.A. 65-3405. KDHE has removed information about solid waste tonnage fees from its publicly-available website due to a concern that publication of such information violates K.S.A. 2011 Supp. 75-5133.

Your question requires an analysis of the Kansas Retailer's Sales Tax Act ("the Act").⁵ K.S.A. 2011 Supp. 65-3415b(e) applies certain provisions of the Act to solid waste tonnage fees. That statute states in relevant part:

Except as otherwise provided by subsections (a) and (b),⁶ all laws and rules and regulations of the secretary of revenue relating to the *administration, enforcement and collection* of the retailer's sales tax shall apply to such fee *insofar as they can be made applicable*.⁷

The Act requires certain retailer's sales tax information to remain confidential. K.S.A. 2011 Supp. 79-3614 states:

Any information obtained by the department of revenue in connection with administration of the Kansas retailer's sales tax act is subject to the confidentiality provisions as set forth in K.S.A. 75-5133, and amendments thereto.

K.S.A. 2011 Supp. 75-5133 states in relevant part:

(a) Except as otherwise more specifically provided by law, all information received by the secretary of revenue, the director of taxation or the director of alcoholic beverage control from returns, reports, license applications or registration documents made or filed under the provisions

² K.S.A. 2011 Supp. 65-3415b(d).

³ K.S.A. 65-3415a(b); K.S.A. 2011 Supp. 65-3415b(f).

⁴ K.S.A. 65-3415a(c).

⁵ K.S.A. 79-3601 *et seq.*

⁶ K.S.A. 2011 Supp. 65-3415b(a) and (b) exempt certain types of waste from the tonnage fee, including waste tires, clean rubble and vegetation. These exemptions are irrelevant to our analysis.

⁷ Emphasis added.

of any law imposing any sales, use or other excise tax administered by the secretary of revenue, the director of taxation, or the director of alcoholic beverage control, or from any investigation conducted under such provisions, shall be confidential, and it shall be unlawful for any officer or employee of the department of revenue to divulge any such information except in accordance with other provisions of law respecting the enforcement and collection of such tax. . . .

. . .

(d) Any violation of this section shall be a class A, nonperson misdemeanor, and if the offender is an officer or employee of this state, such officer or employee shall be dismissed from office.

Thus, your question first requires a determination as to whether K.S.A. 2011 Supp. 79-3614 is among the provisions of the Act related to the “administration, enforcement and collection of the retailer’s sales tax” that theoretically could be “made applicable” to solid waste tonnage fees pursuant to K.S.A. 2011 Supp. 65-3415b(e). Because K.S.A. 2011 Supp. 79-3614 restricts the disclosure of information obtained in connection with the administration of the Act, we opine that this statute governs the administration of the Act and therefore is within the range of statutes contemplated by K.S.A. 2011 Supp. 65-3415b(e).

The second part of our analysis is whether the confidentiality provisions of K.S.A. 2011 Supp. 75-5133 *can be made applicable* to solid waste tonnage fees. When a statute is plain and unambiguous, courts will not speculate as to the legislative intent behind it and will not read into the statute something not readily found in it.⁸ Courts cannot delete vital provisions or supply vital omissions in a statute.⁹

K.S.A. 2011 Supp. 79-3614 states that any information obtained by the Kansas Department of Revenue (KDOR) in connection with administration of the Act is subject to the confidentiality provisions of K.S.A. 2011 Supp. 75-5133. This is the only statute in the Act that could extend the confidentiality provisions of K.S.A. 2011 Supp. 75-5133 to solid waste tonnage fees, and it follows that if K.S.A. 2011 Supp. 79-3614 cannot be made applicable to solid waste tonnage fees, then the issue of the applicability of K.S.A. 2011 Supp. 75-5133 to such fees is moot.

KDOR plays no role in the administration of solid waste tonnage fees. Pursuant to K.S.A. 2011 Supp. 65-3415b, solid waste tonnage fees are administered, enforced and collected by KDHE and remitted to the State Treasurer for deposit into the solid waste management fund. Application of K.S.A. 2011 79-3614 is unambiguously limited to

⁸ See, e.g., *State v. Trautloff*, 289 Kan. 793, 796 (2009).

⁹ *State v. Comprehensive Health of Planned Parenthood of Kansas and Mid-Missouri, Inc.*, 291 Kan. 322, 357 (2010).

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information received by KDOR, and KDOR receives no information in connection with the administration of solid waste tonnage fees. Therefore, the statute cannot be made applicable to KDHE without reading into the statute something not readily found in it. Because the language of K.S.A. 2011 Supp. 79-3614 plainly and unambiguously applies only to KDOR, we opine that the statute cannot be made applicable to KDHE and its administration of solid waste tonnage fees.

In conclusion, K.S.A. 2011 Supp. 65-3415b(e) applies Kansas Retailer's Sales Tax Act statutes and regulations to the administration, enforcement and collection of solid waste tonnage fees insofar as they can be made applicable. Because K.S.A. 2011 Supp. 79-3614 cannot be made applicable to KDHE, it follows that K.S.A. 2011 Supp. 75-5133 also cannot be made applicable to solid waste tonnage fees. Therefore, we opine that solid waste tonnage fees are not subject to the confidentiality provisions of K.S.A. 2011 Supp. 75-5133.

Sincerely,

Derek Schmidt
Attorney General

Sarah Fertig
Assistant Attorney General

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