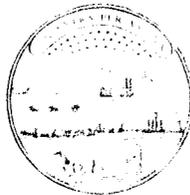


FILE

Subject

*State Institutions
Available-Historical
Property*



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

March 13, 1974

Opinion No. 74- 91

Mr. Edgar Langsdorf
Deputy Director
Kansas State Historical Society
10th and Jackson Streets
Topeka, Kansas 66612

Dear Mr. Langsdorf:

You request our opinion relative to whether the Johnson County sewer maintenance tax on Shawnee Mission State Park must be paid.

The Board of County Commissioners of Johnson County relies upon K.S.A. 19-2709 as authority to levy the "tax" here involved. The statute provides:

"The board of county commissioners shall have power to levy annually a special maintenance tax of not exceeding five (5) mills on each dollar of the assessed valuation on all real estate and improvements within the sewer district or joint sewer districts, for the purpose of creating a maintenance fund to be used solely for the purpose of maintaining and keeping in repair main storm or sanitary sewers, or both, in any such sewer district or joint sewer districts and any sewage treatment plants, pumping stations, pumps, or other apparatus or appurtenances used in connection therewith: Provided, That if the landowners representing more than fifty percent (50%) of the acreage of a sewer district shall petition for a higher tax levy limit, then a special maintenance tax levy of not to exceed ten (10) mills may be levied in such district."

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While it is true the Shawnee Mission State Park is a tax exempt property, it is not, because of that fact exempt from a special assessment for sewer maintenance. There is a distinction between a "tax" and an "assessment." A tax is an exaction placed upon the citizen for the support of the government, paid to the state as a state, the consideration of which is protection or public service by the state . . ." Special or local assessments "are imposed upon property within a limited area for the payment for a local improvement supposed to enhance the value of all property within that area." 70 Am.Jur.2d, §1, Special or Local Assessments.

The significant differences between special assessments and taxes are the following: (1) a special assessment can be levied only on land; (2) a special assessment cannot generally be made a personal liability of the person assessed; (3) a special assessment is ordinarily based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality. 70 Am.Jur.2d, § 1, Special or Local Assessments. A charge imposed only on property owners benefited is a special assessment, rather than a tax notwithstanding the statutes call it a tax. Accordingly, we conclude the provisions of K.S.A. 19-2709 impose a special assessment and not a tax.

In State Highway Commission v. City of Topeka, 193 Kan. 335, 339, the rule was stated thusly:

" . . . an exemption of property of the state, county and municipalities from "taxation" does not carry an exemption from special assessments for public improvements. Running through our decisions is the holding that public property is liable for special assessments for public improvements and this can only be overcome by a positive declaration in the statutes that the public property shall not be liable therefor but that the costs will be borne by the city at large."

Because this is a special assessment and not a tax, and no statutory declaration affirmatively appears which would overcome the rule stated above it is our opinion that the Historical Society is obligated to pay the assessment.

Yours very truly,



VERN MILLER
Attorney General

VM:DRH:LBS:jsm