STATE OF KANSAS

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CURT T. SCHNEIDER
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February 14, 1975

Opinion No. 75- 63

Richard C. "Pete" Loux
Loren H. Hohman II,
State Representatives
Statehouse
Topeka, Kansas 66612

RE: Proposed constitutional amendments to tax agricultural and residential properties.

Dear Sirs:

Your letter of February 5, 1975, has attached to it copies of House Concurrent Resolutions #2005 and #2010. You inquire whether these proposals arbitrarily establish a class of taxpayers in violation of Article 14, of the Federal Constitution. You further ask what effect such proposed changes might have on Kansas inheritance taxes.

HCR #2005 would submit to the Kansas electorate an amendment of Article 11, Section 1 of the Kansas Constitution which would provide "Land devoted to agricultural use may be defined by law and valued for ad valorem tax purposes upon the basis of its agricultural income or agricultural productivity, actual or potential."

HCR #2010 would amend the same section to add: "The legislature shall provide for a uniform and equal rate of assessment of real property devoted to agricultural and residential use, as such terms are defined by law, and such rate of assessment may be different from that of any other property."

Past Kansas Supreme Court decisions have placed emphasis on the word "rate" in the words of Article II, Section 1 which says: "The legislature shall provide for a uniform and equal rate of assessment and taxation,". This requirement, that the burden of ad valorem taxation fall equally and uniformily on all taxpayers is not something unique in the Kansas Constitution. It is substantially similar to the equal protection clause in Article 14 of the Federal Constitution. In general, what violates one will contravene the other.

While the Kansas electorate may write their own constitution, what they do write must not violate the United States Constitution.

States may classify property within the state for ad valorem taxation, and the United States Supreme Court has recently said that states have a large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. Such classifications by states must be reasonable, not palpably arbitrary, and must rest on some real and not feigned differences. Kahn v. Shevin, 94 S. Ct. 1734 (1974); Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 35 L. Ed. 2d 351, 93 S. Ct. 1001 (1973).

But nowhere is there any indication in the Kansas or U.S. Supreme Court decisions to permit discrimination in the tax burden between taxpayers in the SAME class:

> "It is the imposition of taxes upon selected classes of property to the exclusion of others, and the exemption of selected classes to the exclusion of others, which constitute invidious discriminations which destroy uniformity. (Wheeler v. Weightman, 96 Kan. 50, 58, 149 Pac. 977)"

State, ex rel, v. Dwyer, 204 Kan. 3, 12, 460 P. 2d 507 (1969)

> "The right to equal treatment in matters of taxation is also a right protected by Article 11, Section 1 of the Constitution of the State of Kansas. The equal protection clause of the Federal Constitution and the state constitutional provisions pertaining to equality and uniformity of taxation are substantially similar, and in general what violates one will contravene the other."

Northern Natural Gas Co. v. Williams, 208 Kan. 407, 412, 493 P.2d 568 (1972)

Does HCR #2005 meet these tests? In my opinion it does not. This resolution would classify separately all "land devoted to agricultural use" and then require that it be valued for ad valorem taxation only upon the basis of income. Many, if not the majority, of Kansas farms have as an integral part of the farm economic unit a residence, which is occupied either by the owner or the operator. With that home are the necessary farm structures. All these farm improvements are part of the farm land and its operation. They are all devoted to agricultural use, just as the bare land is.

Presently, under K.S.A. 79-1439 all land must be appraised at its full fair market value as defined in K.S.A. 79-503 and then assessed at 30% thereof. This resolution would separately classify land devoted to agricultural use to be appraised only under K.S.A. 79-503 (f) and (g).

There is an increasing number of suburban homes, on tracts of small acreages, part of which is still retained in agricultural use. There is also an increasing number of residences, all on rural, but not necessarily agricultural, land adjoining the shore line of federal reservoirs. If agricultural residences are assessed separately on the basis of income, many of these rural, but nonagricultural, residences may not qualify. They are discriminated against if they are thus excluded.

Then there are all the urban residences. Why should they not also be valued for taxation on the basis of income produced?

HCR #2010 does approach the same desired objective, but in broader terms. With regard to residences, there is no differenciation between rural, agricultural, suburban or urban. It leaves entirely to the legislature the determination of the "rate" of assessment and taxation. It avoids the questionable granting of a special method of valuation for tax purposes to a "select" group of taxpayers.

In my opinion, HCR #2010 has constitutional approval as reflected in a recent Arizona decision, which passed the scrutiny of the United States Supreme Court: Apache County v. A.T. & Santa Fe Ry. Co. 106 Ariz. 356, 476 P.2d 657 (1970); appeal dismissed for lack of a federal question 401 U.S. 1005 (1971). A resume of the Arizona constitutional provision, the valuation and assessment statute, the classification of all property into five classes, and then the assignment of percentage assessment to each of the five classes, is attached hereto, together with selected quotations from the above case.

You also asked about the effect that such an amendment, changing the assessed value of certain classes of real estate, agricultural and residential, for ad valorem tax purposes, would have on the determination of the value of the same property for Kansas Inheritance Tax purposes. The answer is: none. Inheritance tax is an excise tax, and its determination under K.S.A. 1974 Supp. 79-1504 is the "actual value of the property at the time of death". No reference is made to assessed value.

The following language explains more fully:

"The right to take property by descent or devise is a valuable thing. It is not a natural right, but is a creation of the law, and may be conditioned as the legislature sees fit. A condition in the form of an inheritance tax is not a tax on the property which descends or which is disposed of by will, but is an excise on the devolution of the estate."

Wheeler v. Weightman, 96 Kan. 50, 65, 149 Pac. 977 (1915)

Very truly yours,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS:CJM:gdw

The Arizona Constitution, Article IX, Section 1, has a simple provision: "All taxes shall be uniform upon the same class of property."

Here are the Arizona statutes implementing this clause:

Section 42-136: Property is classified for taxation as follows:

Class 1. Flight property, Private Car Companies, Railroads, Mines and Standing Timber.
Class 2. Utility property, such as telephone, telegraph, gas, water and light.
Class 3. Commercial and Industrial Property.
Class 4. All real property and improvements thereto, if any, used for agricultural purposes, and all other real property and improvements not included in 1, 2, 3, and 5.
Class 5. All real property and the improvements thereto used for residential purposes and not included in classes 1, 2, 3, and 4.

Section 42-227:

All property shall be determined at its market value. As the basis for assessed valuation, the following percentages shall apply:

Class 1: 60% of full cash value.
Class 2: 50% of full cash value.
Class 3: 27% of full cash value.
Class 4: 18% of full cash value
Class 5: 15% of full cash value.

[1] Article IX, § 1 requires that taxes be uniform upon the same class of property. It does not itself classify property nor does it purport to embrace a scheme for the classification of property. The power to classify is legislative. Peoples Finance & Thrift Co. v. Pima Co., 44 Ariz. 440, 38 P.2d 643. It is a power inherent in the state, Daube v. Oklahoma Tax Commission, 194 Okl. 487, 152 P.2d 687, and the state may exercise a wide discretion in selecting the subjects of taxation, New York Rapid Transit Corp. v. New York, 303 U.S. 573, 58 S.Ct. 721, 82 L.Ed. 1024. The only restraint placed upon the legislature by this provision is that when property has once been classified the rate must be uniform upon all property of the same class. 508 Chestnut, Inc. v. City of St. Louis [Mo.], 389 S.W.2d 823, cert. denied, 382 U.S. 203, 86 S.Ct. 400, 15 L.Ed.2d 271; City of Cape Girardeau v. Fred A. Groves Motor Co., 346 Mo. 762, 142 S.W.2d 1040.

"The moment we concede the power to classify, we have disposed of the question of uniformity; for then all that is required by the constitution is that the taxes shall be uniform upon the members of a class." Commonwealth v. Delaware Div. Canal Co., 123 Pa. 594, 16 A. 584, 590.

Apache County v. A.T. & Santa Fe Ry. Co., 106 Ariz. 356, 476 P. 2d 657, 660