



Overruled by
13 Kan. App 2d
509 (1989)

STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 22, 1975

Opinion No. 75- 231

Mr. John E. Fierro
Ford County Attorney
Ford County Courthouse
Dodge City, Kansas 67801

Re: Lease agreements (Industrial
Revenue Bonds) and K.S.A.
79-3101, et seq.

Dear Mr. Fierro:

You inquire concerning the application of the Mortgage Registration Act (K.S.A. 79-3101 et seq.). You advise that the City of Dodge City has issued industrial revenue bonds, purchased or constructed certain property with the proceeds therefrom, and entered into a lease agreement with the tenant industry pursuant to K.S.A. 1974 Supp. 12-1741 and K.S.A. 1974 Supp. 12-1742. Further, the city now desires to file with the register of deeds a copy of the lease agreement (an affidavit or memorandum identifying the same) for the primary purpose of putting any interested parties on notice that the facility and the net earnings therefrom are pledged as security for the bond issue. The specific question thus presented is whether the register of deeds must assess a registration fee for such lease agreements presented to that office for filing.

The Kansas Supreme Court has long recognized that the mortgage registration fee constitutes a tax. Missouri Pacific Railroad Company v. Deering, 184 Kan. 283, 336 P.2d 482 (1959). See also Voran v. Wright, 129 Kan. 1, 281 Pac. 938, on rehearing, 129 Kan. 601, 284 Pac. 807 (1930); and Davis-Wellcome Mortgage Co. v. Haynes, 119 Kan. 1, 237 Pac. 918 (1925). Essentially your question becomes one of determining whether the register of deeds must require this tax for the filing of such industrial revenue bond lease agreements.

Assuming arguendo that the lease agreement between the municipality and the tenant industry falls within the definition of

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mortgage as provided in K.S.A. 79-3101, we believe the assessment of the mortgage registration tax would violate K.S.A. 12-1746 which provides:

"All bonds issued pursuant to this act and all income or interest therefrom shall be exempt from all State taxes except inheritance taxes." [Emphasis supplied.]

Clearly, the above provision manifests a broad legislative intent categorically to exempt industrial revenue bond issues from all taxes except inheritance taxes.

In the instant case, the registration tax would necessarily be computed on the amount secured by the pledge, or in other words, the amount of the bond issue itself. It is obvious that such a computation in essence is tantamount to a tax on the bonds themselves inasmuch as the amount which the bonds represent in toto is the amount which becomes the basis of the tax. If such a requirement were made, bond holders standing essentially in the same position as a mortgagee (Missouri Pacific Ry. Inc., supra) would normally pay the tax which would therefore create a burden unanticipated by the specific provisions of the industrial revenue bond act. Thus, we believe the provisions of K.S.A. 12-1746 are conclusive to the end that the intent and purpose of the statute is to prohibit any and all forms of taxation which would effectively impose a burden on the holders of such bonds. Accordingly, it is the opinion of this office that the county register of deeds is without authority to assess registration tax on those instruments requested to be filed for record which represent lease agreements between revenue bond issuing municipalities and tenant industries.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:jj

cc: William P. Timmerman
Atty. for City of Dodge City
Dodge City, Kansas 67801