



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

August 8, 1975

ATTORNEY GENERAL OPINION NO. 75- 323

Mr. Lew Korn
Assistant County Clerk
Room 211
Sedgwick County Courthouse
Wichita, Kansas 67203

Re: State Treasurer--Bonds and Warrants--Annual Statement
of Indebtedness--Willful Failure to Perform Any Duty
Relating to Assessment & Taxation

Synopsis: The failure of the County Clerk to file the annual
financial statement required by K.S.A. 1974 Supp.
10-1007 does not amount to willful criminal behavior
where the failure to file results from the fact
that one or more city, township or district clerks
within his county have failed to submit their res-
pective annual statements of indebtedness.

* * *

Dear Mr. Korn:

You have requested an opinion from this office concerning what
recourse a county clerk has when he is unable to comply with
the requirement of K.S.A. 1974 Supp. 10-1007 that before
July 15 of each year he file with the State Treasurer a state-
ment of his county's financial condition, including the total
indebtedness of each city, township or district within his
county. The inability to comply in this instance stems from the
failure of the City Clerk of Colwich, Kansas, to file on or
before July 5, of this year a financial statement of indebtedness
of that municipality for the preceding fiscal year, also as
required by K.S.A. 1974 Supp. 10-1007. The concern surrounding
this matter stems primarily from the penalty provisions of

Mr. Lew Korn
Page Two
August 8, 1975

K.S.A. 1974 Supp. 79-2919 which state

If any officer charged by the statutes with any duty in relation to assessment and taxation, or who under the statutes may be required by other officers to perform certain duties, shall willfully fail or neglect to perform any of such duties when required to do so by the statute in terms or by any person thereunto authorized by the statute, and shall continue to so fail or neglect to perform such duties after having been notified of the default by the authority or authorities thereunto authorized, such officer so continuing in default shall forfeit a sum not less than fifty dollars nor more than five hundred dollars, to be recovered in an action brought in the name of the state by the county attorney, or by the attorney general upon request of the director of property valuation, in the district court of the county of such officer, and may be removed from office at the discretion of the court.

The assumption has been made that the failure of the county clerk and the city clerk to file their respective annual statements under this statute subject them to criminal liability under K.S.A. 79-2919 for failure to perform a duty relating to assessment and taxation.

The issue central to resolution of this question is what type of conduct is within the purview of a willful failure of neglect to perform any duty relating to assessment and taxation. The word "willfully", when used in the statutes to describe acts punishable criminally is generally construed to include, in addition to the mere purpose to do the act, the purpose to do wrong. The source of this long-standing precedent is derived from the Supreme Court decision in Felton v. U.S., 96 U.S. 702, 24 L.Ed. 875 (1878) wherein it was held "Doing or omitting to do a thing knowingly and 'willfully,'" "implies not only a knowledge of the thing, but a determination with a bad intent to do it or to omit doing it." The Kansas rule is in accord with this position. Chicago, R.I. & P.R. Co. v. Lacy, 78 Kan. 622, 97 P. 1025 (1908); State v. Roberson, 210 Kan. 209, 499 P.2d 1137 (1972). Accordingly,

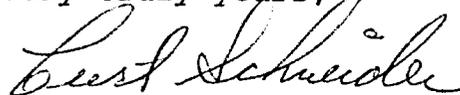
Mr. Lew Korn
Page Three
August 8, 1975

it appears the failure to act must result from or be caused by an evil intent or bad motive. The failure of the county clerk to file the annual financial statement required by K.S.A. 1974 Supp. 10-1007 does not amount to willful criminal behavior where the failure to file results from the fact that one or more city, township or district clerks within his county have failed to submit their respective annual statements of indebtedness. In other words, in the circumstances you have described, the county clerk's failure to file a financial report does not amount to the type of conduct which would be punishable criminally under K.S.A. 79-2919.

The problem remains as to what steps the county clerk should undertake to remedy this situation and complete the compilations necessary for submitting his report to the State Treasurer. Several corrective measures exist. First, the county clerk should notify city clerks of all delinquent municipalities in his county as to their obligation under the statute to report their city's total outstanding indebtedness. If after a reasonable period the notification fails to illicit the desired information and the city clerk's statement remains delinquent, this information should be transmitted to the county attorney for him to take whatever appropriate action he deems correct. A second possible alternative is for the county clerk to file an incomplete report prior to the required filing date. This should be accompanied with a certification as to those municipalities which are delinquent in filing their reports. This could then be supplemented or revised as delinquent reports are filed. Here again, all possible violations of K.S.A. 79-2919 should be transmitted to the county attorney for appropriate action.

Accordingly, it is the opinion of this office that the failure of the county to file the statement required by K.S.A. 10-1007 does not, under the circumstances you have described, amount to a "willful" failure to perform any duty relating to assessment and taxation for purposes of criminal liability under K.S.A. 79-2919.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv

cc: Herman H. Josefiak
State Treasurer's Office