STATE OF KANSAS

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February 5, 1976

ATTORNEY GENERAL OPINION NO. 76- 46

Honorable Ruth W. Wilkins
Representative - 56th District
Statehouse - Room 155B
Topeka, Kansas 66612

RE: K.S.A. 1975 Supp. 79-4501, et seq.

Synopsis: The Kansas Homestead Tax Relief Law, as amended in 1975, which grants advalorem tax relief to "certain female persons fifty (50) years of age and over who are the surviving spouses of husbands who died during marriage, who own or rent their own homestead, so long as they remain unmarried", but which does not grant similar tax relief to widowers, single men and women, does not violate the Kansas and Federal constitutional provisions which prohibit the granting of discriminatory privileges and immunities.

* * * *

Dear Representative Wilkins:

In your letter of January 20, 1976, you contend that 79-4501(a) and 79-4502(e)(2) are discriminatory and illegal, under both Kansas and Federal laws, in granting tax relief to certain females of spouses who died, who are fifty (50) years of age or over, who rent or own their own homestead, and who remain unmarried, without granting like tax relief to males, single women who never marry, and divorced women.

You mention that our Homestead Property Tax Relief Law is funded primarily with federal revenue sharing funds and you question the legality of the expenditure. You ask our opinion.

The Kansas Constitution Bill of Rights, Section 2, provides that "No special privileges or immunities shall ever be granted by the legislature..."

Also, the United States Constitution, Amendment 14, Section 1, provides that "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States;...nor deny to any person within its jurisdiction the equal protection of the laws." Amendment 5 to the Federal Constitution provides for "due process."

Equality and uniformity in assessment and taxation is the general rule. A tax law is invalid which taxes corporate cemeteries, but exempts privately owned cemeteries. Mt. Hope Cemetery Co. v. Pleasant, 139 Kan. 417, 32 P.2d 500 (1939).

> "It is a fundamental principle of law that once a right or privilege is granted, it must be applied equally and indiscriminately."
> State v. Young, 200 Kan. 20, 27, 434 P.2d 820 (1967)

Yet, the Kansas Supreme Court has rendered these decisions which are unreversed: A law establishing a state industrial farm for women does not violate state and federal constitutional prohibitions. In re Josie Dunkerton, 104 Kan. 481, 179 P. 347 (1919). That high Court has approved as constitutionally valid a Soldiers' Bonus, State ex. rel. v. Davis, 113 Kan. 4, 11 (1923) and a veterans' preference, Goodrich v. Mitchell, 68 Kan. 765 (1904). So, the state and federal constitutional mandates are not as clear as they seem. There can be exceptions.

Corpus Juris Secundum, Volume 16A, devotes a Chapter to "Privileges or Immunities and Class Legislation." Here are some pertinent quotations:

> "The Fourteenth Amendment does not forbid all discrimination or inequality, and certain privileges may be granted some and denied to others, under some circumstances, if they be granted or denied on the same terms and if there exists a reasonable basis therefor. The privileges and immunities protected by this clause of the Constitution are only those which owe their existence to the federal government, its national character, its Constitution, or its laws, and not such rights as accrue from state citizenship."
> 16A CJS 169, Sec. 458.

"The legislature has power to classify and a statute which makes classifications which are reasonable and not arbitrary is not invalid. Discrimination is the essence of classification and does violence to the constitution only when the basis of the discrimination is unreasonable. Class legislation is not expressly named in the prohibitions of state and federal constitutions; and neither the Fourteenth Amendment nor the provisions of state constitutions prohibiting the granting of special privileges affect the validity of state statutes making reasonable classifications of persons and things for various purposes of legislation."
16A CJS 241, Sec. 489 citing: Court of Industrial Relations v. Packing Company, 109 Kan. 629, 201 P. 418, 426 (1921); State ex rel Fatzer v. Kansas Turnpike Authority, 176 Kan. 683, 273 P.2d 198 (1954); State v. Pendarvis, 181 Kan. 560, 313 P.2d 237, 240 (1957).

"While constitutional legislation must include all who belong and exclude all who do not belong to a class, the legislature may validly limit its regulation to those situations where the need is most acute and need not cover all evils of like character in a single act, but may proceed step by step."
16A CJS 249, Sec. 490, Citing: State, ex rel. v. Sage Stores, 157 Kan. 404, 141 P.2d 655 (1943), affirmed 323 U.S. 32, 65 S. Ct. 9, 89 L. Ed. 25.

The 1975 Supplement of CJS for the above sections gives these additional citations of Kansas cases: Tri-State Hotel Co. v. Londerholm, 195 Kan. 748, 408 P.2d 864 (1965); State v. Weathers, 205 Kan. 329, 469 P.2d 292 (1970); Manzanares v. Bell, 214 Kan. 589, 522 P.2d 1291 (1974).

This Kansas case seems to summarize all that has been said in the above CJS text:

"Property expressly exempt from taxation by the Constitution manifestly cannot be taxed. A statutory exemption, however, may be broader than the constitutional one...In order, however, for the legislature to extend exemptions beyond those expressly designated in the Constitution, they must have a public purpose and be designed to promote the public welfare...

> With the wisdom of legislation touching the public interest courts have no concern...While Courts may entertain different views on the subject it is not their privilege to supersede the judgment of the lawmaking body unless its judgment is entirely devoid of a rational basis. (Citing many cases)" State, ex. rel. v. Board of Regents, 167 Kan. 587, 595-596, 207 P.2d 373 (1949).

The law in question here, the Homestead Relief Act, was not designed to give a tax relief to widows alone. There are three groups of beneficiaries: widows 50 years of age, all persons over 60 years of age, and all persons of any age so disabled as to be unable to engage in a gainful occupation. All such persons must own or rent a homestead.

Furthermore, this law grants property tax relief only to those who are in financial need of relief as defined in K.S.A. 1975 Supp. 79-4508. Every recipient of the three groups is treated the same.

There can be no question but that this law deals with a matter of public interest and is designed to promote the public welfare.

The facts are that the State of Kansas is expending large sums of money on a social welfare program, which does meet the needs of many destitute citizens. Part of this social welfare program is to help pay taxes so that recipients can keep their own homes.

It is also a fact that there are many elderly citizens who are of little means but still struggle to keep their homes and to stay off "welfare." It is to help them that this law was enacted. To avoid tax assistance to recipients under both programs, note K.S.A. 1975 Supp. 79-4515.

So, the question here is, not whether the law is designed to serve a public purpose and welfare, but whether the special classification of widows age 50 or over whose spouses are dead and they still remain in the homestead, has a reasonable legislative relation to the purpose of the act. Is it an arbitrary classification to set the annual income limitation at $8,100.00, the age qualification for all persons at age 60, and the qualification of all persons blind and disabled? Does the inclusion of unmarried widows age 50 or over who live in a homestead constitute a proper classification also? Is it justifiable? Or is it a classification devoid of rational basis? If it is reasonable for the legislature to find these widows are in acute need of property tax relief, then this act should be upheld.

In our research we have discovered two very recent decisions of the United States Supreme Court which bear heavily upon the issues here involved.

The first was Kahn v. Shevin, Attorney General of Florida, 416 U.S. 351, 94 S. Ct. 1734, 40 L.Ed.2d 189, decided April 24, 1974. Florida had a statute "Property to the value of $500.00 of every widow, blind person, or totally and permanently disabled person who is a bona fide resident of this state shall be exempt from taxation". Kahn, a widower, applied for the exemption and was denied. The Supreme Court of Florida upheld that denial and the U.S. Supreme Court affirmed that decision in these words:

> "There can be no dispute that the financial difficulties confronting the lone woman in Florida or in any other State exceed those facing the man. Whether from overt discrimination or from the socialization process of a male-dominated culture, the job market is inhospitable to the woman seeking any but the lowest paid jobs." (page 353)

The U.S. Supreme Court then recognized that efforts were under way to remedy this situation, listing the Civil Rights Act of 1964 and the Equal Pay Act of 1963, but turned to the charts prepared by the Women's Bureau of the U.S. Department of Labor which showed that in 1972 a woman working full time had a median income which was only 57.9% of the median for males--a figure actually six points lower than had been achieved in 1955. Concluding that disparity could be worse for the widow, the Court said:

> "While the widower can usually continue in the occupation which preceded his spouse's death, in many cases the widow will find herself suddenly forced into a job market with which she is unfamiliar, and in which, because of her former economic dependence, she will have few skills to offer.
>
> "There can be no doubt, therefore, that Florida's differing treatment of widows and widowers 'rests upon some ground of difference having a fair and substantial relation to the object of the legislation'....We deal here with a state tax law reasonably designed to further the state policy of cushioning the financial impact of spousal loss upon the sex for which that loss imposes a disproportionately heavy burden...States have large leeway

in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." (Pages 354-355)

The second case before the United States Supreme Court recently was Weinberger v. Wiesenfeld, 420 U.S. 636, 95 S. Ct. 1225, 43, 514 decided March 19, 1975. Wisenfeld's wife died in childbirth, leaving him the care of their infant son. His wife had been a teacher for five years prior to their marriage and continued teaching after marriage, always paying maximum Social Security contributions.

When Wiesenfeld applied at the Social Security office, he was told he could not apply for benefits (although he was out of work) because he was a man. But if he had died, instead of his wife, she could have received a benefit equal to monthly $248.30 his son would receive. He sued Weinberger, Secretary of HEW. A three-judge Federal District Court in New Jersey held the Social Security Act unconstitutional as violating the 5th amendment requiring "due process" because the act "unjustifiably discriminated against female wage earners by affording them less protection for their survivors than is provided to male employees."

The U.S. Supreme Court affirmed and held that benefits must be distributed according to classifications that do not differentiate among covered employees solely on the basis of sex.

The KAHN case was mentioned twice in the opinion, saying that it could not be used "to justify the denigration of the efforts of women who do work and whose earnings contribute significantly to their family's support." (Page 645) The Court later said that in KAHN "a statute'reasonably designed to further the state policy of the financial impact of spousal loss upon the sex for which that loss imposes a disproportionately heavy burden' can survive an equal protection attack." (Page 648)

The WIESENFELD case does not answer the matters raised in the subject inquiry here. The words "privileges and immunities," "Fourteenth Amendment," or "Exemption from ad valorem taxation," are not mentioned. All that was decided was that women were being shortchanged in benefits under the Social Security Act, which was taking their contributions without due process. Justice Powell, who wrote a concurring opinion in which the Chief Justice joined, said that "Social Security is designed, certainly in this context, for the protection of the family. (Emphasis in the original opinion.) Many women are the principal wage earners for their families, and they participate in the Social Security System on exactly the same basis as men. ... The statutory scheme therefore, impermissibly discriminates against a female wage earner because it provides her family less protection than it provides a male wage earner, even though the family needs may

be identical." (Pages 654-655)

The family, and the homestead in which that family lives, make the basic unit of civilized society. This is why democratic governments strive to preserve them.

The WIESENFELD case does reaffirm KAHN as surviving an equal protection attack. The Florida statute withstood the attack, and it exempted or rebated part of the advalorem taxes. Kansas is in an even sounder position, because the widow pays her advalorem tax in full. Her homestead Tax Relief check comes directly from the State. It comes because in the opinion of the Kansas legislature state funds should be used to assist her to remain in her home, many times with minor children still to raise, and, having been for many years a homemaker, does not have skills to compete in the job market, and if she is under minimum income limits she needs state help to keep that homestead going.

In our opinion the Homestead Tax Relief Act, aiding widows age 50 or over not remarried and owning or renting a homestead, is constitutional and can be defended in the Courts.

Very truly yours,

Curt Schneider

CURT T. SCHNEIDER
ATTORNEY GENERAL

CTS:CJM:cgm