



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 1, 1976

ATTORNEY GENERAL OPINION NO. 76- 159

Mr. Michael D. Mance
Assistant City Attorney
8500 Santa Fe Drive
Overland Park, Kansas 66212

Re: Cities--Occupational Taxes--Physicians and Surgeons

Synopsis: K.S.A. 19-2226 *et seq.* applies only to those counties having a population of more than 125,000 on May 25, 1925.

* * *

Dear Mr. Mance:

We have your letter of May 20, 1976, concerning the applicability of K.S.A. 19-2226 *et seq.* to Johnson County and the City of Overland Park.

K.S.A. 19-2226 through -2228 was enacted in 1925, and became effective on May 28, 1925. It applied to all physicians and surgeons residing in or having an office in certain counties, and required each such person annually to file his or her certificate issued by the Board of Healing Arts with the county clerk, who would thereupon issue to the physician a license. For issuing this license, the county clerk is required to collect from each such physician and surgeon a fee of ten dollars annually, and to deposit the proceeds from such fees in a "county medical library fund," to be used by the board of county commissioners for a medical library in the county. A physician and surgeon who pays such a license fee may not be required to pay a license or occupation tax in any city or town in the county in which the license has been issued and paid for, as described above.

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The question has been raised whether the act applies to Johnson County. If it does, the City of Overland Park may not assess and collect an occupational tax from physicians in the community.

As enacted in 1925 and as it reads today, K.S.A. 19-2226 applies

"[i]n all counties *now* having a population of more than one hundred twenty-five thousand inhabitants" [Emphasis supplied.]

In 1925, Johnson County did not have a population of more than one hundred twenty-five thousand persons. Thus, it was not subject to the act at the time of its enactment and effective date.

The question which has been posed a number of times in the past is whether the act applies only to those counties having the requisite population on May 28, 1925, or whether it applies to all counties in which the population has grown past 125,000 since 1925. In an opinion dated February 20, 1968, Attorney General Robert Londerholm reaffirmed his earlier opinion of September 11, 1967, concluding that the act applied only to counties having a population in excess of 125,000 on May 28, 1925. General Londerholm based this opinion, first, on the view that the use of the word "now" restricted its applicability to the circumstances existing at the time the act took effect, and secondly, on legislative history. Reviewing the Journal of the Senate for 1925, he found that the bill was amended in the floor of the Senate in several particulars, one being a deletion of the words "or hereafter attaining" from the first two lines of the bill. He concluded that

"deletion of this phrase by the legislature seems to clearly indicate that the legislative intent was *not* to include within the bill's provisions any counties which might in the future attain the specified population."

A contrary conclusion was reached in a lengthy and well-researched opinion dated February 5, 1968, by Mr. Chipman, then Johnson County Counselor, who relied upon a number of decisions of the Kansas Supreme Court in which the term "now" had been interpreted to refer not merely to the date on which a statute took effect, but to some time in the future contemporaneous with some condition occurring in the future. Two of these cases are departures from the general rule that "[t]he

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word 'now' as used in a statute ordinarily refers to the date of its taking effect." *See State ex rel. Brewster v. City of Lawrence*, 101 Kan. 225 at 226 (1917).

In its ordinary acceptance, the word "now" does refer, in my judgment, to circumstances in existence at the time the term is used: in this instance, the time the law became effective. This is so absent countervailing suggestions of a legislative purpose that the term should apply to a time in the future contemporaneous with some other identifiable event. General Londerholm has pointed out that in the enactment of this bill, the legislature expressly deleted language which would have broadened the application of the bill to all cities which at any time after 1925 reached the requisite population. By deletion of the words "or hereafter attaining," the legislature explicitly restricted the application of the law to those counties as defined by conditions existing on May 28, 1925.

In short, I concur fully with General Londerholm's conclusions stated in his opinion of February 20, 1968, that K.S.A. 19-2226 *et seq.* does not apply to Johnson County and that it does apply only to those counties having a sufficient population as of May 28, 1925.

Accordingly, physicians and surgeons residing in the City of Overland Park, and those residing elsewhere but having offices therein, are not exempt from the occupational taxes of that city under K.S.A. 19-2228.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj