STATE OF KANSAS

Office of the Attorney General

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September 22, 1976

ATTORNEY GENERAL OPINION NO. 76-295

Mr. F. Kent Kalb
Secretary of Revenue
Kansas Department of Revenue
2nd Floor - State Office Building
Topeka, Kansas   66612

Re: Taxation--Intangibles Tax--Elimination or Reduction

Synopsis: The requirement that a city, county or township file a
          copy of its resolution or ordinance reducing or elimi-
          nating the intangibles tax by September 1 preceding the
          year in which it is to become effective is directory
          and not mandatory. The September 1 filing date must
          be complied with as nearly as possible and practicable,
          and a belated filing is effective, unless it is so late
          as to disrupt the orderly tax collection and distribu-
          tion processes of the Secretary of Revenue and the county
          treasurers.

                    *   *   *

Dear Secretary Kalb:

K.S.A. 1975 Supp. 79-3109 was amended by ch. 425, § 1, L. 1976, to
permit boards of county commissioners, city governing bodies and
township boards to reduce the rate of, or eliminate altogether, the
Kansas intangibles tax levied within their respective jurisdictions.
In order to do so, the statutory procedure must be followed, includ-
ing adoption of the appropriate resolution or ordinance, and publica-
tion thereof. If a timely and sufficient protest petition is filed,
the resolution or ordinance may not become effective without an elec-
tion thereon. Lastly, a

"copy of each ordinance and resolution becoming
effective shall be filed with the secretary of
revenue and the county treasurer of the county
on or before September 1 of the year preceding
the year in which such tax or the removal there-
of shall be applicable."

A number of counties, townships and cities have adopted resolutions
or ordinances, and published notice thereof, for elimination or re-
duction of the intangibles tax, effective for the taxable year 1977.
You advise that although most have filed copies of their resolutions
or ordinances with your offices, some did not do so by September 1,
1977, and some have not yet done so. You inquire whether the filing
requirement described above is mandatory or directory, and thus,
whether failure to file the required copy with your office by Septem-
ber 1, 1976, renders the ordinance or resolution ineffective for 1977.

In *City of Hutchinson v. Ryan*, 154 Kan. 751, 121 P.2d 179 (1942), the
court stated the applicable principles thus, quoting from 59 Corpus
Juris 1078:

"'A statute specifying a time within which
a public officer is to perform an official act
regarding the rights and duties of others, and
made with a view to the proper, orderly, and
prompt conduct of business is usually directory,
unless the phraseology of the statute, or the
nature of the act to be performed, and the con-
sequences of doing or failing to do it at such
time, is such that the designation of time must
be considered a limitation on the power of the
officer. So a statute requiring a public body,
merely for the orderly transaction of business,
to fix the time for the performance of certain
acts which may as effectually be done at any
other time is usually regarded as directory.'"
154 Kan. at 757.

In *School District v. Clark County Commissioners*, 155 Kan. 636, 127
P.2d 418 (1942) the court stated thus:

"There is a rule of statutory construction
familiar to all lawyers, which is that when the
legislature prescribes the time when an official
act is to be performed, the broad legislative

purpose is to be considered by the courts
whenever they are called upon to decide
whether the time prescribed by statute is
mandatory or directory. If mandatory,
there must be strict conformity. If
directory, the legislative intention is
to be complied with a [*sic*] nearly as prac-
ticable. Instances of the latter sort fre-
quently arise, and indeed they are parti-
cularly applicable in respect to the offi-
cial mode of procedure in matters of taxa-
tion. For example, it is the duty of the
board of county commissioners at its meet-
ing on the first Monday in August to order
the proper levies of every sort to be extend-
ed on the tax rolls . . . . Instance are
not rare where the board has declined or
failed to make a particular levy; mandamus
is invoked and a decision may be reached
some weeks later holding that the contested
levy should be made, and it is then made,
although the *directory* time at which it
should have been made has passed. Again,
the statute says the county clerk shall pre-
pare and deliver the tax rolls to the county
treasurer on or before November 1 . . . .
If the work of preparing the tax rolls is not
completed by the statutory date (and litiga-
tion over the legality of the levies or other
untoward circumstances sometimes causes delay),
the statutory date on which the tax rolls
should be delivered to the county treasurer
must of necessity be regarded as directory
rather than mandatory. Although the tax rolls
are not delivered to the treasurer by the time
directed by the statute, nevertheless we all
have to pay our taxes when the belated delivery
is made!" [Emphasis by the court.] 155 Kan.
at 638-639.

The criteria for determining whether a particular requirement is
mandatory or directory was reiterated in *Shriver v. Board of County
Commissioners*, 189 Kan. 548, 370 P.2d 124 (1962):

"Generally speaking, statutory provisions
directing the mode of proceeding by public

> officers and intended to secure order,
> system and dispatch in proceedings, and
> by a disregard of which the rights of
> parties cannot be injuriously affected,
> are not regarded as mandatory, unless
> accompanied by negative words importing
> that the acts required shall not be done
> in any other manner or time than that
> designated." 189 Kan. at 556.

The intangibles tax is collected by the Secretary of Revenue,
and notice of local ordinances and resolutions eliminating or
reducing the rate of that tax must necessarily be given to your
Department. The Legislature recognized that ordinarily, local
action to eliminate or reduce the intangibles tax must be com-
pleted before final adoption of the budget in August of each year.
The Legislature presumably required filing of copies of local ordi-
nances and resolutions with your Department and the respective
county treasurers by September 1, in order to assure ample time
to prepare for tax collection and distribution in accordance with
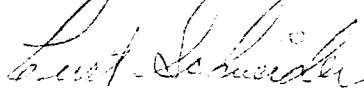these local acts.

In *School District v. Clark County Commissioners*, *supra*, the court
pointed out that lack of strict conformity with procedural steps
in the taxing process will not invalidate taxes levied through such
procedure. *E.g.*, the fact that the tax rolls are not delivered to
the county treasurer by the statutory deadline does not affect the
validity of taxes levied thereafter. Similarly, here, the lack of
strict conformity with the procedural filing requirement should not,
in my view, be construed to invalidate any county, city or township
action which is otherwise lawfully perfected and sufficient to affect
the 1977 intangible levy. The broad legislative purpose in requiring
the September 1 filing was, doubtless, to facilitate the collection
of the intangibles tax. Lack of strict compliance with that filing
date should not operate to frustrate the effect of local ordinances
and resolutions and compel the collection of a tax which the local
governing bodies have eliminated or reduced.

I can but conclude that the requirement that copies of local ordi-
nances or resolutions be filed with you and county treasurers on
September 1 is directory and not mandatory. It must be complied with
as nearly as possible and practicable. However, a belated filing
which does not jeopardize the integrity and dispatch of the tax
collection and distribution procedures does not render the local

ordinance or resolution invalid and ineffective, in my judgment, for the succeeding year.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj