

STATE OF KANSAS

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March 16, 1977

ATTORNEY GENERAL OPINION NO. 77- 98

The Honorable Jack W. Janssen
State Senator
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Taxation--School District--Special Operating Cost
Assessment Districts

Synopsis: Special assessments levied by special operating cost assessment districts authorized by K.S.A. 1976 Supp. 72-8213a are not genuine special assessments which are exempt from Article 11, § 1 of the Kansas Constitution, but are general taxes of the school district in which said special operating cost assessment district is created. The imposition of such so-called special assessments results in an unequal rate of taxation within the taxing district, in violation of that constitutional problem.

* * *

Dear Senator Janssen:

You inquire concerning a portion of K.S.A. 1976 Supp. 72-8213a, a statute which provides a procedure for the closing of attendance facilities. Subparagraph (c) provides that upon a "finding that the cost of operating any attendance facility is excessive or unwarranted," the board of education may prepare a plan for closing such facility. If that plan is approved by the State Board of Education, the local board must reconsider its closing plan, determine whether circumstances in the district remain virtually unchanged, and make a final determination as to closing the facility. Under subsection (d), when that final determination is made, the board must request that an election be held for the registered voters "residing within the attendance center of such

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attendance facility," upon the question of creating a so-called "special operating cost assessment district" comprised of the territory of the disorganized school district attendance center. If a majority of those voting approve the creation of a special cost assessment district, the facility shall not be closed, and the board may then levy annually "special assessments" on the taxable tangible property of the special operating cost assessment district in an amount which will produce the "excessive or unwarranted amount" which is required to permit continued operation of the attendance facility.

The question which is raised is whether this provision permits the levy of taxes at an unequal rate upon property within the school district, in violation of Article 11, § 1, of the Kansas Constitution, which requires that the "legislature shall provide for a uniform and equal rate of assessment and taxation." This mandate has been construed many times by the Kansas Supreme Court, and it has long been settled that it requires a uniform rate throughout the jurisdiction of the taxing district in question:

"The constitution only requires a uniform and equal rate throughout the territory in which the tax is levied, and the principle of equality is fully satisfied by making local taxation equal and uniform as to all property within the limits of the taxing district."
State v. Lawrence, 79 Kan. 234, 100 Pac. 485 (1909).

This section is inapplicable to special assessments *Mount Hope Cemetery Co. v. City of Topeka*, 190 Kan. 702, 378 P.2d 30 (1963). However, the levy provided to be extended throughout the special operating cost assessment district is not a genuine special assessment. In *Mount Hope*, *supra*, the court quoted from *Illinois Central Railroad v. City of Decatur*, 147 U.S. 190, 37 L.Ed 132, 13 S.Ct. 293 (1892), in distinguishing between taxes generally and special assessments:

"'Between taxes, or general taxes as they are sometimes called by way of distinction, which are the exactions placed upon the citizen for the support of the government, paid to the State as a State, the consideration of which is protection by the State, and special

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taxes or special assessments, which are imposed upon property within a limited area for the payment of a local improvement supposed to enhance the value of all property within the area, there is a broad and clear line of distinction, although both of them are properly called taxes, and the proceedings for their collection are by the same officers and by substantially similar methods.'" 190 Kan. at 707.

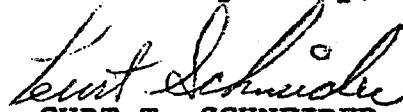
The so-called "special assessment" which is levied within the special operating cost assessment district by the board of education is applied to precisely the same purpose for which general taxes levied by that board within the entire school district, including the special operating cost assessment district, are expended, i.e., the cost of school operation. The so-called special assessment is not applied to any improvement whatever, which enhances the value of any property in the vicinity thereof. Rather, the proceeds of the special assessment are applied merely to meet expenses of the operation of an attendance facility which were formerly borne by the general taxes levied by the board of education. Thus, in my judgment, the so-called "special assessment" authorized by K.S.A. 1976 Supp. 72-8213a(d) is not in fact a special assessment, and must be treated as a general tax for the purposes of Article 11, § 1.

The apparent purpose of the legislature in authorizing the creation of the so-called special operating cost assessment district is to avoid the constraints of Article 11, § 1. By purportedly creating a new and different taxing district which levies special assessments, the rate of taxation therein need not be equal to the rate of taxation in the school district itself. However, as noted above, the additional taxes which the board of education may levy in the special operating cost assessment district are not genuine special assessments to defray the cost of an improvement. Rather, they are to meet the general operating costs of the attendance facility located in the district, which were formerly borne by the general tax levies of the board of education. Indeed, there is a new taxing district in name only. It has no budget, no employees, and no general fund. The additional taxes levied within the so-called special operating cost assessment district are deposited in the general fund of the school district itself, and are commingled with its general operating fund to maintain the operation of the attendance facility. The attendance

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area of that facility does not become a new school district, but remains merely a part of the original district, and the property therein remains subject to the general school taxes of that district. However, property in the so-called special operating cost assessment district is subject to taxation, and not for the payment of special assessments, for the general operating costs of the attendance facility, at a rate greater than property in the remainder of the school district. In my judgment, there results an unequal rate of taxation within the territorial boundaries of a single taxing district, and thus, the provisions which authorize the creation of a special operating assessment district and the levy of taxes therein at a rate greater than that levied in the remainder of the district are unconstitutional under Article 11, § 1 of the Kansas Constitution.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

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