



STATE OF KANSAS

Office of the Attorney General

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Attorney General

July 19, 1977

ATTORNEY GENERAL OPINION NO. 77- 236

J. Byron Meeks
Edwards County Attorney
Edwards County Courthouse
Kinsley, Kansas 67547

RE: Taxation - Separate Tax Statements for Fractional
Interests in Real Estate. K.S.A. 79-1803, K.S.A.
1976 Supp. 79-2001, K.S.A. 79-426

SYNOPSIS: Where real estate is owned by two or more persons in joint tenancy or as tenants in common, Kansas statutes provide for tax rolls listing a single owner. When the tax roll is certified to the County Treasurer, tax statements must follow the tax roll and the County Treasurer may not break down the taxes for a single tract and send "fractional" statements to each owner for the percentage share each owner contends to own. Any joint tenant may pay the taxes in full if all others default and have a statutory lien for the extra taxes paid.

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Dear Mr. Meeks:

Your county treasurer has a real estate tax roll whereon one person is designated as "owner" when in fact the land is owned "jointly" by three persons in undivided interests. Two owners are satisfied, but the third demands a "separate statement of his own." He argues that if the tax is unpaid, his interest is unprotected. Whereas, if his third of the tax was billed directly to him, he would pay his third.

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You ask: Does the county treasurer have to direct a tax statement to each fractional interest in real estate?

In our opinion, where real estate is owned by two or more persons in joint tenancy or as tenants in common, the Kansas tax statutes provide for the tax rolls listing a single owner. The county clerk makes up the tax rolls "in the name of the OWNER, if known." K.S.A. 79-1803. Upon receipt of the tax roll from the county clerk, the county treasurer shall mail "each taxpayer" a tax statement. K.S.A. 1976 Supp. 79-2001. The use of the singular in both of these statutes indicates a legislative intent that the tax rolls, and the resulting tax statement based thereon, be limited to one owner taxpayer. In some estates, where an aged person dies without a will leaving a large body of heirs possibly including minors, the county clerk must pick out one responsible heir, if known, and assess the tract in the name of that heir. Many times the county clerk welcomes the designation of such name by agreement of the heirs.

Your question contemplates a fractional division of the tax bill. The county treasurer cannot do this. A tenant in common cannot compel the county treasurer to divide the tax so that each percentage owner can pay his percentage of the total tax and get a receipt for just that share. Challiss v. Hekelnkaemper, 14 Kan. 474 (1875). Even if the county treasurer accepted a percentage of the tax due from one of the owners, and the other owners defaulted on their share, the tax laws do not provide for a tax foreclosure on an undivided interest. Corbin v. Inslee, 24 Kan. 154 (1880). See also: Auld v. McAllaster, 43 Kan. 162, 23 P. 165 (1890).

Every attempt of taxpayers to pay taxes on specific tracts by some piece-meal plan or "fractional" method has been rejected. Julien, Sheriff v. Ainsworth, 29 Kan. 446 (1882). As stated by Judge Brewer in that case, the county treasurer must collect the entire tax on each tract, with one exception and that is payment of one half on December 20th and a second half on June 20th. It is impossible for the treasurer to keep the books necessary to record and receipt partial payments. (Page 449).

Our answer is that the county treasurer cannot "fractionalize" a tax statement, and receipt for percentages or fractions of a total tax statement. If a joint or common tenant is dissatisfied with his situation he can always bring a partition suit and have his portion of a specific property set off to him in kind, or force a partition sale in which he can bid for the whole tract or receive his share in cash out of the sale proceeds.

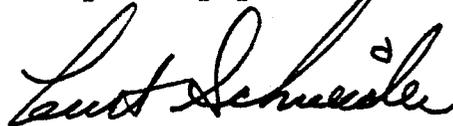
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A joint tenant is fully protected in paying the whole tax when other tenants fail to pay. He has a lien on the property for the extra tax he has paid. K.S.A. 79-426. Jesberg v. Klinger, 184 Kan. 519, 520, 522, 332 P.2d 660 (1959).

If the joint tenants or tenants in common can agree on a division of the land into tracts even after assessment, there is still an opportunity to apportion that assessment among individual owners of each tract. K.S.A. 79-425. There is another available statutory option. But there is no statutory procedure for a taxpayer to force a county treasurer to set up a fractional set of book-keeping for the payment of taxes on an undivided tract.

This taxpayer's premise, that he must get a separate tax statement for his share is untenable. No notice or demand is necessary to fix the duty of the citizen to pay taxes. Tax statements are directory, not mandatory, and do not change the policy that property owners are charged with knowledge that their real estate is taxable each year. No tax statement need be sent to any person other than the person assessed as "owner". Sending a tax statement to only one of the heirs has been held sufficient. 84 CJS 1219, TAXATION, Section 608 NOTICE OR DEMAND.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw