



STATE OF KANSAS

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CURT T. SCHNEIDER
ATTORNEY GENERAL

November 13, 1978

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ATTORNEY GENERAL OPINION NO. 78-362

Mr. Neil R. Shortlidge
Assistant City Attorney
8500 Antioch
Overland Park, Kansas 66212

Re: Cities--Occupational Taxes--Attorneys

Synopsis: K.S.A. 19-1310 does not apply uniformly to all cities or to all cities within any one of not to exceed four classes of cities which have been created by the legislature for the purpose of imposing limitations upon the constitutional power of cities to levy occupational taxes upon attorneys. Accordingly, it is ineffective to strip cities of their direct constitutional power to levy such a tax under Article 12, § 5(b) of the Kansas Constitution, and a city may proceed to levy such a tax by ordinance adopted in accordance with K.S.A. 12-137.

* * *

Dear Mr. Shortlidge:

In Opinion No. 78-212, we concluded that under Article 12, § 5(b), of the Kansas Constitution, a city may by charter ordinance exempt itself from K.S.A. 19-1310 and impose an occupational tax upon attorneys preacting law within such city. Subsequently, the city determined that the enactment of a charter ordinance was not the only avenue available for the imposition of such a tax, and proceeded under K.S.A. 12-137. You enclose a photocopy of Ordinance No. OT-972, and inquire whether it is valid and effective to impose such a tax, notwithstanding the City did not enact a charter ordinance.

Mr. Neil R. Shortlidge
Page Two
November 13, 1978

Article 12, § 5(b) of the Kansas Constitution provides in pertinent part thus:

"Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges and other exactions except when and as the levying of any tax, excise, fee, charge or other exaction is limited or prohibited by enactment of the legislature applicable uniformly to all cities of the same class: Provided, That the legislature may establish not to exceed four classes of cities for the purpose of imposing all such limitations or prohibitions."

This amendment was approved by the voters in 1960. It represented a drastic change in the status of Kansas cities. Upon its adoption, cities became invested directly by the constitution with direct legislative powers to deal with a broad range of local matters, including the levy of occupational taxes. The home rule amendment was drawn and intended not only to vest broad powers of self-government in Kansas cities, but also to circumscribe in some measure the power of the legislature to intrude upon and erode that power by piecemeal limitations and prohibitions. Specifically, cities' power to impose any "tax, excise, fee, charge or other exaction" may be limited or prohibited by the legislature, but only by specific kinds of enactments, i.e., by an enactment which applies uniformly to all cities, or which applies uniformly to all cities within any one of not to exceed four classes of cities which the legislature might choose to create for the purpose of imposing such limitations and prohibitions. The home rule amendment reserved to the legislature the power to limit cities in the exercise of their authority to levy taxes, excise and the like, but required that the legislature act within certain constraints in imposing such limitations. The legislature could limit cities' power only by enactments applicable uniformly to all cities, or if it wished to classify the cities for the purpose of imposing different limitations upon different cities, it could create no more than four classes of cities for that purpose.

The limitation in question here is K.S.A. 19-1310, which states thus:

Mr. Neil R. Shortlidge
Page Three
November 13, 1978

"All attorneys registered under this act shall not be liable to pay any occupation tax or city license fees levied under the laws of this state by any municipality."

This provision was enacted in 1919, as section 3 of chapter 178, L. 1919. Section 1 of that act commenced thus:

"That in all counties having a population of one hundred thousand, all attorneys at law shall register annually with the clerk of the district court in a register which said clerk shall keep for that purpose Each attorney shall pay a registration fee of \$10 to said clerk."

Section 1 of the 1919 act now appears as K.S.A. 19-1308, and has been amended at least eleven times to broaden its application to a number of counties which fall within prescribed ranges of population and assessed valuation.

Neither K.S.A. 19-1310, nor the enactment of which it is a part, applies uniformly to all cities, nor does it apply uniformly to all cities within any one of not to exceed four classes of cities created by the legislature for the purpose of imposing limitations upon the power of cities to levy occupational taxes upon attorneys. Neither K.S.A. 19-1310, nor the enactment of which it is a part, is the kind of enactment which the legislature must adopt in order to limit or prohibit cities from the exercise of their constitutional power to levy taxes, excise, fees, charges or any other like exaction, precisely because they are not drawn in the fashion required by Article 12, § 5(b). Although, certainly, the legislature has the power to limit cities in the exercise of their constitutional power to levy occupational taxes upon attorneys engaged in the practice of law, Article 12, § 5(b) forbids the legislature to exercise that power except by enactments fashioned as that section requires, enactments which apply uniformly to all cities or to all cities within any one of not to exceed four classes.

Article 12, § 5 was approved at the general election November 8, 1960, and became effective, by its terms, on July 1, 1961. Anticipating it, the 1961 legislature prescribed specifically

Mr. Neil R. Shortlidge
Page Four
November 13, 1978

the procedure which cities must follow in the exercise of their constitutional taxing power. It enacted what is now K.S.A. 12-137, as ch. 78, § 1, L. 1961, effective July 1, 1961, the same date as Article 12, § 5. The first paragraph of that statutory provision states thus:

"Where, under the power of cities granted by paragraph (b) of section 5 of article 12 of the constitution of Kansas, effective July 1, 1961, the governing body of any city by ordinance proposes to levy any tax, excise, fee, charge or other exaction other than permit fees or license fees for regulatory purposes, which is not limited or prohibited or a procedure for the levy of which is not otherwise prescribed by enactment of the legislature as provided by said paragraph (b) [of Article 12, § 5 of the Kansas Constitution], such ordinance shall require a two-thirds (2/3) vote of the members-elect of the governing body"

The levy which the City of Overland Park has imposed by Ordinance No. OT-972 is precisely the kind of levy contemplated by this section, *i.e.*, it is one "which is not limited or prohibited . . . by enactment of the legislature as provided by said paragraph (b)" of Article 12, § 5, *i.e.*, one which is applicable uniformly to all cities or to all cities within any one of not to exceed four classes. The city's constitutional power to impose this levy is not constrained by K.S.A. 19-1310 because it is not an enactment which conforms to the constitutionally-prescribed form which any enactment must satisfy in order to foreclose a city from exercising its Article 12, § 5(b) powers to levy taxes, fees, and like exactions.

Accordingly, in my judgment, the city correctly proceeded to impose this levy under K.S.A. 12-137, in the exercise of its powers to do so under Article 12, § 5(b). It was not necessary for the city to adopt a charter ordinance to exempt itself from K.S.A. 19-1310, because that provision was ineffective to prevent the city from exercising its direct constitutional taxing power, for the reasons stated at length above.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj