



STATE OF KANSAS

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ATTORNEY GENERAL

December 28, 1978

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ATTORNEY GENERAL OPINION NO. 78- 393

Mr. Rodney J. Bieker
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Department of Revenue
State Office Building
Topeka, Kansas 66612

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

Synopsis: Ordinance No. 662, adopted December 4, 1978, by the City of Fairway, Kansas, is ineffective to reduce the rate of the levy of the intangibles tax levied for the benefit of that city and collected in 1979.

* * *

Dear Mr. Bieker:

You inquire concerning the levy of an intangibles tax by the City of Fairway, Kansas. The question is based upon a somewhat extensive set of circumstances, commencing in December, 1977.

At a meeting December 5, 1977, the city governing body resolved to submit to the electors of the city two questions at a special election to be held April 4, 1978. The special election was called

"for the purpose of reducing the intangibles tax in the City to 1 1/4% for the year 1979 and subsequently reducing the tax by an additional 3/4% in 1980 and 1/2% in 1981 so the tax is totally eliminated, contingent upon and subsequent to an affirmative vote on the

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question of suspending the aggregate tax levy limitation for a period of not to exceed eight years for the purpose of providing alternative sources of revenue"

The questions were duly submitted, and approved by the voters. Thereafter, the city took no further action until the question was raised whether this procedure was sufficient, in and of itself, under K.S.A. 77-3109 to reduce the intangibles levy. In response to those inquiries, on December 4, 1978, the city governing body enacted Ordinance No. 662, section 2 of which provides for a reduction of the intangibles levy from two percent to one and one fourth percent, to be collected in the year 1979, further to one half percent to be collected in the year 1980, and reducing the levy altogether for the year 1981 and each year thereafter.

Section 3 of the ordinance provides, in accordance with K.S.A. 79-3107, that it shall be published in the official city newspaper once each week for two consecutive weeks, and that if a sufficient petition is filed within 60 days from the date of the second publication, it shall not become effective without an election having been held thereon. Section 4 provides that if no sufficient petition is filed, a copy of the ordinance shall be filed with the Secretary of Revenue and the Johnson County county treasurer.

K.S.A. 79-3109 specifies the procedure to be followed by a city governing body in reducing the rate of the intangibles tax, or in eliminating the levy altogether. In pertinent part, it provides thus:

"The governing body of any city may, in the year 1977 or in any years thereafter, by ordinance fix the rate of the tax levied for the benefit of such city upon money, notes and other evidence of debt having a tax situs in such city Such governing body may by ordinance, in lieu of prescribing a rate of taxation, elect that no tax shall be levied for the benefit of such city upon money, notes and other evidence of debt having a tax situs in such city."

The statute goes on to require that the ordinance be published, and that a sixty-day period be provided for the filing of a

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petition in opposition thereto. If a petition is filed, the ordinance may not become effective unless submitted to a vote. If no petition is filed, the ordinance becomes effective at the end of the sixty day period. It further specifies thus:

"A copy of such 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 thereof shall be applicable."

Ordinance No. 662, in question here, cannot become effective, by its terms, until sixty days after the date of the second publication, and hence, not until mid-February, 1979.

In Opinion No. 76-295, we concluded that the requirement that a copy of the resolution or ordinance be filed with the Secretary of Revenue and the county treasurer by September 1 was directory and not mandatory. At the same time, we held that it must be complied with as nearly as possible and practicable, and that a belated filing is effective unless it is so late so as to disrupt the orderly tax collection and distribution processes of the Department of Revenue and the county treasurers.

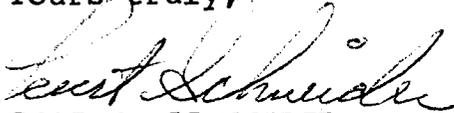
K.S.A. 79-3109 provides the sole statutory procedure available to a city, county or township which wishes to lower the rate of the intangibles tax which is levied for its benefit, or to eliminate the levy altogether. In order to reduce the rate of the levy, the city must adopt an ordinance fixing the rate of such reduced levy, and in order to eliminate the levy, the city must adopt an ordinance electing that no such levy shall be made. The resolution of December 5, 1977, did neither. It merely called a special election upon two questions, suspension of the aggregate levy limitations prescribed by K.S.A. 79-5001 *et seq.*, and reduction and ultimate elimination of the intangibles levy. The resolution, in and of itself, had no effect upon the intangibles levy. Likewise, the approval of the questions by the electorate in April, 1978, also had no effect upon the intangibles levy. K.S.A. 79-3107 requires that the rate be lowered by ordinance duly adopted by the governing body of the city, and that it also be eliminated only by such an ordinance. The approval of the questions by the electorate did not enact the proposition as an ordinance, and further legislative action by the city governing

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body was necessary to effect the reduction and ultimate elimination of the levy. Ordinance No. 662, adopted December 4, 1978, is such legislative action. However, by its terms, that ordinance cannot take effect until sixty days from the date of the second publication, and hence, not until mid-February, 1979. K.S.A. 79-3107 requires that each "ordinance . . . 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 thereof shall be applicable." Certainly, as indicated above, we have construed this requirement to be directory, and not mandatory, and a belated filing, which does not disrupt the orderly processes of tax collection, should be recognized by the Secretary of Revenue and the county treasurer. However, this construction should not be understood to do away with the filing requirement altogether. In the instant case, if the ordinance were filed in February, 1979, upon its becoming effective, the filing would be nearly six months delinquent, and indeed, would be filed at least six weeks after taxpayers had begun to file the returns upon which the tax liability is based, under K.S.A. 79-3111.

In my judgment, Ordinance No. 662 of the City of Fairway is not effective to reduce the rate of the intangibles levy for the benefit of that city to be collected in 1979.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj