



STATE OF KANSAS

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April 19, 1979

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ATTORNEY GENERAL OPINION NO. 79- 64

The Honorable Stan Gibson
State Representative
Kansas House of Representatives
State Capitol
Topeka, Kansas 66612

Re: Kansas Constitution--Finance and Taxation--Uniform
and Equal Rate of Assessment and Taxation

Synopsis: The provisions of 1979 House Bill No. 2393, which provide a method for dissolving certain fire districts and creating new fire districts in place thereof, do not violate Article 11, §1, of the Kansas Constitution. Said constitutional provision only requires that there be a "uniform and equal rate of assessment and taxation" as to each separate taxing district in the state.

Taxes levied pursuant to 1979 House Bill No. 2393 by the governing body of a new fire district created under the authority of said House Bill would not be tax levies of the municipality which said governing body also serves.

* * *

Dear Representative Gibson:

You request the opinion of this office as to whether 1979 House Bill No. 2393 violates Article 11, Section 1, of the Kansas Constitution. Further, you request an opinion as to whether taxes levied by the governing body of a new fire district created under the authority of said House Bill would be tax

The Honorable Stan Gibson
Page Two
April 19, 1979

levies of the municipality which said governing body also serves, for purposes of revenue apportionment under K.S.A. 1978 Supp. 12-192, and for purposes of allocation of local ad valorem tax reduction funds under K.S.A. 79-2961.

Briefly stated, House Bill No. 2393 provides that where any fire district created under K.S.A. 19-3613 et seq. is located totally within the corporate limits of a city of the first class, the governing body of such city may elect to replace said fire district with a new fire district, the governing body of which shall be the governing body of the city. The governing body of such new fire district is granted the authority to levy taxes and issue general obligation bonds under certain conditions. The fire district also is granted "all the powers and duties of any district created pursuant to K.S.A. 19-3613 et seq., and amendments thereto, so long as the same are not in conflict with the provisions of this act."

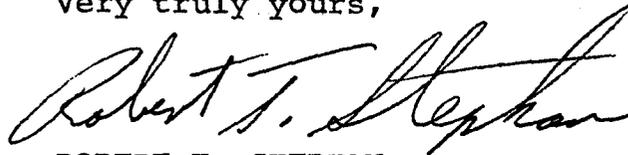
In our judgment, House Bill No. 2393 does not violate Article 11, Section 1, of the Kansas Constitution. That taxes would be levied only on taxable tangible property located within a fire district created under the act, rather than on all taxable tangible property in the city in which such district is located, is not violative of the constitutional rule of uniformity and equality. It has long been held that said rule requires uniformity and equality only in each separate taxing district of the state. Midland Elevator Co. v. Stewart, 50 Kan. 378, 383 (1893); State ex rel, v. Dwyer, 208 Kan. 437, 445 (1972). As will be discussed below, any tax levied under the proposed act would be that of a fire district, rather than that of a city, and since all taxable property within the fire district would be subject to the tax, the constitutional rule of uniformity and equality is satisfied.

House Bill No. 2393 provides that "[t]he governing body of the fire district shall have authority to levy taxes as hereinafter provided." [Emphasis supplied.] Therefore, as stated above, it is our opinion that any tax levied under the proposed act would be that of a fire district, rather than that of a city. This would be true even though the governing body of the fire district, and the governing body of the city in which said fire district is located, are one and the same.

The Honorable Stan Gibson
Page Three
April 19, 1979

We therefore conclude that a tax levied under the proposed act would not be that of a municipality, for purposes of revenue apportionment under K.S.A. 1978 Supp. 12-192, and for purposes of allocation of local ad valorem tax reduction funds under K.S.A. 79-2961.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
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RTS:BJS:TRH:gk