



STATE OF KANSAS

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October 11, 1979

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ATTORNEY GENERAL OPINION NO. 79-227

Mr. Robert J. Watson
City Attorney
Legal Department of Kansas City, Kansas
Ninth Floor, Municipal Office Building
One Civic Center Plaza
Kansas City, Kansas 66101

Re: Taxation--Exemption--Municipal Property

Synopsis: Property presently exempt from property taxation by virtue of K.S.A. 1978 Supp. 79-201a (as amended by L. 1979, ch. 307, §1) loses that exempt status after the call and payment of the revenue bonds issued pursuant to K.S.A. 13-1238 to 13-1245.

* * *

Dear Mr. Watson:

You have inquired as to whether K.S.A. 1978 Supp. 79-201a (as amended by L. 1979, ch. 307, §1) exempts from taxation certain property controlled by the City of Kansas City, Kansas, but leased to private, commercial entities. You indicate that such property has been improved, constructed or repaired with proceeds of revenue bonds issued prior to July 1, 1963, as authorized by K.S.A. 13-1238 to 13-1245, and you have asked our opinion as to the tax exempt status of such property, if the city elects to call the outstanding bonds and pay them prior to maturity, or if the city chooses not to issue new bonds pursuant to the same authority after June 1, 1983, the maturity date of the outstanding bonds.

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In your letter, you traced the evolution of the relevant provisions of 79-201a and contend that the property would remain exempt from taxation pursuant to such provisions, even if the city were to call the outstanding revenue bonds issued, or if it were to fail to issue new revenue bonds on or after June 1, 1983. While we truly appreciated the comprehensive form of your inquiry, together with the brief in support of your position, we cannot agree with your contention.

The provisions of 79-201 that are pertinent to your inquiry read as follows:

"The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the State of Kansas:

. . . .

"Second. All property used exclusively by the state or any municipality or political subdivision of the state. All property owned or operated by the state or any municipality or political subdivision of the state which is used or to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same, shall be considered to be 'used exclusively' by the state, municipality or political subdivision for the purposes of this act. Any property constructed or purchased with the proceeds of industrial revenue bonds . . . or any property improved, purchased, constructed, reconstructed or repaired with the proceeds of revenue bonds issued prior to July 1, 1963 as authorized by K.S.A. 13-1238 to 13-1245, or any property improved, reimproved, reconstructed or repaired with the proceeds of revenue bonds issued after July 1, 1963, under the authority of K.S.A. 13-1238 to 13-1245, which had previously been improved, reconstructed or repaired with the proceeds of revenue bonds issued under such act on or before July 1, 1963, shall be exempt from taxation for so long as any of the revenue bonds issued to finance such construction, reconstruction, improvement, repair or purchase shall be outstanding and unpaid."

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In support of your interpretation of the foregoing provisions, you gave significance to the fact that the terms "Provided, that" and "Provided, however, That" had been deleted from this portion of the statute by the 1977 Legislature. See L. 1977, ch. 323, §1. However, we believe no importance should be attached to that action.

As part of our research on this point, we visited with the Office of Revisor of Statutes, which provides bill drafting services to the legislature. We were informed that, for the past several years the Revisor's Office has been following instructions from legislative leaders to eliminate the use of provisos wherever possible, and that the removal of the language in question was pursuant to this directive. The apparent purposes for such drafting policy are that: (1) Multiple provisos within a particular statute, particularly where they occur in succession, tend to create confusion and ambiguities; and (2) while provisos are intended to state exceptions to statutory provisions, Kansas statutes throughout the years have become liberally sprinkled with provisos that do not, in fact, state statutory exceptions.

In reviewing the 1977 amendments to 79-201a, we found the latter point to be particularly relevant. What were characterized as provisos in this statute prior to 1977 were not, in fact, exceptions to the statutory provisions preceding them, but merely declarations of the substantive requirements of the exemption granted therein. Thus, in our judgment, the removal of the provisos from the second clause of 79-201a in 1977 did not effect any substantive change in the meaning of this clause.

You also attach significance to the phrase "used or to be used for any governmental or proprietary function and for which bonds may be issued or taxes levied to finance the same." You state that, grammatically, the words "may be" denote futurity and authority, and that the use of the words "to be used," coupled with the fact that in 1969 the legislature deleted a clause proscribing the exemption for property leased to private entities, lends credence to your position. We likewise disagree with this construction.

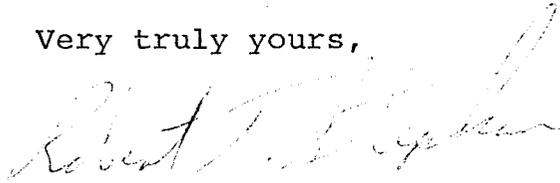
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Your interpretation means that, if a piece of property could qualify under the bond statutes, then it should be exempt from taxation, regardless of whether bonds had in fact been issued. Such construction contradicts the clear and unambiguous language of that portion of the statute granting and prescribing the duration of such exemption. These statutory provisions state that the property

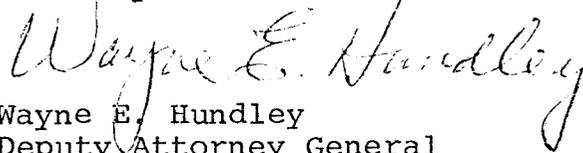
"shall be exempt from taxation for so long as any of the revenue bonds issued to finance such construction, reconstruction, improvement, repair or purchase shall be outstanding and unpaid."

The foregoing makes it abundantly clear that, once such property is no longer subject to bonded indebtedness, it is no longer exempt from taxation under this statute. We, therefore, conclude that the property in question will lose its exempt status when the bonds cease to be outstanding and unpaid, unless the city chooses to issue new bonds under the authority of K.S.A. 13-1238 to 13-1245.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Wayne E. Hundley
Deputy Attorney General

RTS:WEH:gk