



STATE OF KANSAS

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February 6, 1980

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ATTORNEY GENERAL OPINION NO. 80-31

Mr. Duane E. West
City Commissioner
City of Garden City
P.O. Box 499
Garden City, Kansas 67846

Re: Taxation--Kansas Retailers' Sales Tax--Exempt Sales

Synopsis: Pursuant to subsection (d) of K.S.A. 1979 Supp. 79-3606, the Department of Revenue grants sales tax exemption certificates for industrial revenue bond projects. The fact that a private concern may obtain industrial revenue bond financing from a city with the specific intention of avoiding sales tax on construction of a project has no effect upon issuance of project exemption certificates under said statute.

Pursuant to K.S.A. 12-147, taxing subdivisions of the state of Kansas may enter into "contracts for the payment of service charges in lieu of taxes" with the owners of property which is exempt from the payment of ad valorem taxes.

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Dear Commissioner West:

You request our opinion as to the "legality" of an industrial revenue bond project of the City of Garden City, which project is, in your opinion, "patently designed to avoid the sales tax," which tax would otherwise be incurred in the construction of the facilities. You also question the legality of a "tax break"

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(relating to property taxes) which will be afforded to the private concern which will be leasing the property when the project is completed.

Subsection (d) of K.S.A. 1979 Supp. 79-3606 provides, in part, that the following sales shall be exempt from sales tax:

"All sales of tangible personal property or services purchased by a contractor for the erection, repair or enlargement of buildings or other projects for any political subdivision of the state, public or private nonprofit hospital, public or private elementary or secondary school or a public or private nonprofit educational institution, which would be exempt from taxation under the provisions of this act if purchased directly by such political subdivision, hospital, school or educational institution. When any political subdivision of the state, public or private nonprofit hospital, public or private elementary or secondary school or public or private nonprofit educational institution shall contract for the erection, repair, or enlargement of any building or other project, it shall obtain from the state and furnish to the contractor an exemption certificate for the project involved, and the contractor may purchase materials for incorporation in such project."
(Emphasis added.)

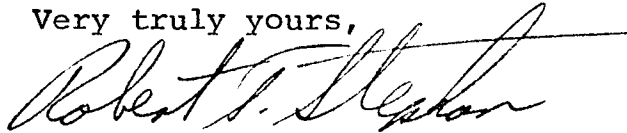
The Department of Revenue consistently grants exemption certificates to industrial revenue projects under the foregoing statutory provisions. The fact that a private concern may obtain industrial revenue bond financing from a city with the specific intention of avoiding sales tax on construction of the project is, in our opinion, of no consequence, so long as the project otherwise qualifies for the exemption. However, before the contractor or contractors may make exempt purchases for incorporation in the project, the city must, pursuant to K.S.A. 1979 Supp. 79-3606(d), obtain a project exemption certificate from the state and furnish it to the contractor. In cases where purchases are made for the project before the exemption certificate is obtained, the Department of Revenue refers contractors to the Legislature's Joint Committee on Special Claims Against the State for a determination as to whether a refund of sales tax will be granted.

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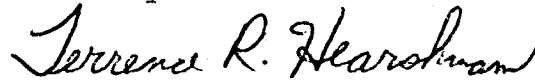
With regard to the "property tax break" which will be afforded to the private concern that will be leasing the property concerned, it should be noted that K.S.A. 1979 Supp. 79-201a, Second, provides that any property constructed or purchased with the proceeds of industrial revenue bonds (issued on or after July 1, 1963) "shall be exempt from taxation only for a period of ten (10) calendar years after the calendar year in which the said bonds were issued." Further K.S.A. 12-147 authorizes taxing subdivisions of the state of Kansas to enter into "contracts for the payment of service charges in lieu of taxes" with the owners of property which is exempt from the payment of ad valorem taxes. Without considering the details of the "arrangement" which has been entered into, it would seem that these statutory provisions are sufficient to authorize the "tax break" that has been granted to the private concern that will be leasing the subject property.

Finally, please be advised that we have conferred with officials of the Department of Revenue, and they are in agreement with the opinions expressed herein.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm