



STATE OF KANSAS

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February 11, 1980

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ATTORNEY GENERAL OPINION NO. 80- 37

Mr. James M. Milliken
Cheyenne County Attorney
101 West Washington Street
St. Francis, Kansas 67756

Re: Taxation--Listing and Valuation of Real Estate--
Surface and Mineral Rights Taxed Separately, When

Synopsis: In this state, the whole matter of taxation, including appraisal and taxation of mineral rights, is statutory and does not exist apart from statute. Therefore, a county may not, without statutory authority, prescribe its own method for the appraisal of mineral rights, and may not provide for the cancellation of taxes upon such mineral rights.

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Dear Mr. Milliken:

You request our opinion as to whether the Board of County Commissioners of Cheyenne County may "place a set dollar valuation on mineral interests, and if the valuation does not exceed a set amount, whether the right exists not to tax such interest." You state that the purpose of such a method of taxation would be to provide a more efficient procedure for handling many very small fractional mineral interests which must be separately taxed to the owners thereof, pursuant to K.S.A. 79-420. You advise that the cost of preparation and mailing of tax statements relative to such small mineral interests exceeds, in many cases, the amount of taxes received by the county.

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You describe the proposed method of taxation as follows:

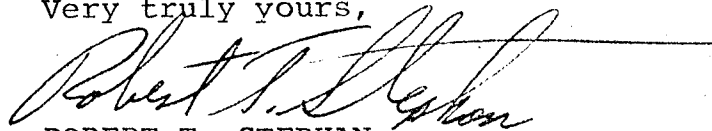
"An example of this would be to set a \$5.00 valuation per acre on the mineral interests and if the mineral interests did not total \$100.00, which would be an undivided one-eighth interest under a quarter section of land, then not to tax such interest at all."

Such a procedure, relating to taxation of mineral interests, is permissible only if the legislature has, in some manner, authorized the same. In this state, the whole matter of taxation, including the levy and collection of taxes, is statutory and does not exist apart from statute. Sarver v. Sarver Oil Co., 141 Kan. 246, 248 (1935); Sherman County Comm'rs v. Alden, 158 Kan. 487, 492 (1944); Phillips Petroleum Co. v. Moore, 179 Kan. 482, 490 (1956); Board of County Commissioners v. Matlock, 192 Kan. 272, 273 (1963).

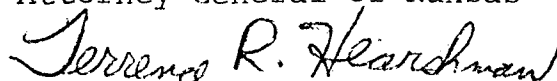
The legislature has recognized, in several respects, the inefficiency involved in the collection of very small tax liabilities. K.S.A. 1979 Supp. 79-2004, which relates to collection of real estate taxes, provides that, where the full amount of real estate taxes listed upon any tax statement is ten dollars or less, the entire amount of such tax must be paid on or before December 20. K.S.A. 79-330 provides that, where the aggregate amount of tax owed by any taxpayer on a royalty interest in an oil and gas lease (having a tax situs in the same taxing district) is less than two dollars, "such tax shall be cancelled and the amount shall not be included on the personal property list."

However, we are unaware of any statutory authority which would permit the cancellation of small tax liabilities upon mineral interests which are taxed under K.S.A. 79-420. Nor do we know of any authority which would permit a county to place a rigid \$5.00 per acre valuation on all mineral interests in the county; on the contrary, K.S.A. 79-411 requires that each parcel of real estate (which includes mineral interests) be appraised at its "fair market value in money." Therefore, in the absence of any statutory authority permitting the same, it is our opinion that the proposed method of taxation of mineral interests is not permissible.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General