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April 24, 1980

ATTORNEY GENERAL OPINION NO. 80-96

Dale J. Paulsen
201 E. Third
St. John, Kansas 67576

Re: Waters and Watercourses--Groundwater Management Districts--Imposition of Annual Assessment on Unified School District

Synopsis: A unified school district which is an owner of land within the boundaries of a groundwater management district is liable for any annual assessment levied by virtue of K.S.A. 1979 Supp. 82a-1030(a). As such an assessment is not based upon the value of property owned, the school district may not rely on the exemption from property taxes found at Article 11, Section 1 of the Kansas Constitution and K.S.A. 79-201. Cited herein: K.S.A. 79-201, 82a-1021(g), 82a-1021(k), K.S.A. 1979 Supp. 82a-1030(a), Kan. Const., Art. 11, §1.

* * *

Dear Mr. Paulsen:

As attorney for the Big Bend Groundwater Management District No. 5, you have requested our opinion whether a unified school district is exempt from an assessment made by the management district. Specifically, you inquire whether the exemption from property taxes which the school district enjoys also extends to the annual assessment of five cents (5¢) per acre which the management district imposes pursuant to K.S.A. 1979 Supp. 82a-1030(a). We would conclude that the school district is not exempt.

Big Bend Groundwater Management District No. 5 is a body politic and corporate, organized under the provisions of K.S.A. 82a-1020 et seq. Funds for the operation of the district are raised pursuant to K.S.A. 1979 Supp. 82a-1030(a), which in part states:

> "In order to finance the operations of the district, the board may assess an annual water user charge against every person who withdraws groundwater from within the boundaries of the district. The board shall base such charge upon the amount of groundwater allocated for such person's use pursuant to his or her water right. Such charge shall not exceed sixty cents (60¢) for each acre-foot (325,851 gallons) of groundwater withdrawn within the district or allocated by the water right.
>
> . . . .
>
> "The board may also make an annual assessment against each landowner of not to exceed five cents (5¢) for each acre of land owned within the boundaries of the district. Special assessments may also be levied, as provided hereafter, against land specially benefited by a capital improvement without regard to the limits prescribed above." (Emphasis added.)

Before an annual assessment may be imposed, it is necessary that the "person" own land within the district. K.S.A. 82a-1021(g). One such owner of land is Unified District No. 438 (Skyline). As Skyline also withdraws water from the ground for its use, it meets the definition set out by K.S.A. 82a-1021(k) and is so liable for the payment of user fees as well. This point is apparently not at issue.

Whether Skyline can be made to pay the annual assessment, however, is very much in dispute. The school district argues

that it cannot be made to do so by virtue of provisions contained both in the Kansas Constitution and in Kansas statutory law. Art. 11, Sec. 1 of the former states in part that "[a]ll property used exclusively for . . . educational . . . purposes shall be exempted from property taxation," while K.S.A. 79-201 further defines "property" to include all buildings, real property, tangible personal property and moneys held for such purposes.

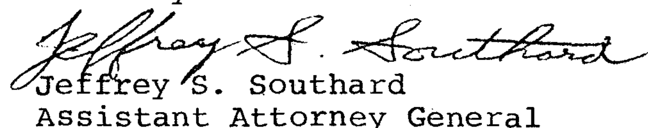
From the earliest days of this state, it has been recognized that the exemption from property taxes contained in Art. 11, Sec. 1 of the Kansas Constitution does not extend to all taxes paid by those entities which are listed therein. Hines et al. v. City of Leavenworth, 3 Kan. 186 (1865). Special assessments, for example, like those authorized in K.S.A. 1979 Supp. 82a-1030(a), are based wholly on benefits conferred on the property, and so are not within the exemption. State Highway Commission v. City of Topeka, 193 Kan. 335 (1964). Excise taxes, such as sales and use taxes, have also been held not to come within the scope of the exemption. City of Chanute v. Commission of Revenue, 156 Kan. 538 (1943), State, ex rel. v. Commission of Revenue, 163 Kan. 240 (1947).

Turning to the statute at issue, it becomes apparent that the annual assessment of up to five cents per acre for each landowner within the district is akin to an excise tax, as it is set at a flat rate, regardless of the value of the property. In this sense, it is obviously unlike a property tax which is dependent upon the value of the property involved. Under K.S.A. 1979 Supp. 82a-1030, the assessment is the same for an undeveloped acre of land as for one containing a school building or athletic field. Accordingly, while not a special assessment, the annual acreage charge is not proscribed by either the constitutional or statutory exemption from taxation of property owned by a unified school district.

In conclusion, a unified school district which is an owner of land within the boundaries of a groundwater management district is liable for any annual assessment levied by virtue of K.S.A. 1979 Supp. 82a-1030(a). As such an assessment is not based upon the value of property owned, the school district may not rely on the exemption from property taxes fround at Article 11, Section 1 of the Kansas Constitution and K.S.A. 79-201.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:phf