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August 27, 1980

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ATTORNEY GENERAL OPINION NO. 80-184

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Kansas City, Kansas 66117

Re: Cities and Municipalities--Port Authorities--
Exemption of Port Authority Property from Property
Taxes

Synopsis: Under the provisions of K.S.A. 12-3418 (as amended by L. 1980, ch. 70, §7), property owned by a port authority, but which is rented, leased, subleased or developed, is exempt from property taxation until the calendar year in which the revenue returned to the port authority from such property is sufficient to withdraw all the obligations of the port authority from circulation, pay all administrative costs of the port authority, and leave a balance in the treasury of the port authority. Stated otherwise, none of the property owned by a port authority is to be assessed and taxed as long as the port authority has obligations outstanding and administrative costs which the port authority cannot pay, in full, with the revenues returned to it by its property holdings.

The exemption granted by the provisions of K.S.A. 12-3418, as amended, is a valid exercise of the legislature's sovereign power of taxation, which includes the power to grant exemptions. Cited herein: K.S.A. 12-3418 as amended by L. 1980, ch. 70, §7, 77-201; and Article 11, Section 1, of the Kansas Constitution.

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Dear Mr. Higgins:

On behalf of the Kansas City, Kansas, Port Authority, you seek our opinion concerning the property tax exemption granted under the provisions of K.S.A. 12-3418, as amended by L. 1980, ch. 70, §7. More specifically, you ask how these provisions apply to a port authority that owns separate revenue-producing facilities, at different locations within its jurisdiction. You also inquire, generally, whether the Legislature possesses the power to exempt port authority property from ad valorem property taxation.

K.S.A. 12-3418, as amended, in relevant part, provides:

"[N]o port authority shall be required to pay any taxes or assessments upon any property acquired and used by it under the provisions of this act . . . except that property acquired by a port authority shall be exempt from ad valorem property tax only until the calendar year in which the same is rented, leased, subleased or developed and returns revenue to such authority in excess of the amount necessary to retire the obligations of the port authority and pay administrative costs of the port authority, and in such year such property shall be placed upon the tax rolls and thereafter ad valorem property taxes shall be paid thereon as is provided by law." (Emphasis added.)

From the foregoing, it is apparent that the legislature has granted a general exemption from property taxation to all property owned by a port authority. However, the duration of such exemption for any particular property is potentially limited by the use made of such property. Prior to its amendment in 1980, K.S.A. 12-3418 provided that the exemption lasted only until the calendar year in which such property was rented, leased, subleased or developed and returned revenue to the authority. Such provision was modified in 1980 by the addition the emphasized portion of the preceding quoted language. As a result of this amendment, there is a presumption that the legislature intended to change the prior provisions. "[A]ny changes and additions made in existing legislation raise a presumption that a change in meaning and effect is intended." Hessell v. Lateral Sewer District, 202 Kan. 499, Syl. ¶2 (1969). See also McGowen v. Southwestern Bell Tel. Co., 215 Kan. 887, 891 (1974); Huss v. DeMott, 215 Kan. 450, 451-452 (1974); Safeway Stores, Inc. v. Director of Revenue, 211 Kan. 594, (1973); Leslie v. Reynolds, 179 Kan. 422, 428 (1956); and State, ex rel., v. Richardson, 174 Kan. 382, 386 (1953).

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The question arises, however, as to the change intended by the legislature. In making such determination, we are guided by the rules of statutory construction adhered to by our courts, foremost of which is the principle that legislative intent is to be discerned from the language of the statute itself:

"A primary rule for the construction of a statute is to find the legislative intent from its language, and where the language used is plain and unambiguous and also appropriate to the obvious purpose the court should follow the intent as expressed by the words used and is not warranted in looking beyond them in search of some other legislative purpose or extending the meaning beyond the plain terms of the Act. (Alter v. Johnson, 127 Kan. 443, 273 Pac. 474; Hand v. Board of Education, 198 Kan. 460, 426 P.2d 124; City of Overland Park v. Nikias, 209 Kan. 643, 498 P.2d 56; Hunter v. Haun, 210 Kan. 11, 499 P.2d 1087.)" City of Kiowa v. Central Telephone & Utilities Corporation, 213 Kan. 169, 176 (1973).

Also of relevance is the Court's pronouncement in Lakeview Gardens, Inc. v. State, ex rel. Schneider, 221 Kan. 221 (1976):

"[T]his court must ascertain and give effect to the intent of the legislature. In so doing we must consider the language of the statute; its words are to be understood in their plain and ordinary sense. (Hunter v. Haun, 210 Kan. 11, 13, 499 P.2d 1087; Roda v. Williams, 195 Kan. 507, 511, 407 P.2d 471.) When a statute is plain and unambiguous this court must give effect to the intention of the legislature as expressed rather than determine what the law should or should not be. (Amoco Production Co. v. Arnold, Director of Taxation, 213 Kan. 636, 647, 518 P.2d 453; Jolly v. Kansas Public Employees Retirement System, 214 Kan. 200, 204, 519 P.2d 1391.)" 221 Kan. at 214.

Guided by these rules, we have concluded that the legislative intent underlying the 1980 amendment to 12-3418 is that all property owned by a port authority is to be exempt from ad valorem property taxation until the calendar year in which the revenue returned to the authority from such of its property as is rented,

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leased, subleased or developed is in excess of the amount required to withdraw the obligations of the port authority from circulation and pay all the authority's administrative costs. Such conclusion is predicated on our judgment that the amended language is plain and unambiguous and that the meaning thereof can be ascertained by ascribing to the words used their plain and ordinary meanings.

Initially, it is to be noted that the legislature has keyed the duration of the property tax exemption afforded port authority property to the time when the revenues derived from such property that is used by others is sufficient to "retire the obligations of the port authority" and, additionally, to pay the authority's administrative costs. In prescribing this requirement, the legislature has not specified any limitations or restrictions as to which obligations must be retired, nor does the context in which the new language is employed imply any such limitations or restrictions. Thus, in adherence to the previously cited rules of construction, we would not be justified in looking beyond the language of the statute in search of legislative intent, and must conclude that the revenues derived from the authority's property must be in excess of the amount necessary to retire all obligations of the authority. By similar reasoning, we also have concluded that such revenues must be more than sufficient to pay all administrative costs of the authority, as well.

As to the amount of revenues needed to "retire" the authority's obligations, we are afforded guidance by judicial determinations of this term's meaning. The courts have held the word "retire" means "to recover, redeem, regain by the payment of a sum of money" [McClain v. Commissioner of Internal Revenue Service, 110 F.2d 878 (5th Cir., 1940), affirmed 311 U.S. 527, 61 S.Ct. 373, 85 L.Ed. 319 (1941) and Empire Security Co. v. Berry, 211 Ill. App. 278 (1918)], or "to withdraw from circulation, or from the market; to take up and pay, as to retire bonds, to retire a note" (McClain, supra, at 879). It is our opinion, therefore, the phrase "retire the obligations of the port authority" means not that the revenue must be sufficient merely to pay principal and interest on obligations of the authority as the same become due, but means the revenue must be sufficient to withdraw the obligations of the port authority from circulation; to take up and pay such obligations.

Thus, it is our judgment that, until the calendar year in which the revenue returned to a port authority from such of its property as is rented, leased, subleased or developed is in excess of the sum needed to retire all the obligations of the port authority, pay all the port authority's administrative costs and allow the port authority to have moneys remaining in its treasury, none of the

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property of the port authority is subject to ad valorem property taxation. As long as the port authority, the potential taxpayer as owner of the property, has not the annual income to retire all its outstanding obligations and pay all its administrative costs, then none of the port authority's property is to be assessed and taxed.

Under the provisions of K.S.A. 12-3418, as amended, the taxation of property owned by a port authority, unlike the taxation of property owned by any other entity or individual, is based upon the owner's ability to pay; it is predicated on the owner's financial condition. Unlike any other property tax law of this state, the statute under consideration does not obligate a port authority to pay property taxes until the authority has the financial resources with which to pay its share of the costs of maintaining government.

Has the legislature the power to provide such an exemption? The Kansas Supreme Court has held that the power of the legislature to establish an exemption of property from taxation is not limited by Article 11, Section 1, of the Kansas Constitution [City of Harper v. Fink, 149 Kan. 278, Syl. ¶1 (1938), cited with approval in Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. 39, 42 (1975) and Board of Park Commisiners v. Board of County Commissioners, 206 Kan. 438, 440 (1971)], provided the exemption has a public purpose and is designed to promote the public welfare, and is not entirely devoid of a rational basis. State, ex rel., v. Board of Regents, 167 Kan. 587, 596 (1949).

In this regard, the Court also has held:

"It will be noticed that the provision quoted [Article 11, Section 1, of the Kansas Constitution] does not require that all property in the state be taxed, but does provide that all which is subject to taxation shall be assessed and taxed at a uniform and equal rate. Certain exemptions are therein prescribed which the legislature cannot ignore; but it does not forbid the exercise of the inherent power of the legislature to exempt property from taxation when in its judgment it may conduce to the public welfare. In Francis, Treas., v. A.T. & S.F. Rld. Co., 19 Kan. 303, 311, and in Comm'rs of Ottawa Co. v. Nelson, 19 Id. 234, 237, 27 Am.Rep. 101, it was in effect said that the constitution does not in terms

prohibit the exemption of property not therein enumerated, nor provide that no property shall be exempt, except such as is named in that section; and that it actually contains an implication that power exists to make exemptions beyond those expressly enumerated. Our constitution limits, rather than confers, power, and, hence, we look to it to see what it prohibits, instead of what it authorizes. Unless the sovereign power of taxation, which includes the power to make exemptions, is actually prohibited by the constitution it may be exercised by the legislature. In the absence of constitutional restrictions, the general rule is that the legislature has full power to grant exemptions from taxation, and, there being no such limitation, we cannot say that property like that in question, owned by a city, may not be exempted by the legislature." (Emphasis added.) Sumner County v. Wellington, 66 Kan. 590, 593 (1903).

The above rule has been stated in varying terms in numerous cases, including those cited above and Alpha Tau Omega v. Douglas County Comm'rs, 136 Kan. 675, 684 (1932); Gunkle v. Killingsworth, 118 Kan. 154, 156 (1925); and Wheeler v. Weightman, 96 Kan. 50, 68 (1915). In addition, the Court has said:

(1) "Within the scope of legislative power, the legislature itself is the judge of what exemptions are in the public interest and will conduce to the public welfare." (Emphasis added.) Gunkle v. Killingsworth, supra at 157.

(2) "In order . . . for the legislature to extend exemptions beyond those expressly designated in the constitution, they must have a public purpose and be designed to promote the public welfare It is the legislature and not the courts, that is charged with the duty of determining what, in its judgment, will best accomplish that purpose and thus be conducive to the public welfare." (Emphasis added.) State, ex rel., v. Board of Regents, 167 Kan. 587, 596 (1949).

(3) "Having concluded the exemption of this property from taxation would advance the

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public welfare, the legislature was competent to make it. (Ryan v. State Tax Commission, 132 Kan. 1, 4, 294 Pac. 938). With the wisdom of legislation touching the public interest courts have no concern. [Emphasis added.] (State, ex rel., v. State Highway Comm., 163 Kan. 187, 182 P.2d 127.) While courts may entertain different views on the subject it is not their privilege to supersede the judgment of the lawmaking body unless its judgment is entirely devoid of a rational basis. (State, ex rel. v. Sage Stores Co., 157 Kan. 404, 413, 141 P.2d 655.)" (Emphasis added.) State, ex rel., v. Board of Regents, supra, at 596.

In regard to the exemption from taxation of property owned by a port authority, the legislature has determined that such exemption will advance the public welfare. The legislature was competent to make it.

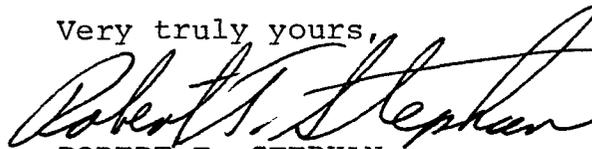
In addition, the legislature, in K.S.A. 12-3418, as amended, expressly stated: "The exercise of the powers granted by this act will be in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions" (Emphasis added.) To help foster the accomplishment of these laudable goals, the legislature provided the exemption with which we are concerned. It is apparent the legislature believed that such exemption would encourage those empowered by law to do so to exercise the powers granted by the act, thereby benefitting the people of this state. Clearly, this forms a rational basis for the exemption granted in K.S.A. 12-3418, as amended, and, in our opinion, it cannot be said the judgment of the lawmaking body is "entirely devoid of a rational basis." We therefore conclude that the exemption granted by the provisions of K.S.A. 12-3418, as amended, is a valid exercise of the legislature's sovereign power of taxation, which includes the power to grant exemptions. Sumner County v. Wellington, supra.

In review, it is our opinion that, under the provisions of K.S.A. 12-3418, as amended, property owned by a port authority, but which is rented, leased, subleased or developed, is exempt from property taxation until the calendar year in which the revenue returned to the authority from such property is sufficient to withdraw all the obligations of the port authority from circulation, pay all its administrative costs, and leave a balance in the treasury of the port authority. Stated otherwise, none of the property owned

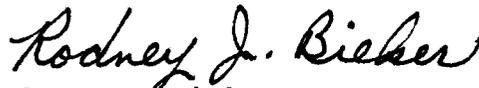
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by a port authority is to be assessed and taxed as long as the port authority has obligations outstanding and administrative costs which the port authority cannot pay, in full, with the revenue returned to it by its property holdings. It also is our opinion the exemption granted by the provisions of K.S.A. 12-3418, as amended, is a valid exercise of the legislature's sovereign power of taxation, which includes the power to grant exemptions.

Very truly yours,



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