



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

October 28, 1980

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80- 237

The Honorable Franklin D. Gaines  
Kansas State Senator  
Box 219  
Augusta, Kansas 67010

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

Synopsis: Contractors for both utilities and cable television firms are subject to the tax imposed by subsection (1) of K.S.A. 1979 Supp. 79-3603. However, with regard to the service of installing tangible personal property in connection with the original construction of a conveyance or distribution line, sales tax is imposed upon services rendered to a cable television system or privately owned utility (other than a cooperative, nonprofit, membership corporation organized under the provisions of K.S.A. 17-4601 et seq.), whereas no tax is imposed where the services relate to a transmission line of a municipal or quasi-municipal corporation. Cited herein: K.S.A. 1979 Supp. 79-3603 and 79-3606.

\*

\*

\*

Dear Senator Gaines:

You have requested an Attorney General's opinion regarding a sales tax question raised by one of your constituents. You state that the constituent alleges that he has been "forced to pay sales tax on construction projects involving cable TV," whereas "all other utilities are exempt under the laws of the State of Kansas."

Subsection (1) of K.S.A. 1979 Supp. 79-3603 imposes sales tax

"at the rate of three percent (3%) upon the gross receipts received from the sales of tangible personal property to all contractors, subcontractors or repairmen of materials and supplies for use by them in erecting structures for others, or building on, or otherwise improving, altering, or repairing real or personal property of others . . . ."

Since the sale of gas, water, electricity, and heat is a business specifically taxable under the Kansas Retailers' Sales Tax Act [K.S.A. 1979 Supp. 79-3603(c)], contractors purchasing materials and supplies for incorporation in projects of municipally-owned utilities are not within the exemptions set forth in K.S.A. 1979 Supp. 79-3606(b) and (d). See City of Chanute v. Commission of Revenue and Taxation, 156 Kan. 538 (1943). Therefore, contractors for either private or municipally-owned utilities are subject to the tax imposed by K.S.A. 1979 Supp. 79-3603(1), and would presumably include the tax as part of the contract price charged to the utility. This treatment is no different than that which is applicable to projects of cable TV firms.

Another tax imposed by the sales tax act is upon the gross receipts received for

"the service of installing or applying tangible personal property which when installed or applied is not being held for sale in the regular course of business, and whether or not such tangible personal property when installed or applied remains tangible personal property or becomes a part of real estate, except that no tax shall be imposed upon the service of installing or applying tangible personal property in connection with the original construction of a building or facility . . . ."  
K.S.A. 1979 Supp. 79-3603(p). (Emphasis added.)

The term "facility" is defined as follows:

"'[F]acility' shall mean a mill, plant, refinery, oil or gas well, water well, feed lot or any conveyance, transmission or distribution line of any cooperative, nonprofit, membership corporation organized under or subject to the provisions of K.S.A. 17-4601 et seq. or of any municipal or quasi-municipal

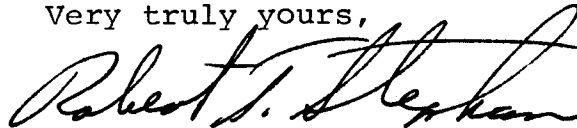
The Honorable Franklin D. Gaines  
Page Three  
October 28, 1980

corporation, including the land improvements immediately surrounding such facility . . . ."  
K.S.A. 1979 Supp. 79-3603(p). (Emphasis added.)

Therefore, as the above statutory excerpts indicate, no sales tax is imposed upon the service of installing or applying tangible personal property in connection with the original construction of a conveyance, transmission, or distribution line of any municipal or quasi-municipal corporation. Under the present tax-imposing statute, however, such services would be taxable with regard to the original construction of a distribution or transmission line of a cable TV system, or a privately owned utility.

In summary, contractors for both utilities and cable television firms are subject to the tax imposed by subsection (1) of K.S.A. 1979 Supp. 79-3603. However, with regard to the service of installing tangible personal property in connection with the original construction of a conveyance or distribution line, sales tax is imposed upon services rendered to a cable television system, whereas no tax is imposed where the services relate to a transmission line of a municipal or quasi-municipal corporation.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm