



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 8, 1981

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 81-79

John Willowby
Mayor, City of Palco
Palco, Kansas 67657

Re: Cities and Municipalities--County and City Retailers'
Sales Taxes--Situs of Taxable Transactions; Rules
and Regulations

Synopsis: The city retailers' sales tax imposed by the city
of Pittsburg must be collected by a Pittsburg contractor
who repairs, services, alters or maintains a water
tank owned by the city of Palco. Cited herein:
K.S.A. 12-187, 12-191, K.S.A. 1980 Supp. 79-3603(q),
K.A.R. 92-21-18.

*

*

*

Dear Mr. Willowby:

You request our opinion as to whether a contract for the
"refurbishing" of the city of Palco's water tank is subject to
the .5% city retailers' sales tax levied by the city of Pittsburg.
You state that the place of business of the contractor who will
be performing the work is located in the city of Pittsburg,
but that all work will be done in the city of Palco.

County and city retailers' sales taxes are levied pursuant to
the provisions of K.S.A. 1980 Supp. 12-187 et seq. K.S.A. 1980
Supp. 12-189 provides, with certain exceptions not relevant here,
that a city retailers' sales tax "shall be identical in its
application, and exemptions therefrom, to the Kansas retailers'
sales tax." The Kansas Retailers' Sales Tax Act does not exempt

political subdivisions of the state from taxation where the political subdivision is engaged in a business specifically taxable under the provisions of the Act. K.S.A. 1980 Supp. 79-3606(b). Since, pursuant to K.S.A. 1980 Supp. 79-3603(c), the sale or furnishing of water is specifically taxable, the city of Palco is not exempt from payment of either state or local sales tax where taxable services are rendered in connection with the business of selling or furnishing water.

For purposes of local sales tax, the situs of a taxable transaction must be determined in accordance with K.S.A. 1980 Supp. 12-191, which statute provides, in part, as follows:

"All retail sales, for the purpose of this act, shall be considered to have been consummated at the place of business of the retailer. In the event the place of business of a retailer is doubtful the place or places at which the retail sales are consummated for the purposes of this act shall be determined under rules and regulations adopted by the secretary of revenue which rules and regulations shall be considered with state and federal law insofar as applicable." (Emphasis added.)

As authorized by the underscored portion of the above-quoted statutory excerpt, the Secretary of Revenue has adopted a regulation, K.A.R. 92-21-18, concerning the application of local sales tax to the service of maintaining and servicing tangible personal property.¹ That regulation provides, in part, as follows:

"Gross receipts received from the installation, maintenance, servicing and repairing of tangible personal property which are taxable under the Kansas retailers' sales tax act are applicable to the place of business out of which the repairman or serviceman works unless otherwise specified herein. If the repairman or serviceman works out of a place of business located in a city or county having local sales tax the total charge for taxable services to

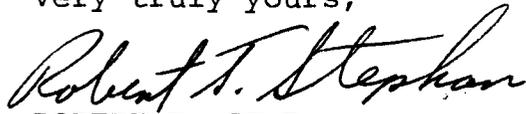
¹It should be noted that, pursuant to K.S.A. 1980 Supp. 79-3603(q), the service of repairing, servicing, altering, or maintaining tangible personal property is taxable where the item of tangible personal property has been "fastened to, connected with or built into real property."

John Willowby
Page Three
April 8, 1981

tangible personal property by such repairman
or serviceman is subject to both state and
and local sales tax, regardless of where in
Kansas the service or labor is performed."

The above-quoted regulation is dispositive of the question you have raised. Thus, it is our opinion that the city retailers' sales tax imposed by the city of Pittsburg must be collected by a Pittsburg contractor who repairs, services, alters or maintains a water tank owned by the city of Palco.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm