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May 14, 1981

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ATTORNEY GENERAL OPINION NO. 81-111

Mr. William H. Pringle  
Barton County Attorney  
P.O. Box 881  
Great Bend, Kansas 67530

Re: Taxation--Collection of Delinquent Personal Property  
Taxes--Dormant Tax Judgments

Synopsis: Due to the differing provisions of K.S.A. 1980 Supp. 79-2017 and 79-2101, county attorneys of counties having a population of 100,000 or less have the continuing duty to pursue collection procedures on personal property tax judgments, regardless of the vintage of the same.

In addition, while both K.S.A. 1980 Supp. 79-2017 and 79-2101 concern the same subject and reflect a nonuniform state position relative to the time at which efforts to collect delinquent personal property tax judgments may be allowed to cease, counties may not exercise their home rule powers, pursuant to K.S.A. 1980 Supp. 19-101a, to establish their own policy concerning that subject. Cited herein: K.S.A. 1980 Supp. 19-101a, 79-2017 and 79-2101.

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Dear Mr. Pringle:

You seek our opinion on whether personal property tax judgments in counties having a population of less than 100,000 may be allowed to remain dormant after five years, at the discretion of the county attorney or board of county commissioners, or whether the county attorney has a continuing duty to attempt to collect such judgments.

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Your inquiry concerns the provisions of K.S.A. 1980 Supp. 79-2101. Pursuant to that statute, if personal property taxes remain unpaid for a prescribed period of time, the county treasurer is required to issue a tax warrant directed to the sheriff, who, in turn, is required to attempt to collect the delinquent taxes. If the sheriff is unable to collect the taxes, the county treasurer is required to file, with the clerk of the district court, an abstract of the total amount of unpaid taxes, interest and costs, together with the last tax warrant. The clerk of the district court is required to enter said total amount in the judgment docket or in another docket maintained for such purpose. The statute further provides:

"Said total amount shall become a judgment in the same manner and to the same extent as any other judgment under the code of civil procedure and shall be a lien on real estate from and after the time of filing thereof. . . . Execution, garnishment or other proceedings in aid of execution may issue within the county or to any other county on said judgment in like manner as on judgments under the code of civil procedure except that any real estate taken upon execution for the collection of such taxes shall be sold without appraisalment. . . ." (Emphasis added.)

The statute concludes by providing:

"At the time of filing the abstract of the taxes, interest, penalties and costs and the last tax warrant with the clerk of the district court, the county treasurer shall serve notice, in writing, on the county attorney of such filing and it shall be the duty of the county attorney to commence such proceedings as are necessary for the collection of such judgment. If execution shall not be sued out within five (5) years from the date of the entry of any such judgment, or if five (5) years shall have intervened between the date of the last execution issued on such judgment, and the time of suing out another writ of execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the real estate of the delinquent taxpayer. Such dormant judgment may be revived in like manner as dormant judgments under the code of civil procedure." (Emphasis added.)

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The provisions of K.S.A. 1980 Supp. 79-2101 are applicable only in those counties having a population of 100,000 or less, as the legislature has prescribed a different statute to govern the collection of delinquent personal property taxes in counties having a population of more than 100,000. That statute is K.S.A. 1980 Supp. 79-2017.

While the two above-referenced statutes are not identical, the provisions of each regarding the filing of the abstract by the county treasurer with the clerk of the district court and the entry of the total amount of unpaid taxes, interest and costs as a judgment, are quite similar. Also, K.S.A. 1980 Supp. 79-2017, like K.S.A. 1980 Supp. 79-2101, concludes by imposing a duty upon the county counselor (instead of the county attorney) to "commence such proceedings as are necessary for the collection of such judgment." Except for the substitution of "county counselor" for "county attorney," the final paragraphs of the two statutes are identical, except that the following sentence concludes K.S.A. 1980 Supp. 79-2017:

"Any such judgment uncollected after twenty (20) years may be allowed to become dormant if the county commissioners determine, after consideration of all relevant facts, that it is not reasonable to expect that such judgment will be collected." (Emphasis added.)

As you correctly note, since no such provision is made for counties of less than 100,000, it appears the county attorney of any such county is required to pursue collection procedures on such judgments ad infinitum. Since the provisions of K.S.A. 1980 Supp. 79-2101 clearly and unequivocally require the county attorney "to commence such proceedings as are necessary for the collection of such judgment[s]," and do not authorize that such judgments "may be allowed to become dormant," as is permitted under K.S.A. 1980 Supp. 79-2017, we are constrained to conclude that the county attorneys of counties having a population of 100,000 or less have a continuing duty to pursue collection procedures on personal property tax judgments, regardless of the vintage of the same.

Our conclusion is supported by the fact the twenty-year provision of K.S.A. 1980 Supp. 79-2017 was added to this statute in 1971 (see, L. 1971, ch. 304, §1), and, while both statutes have been amended four times by the legislature since 1971, (see, L. 1976, ch. 145, §§242, 243; L. 1977, ch. 109, §§39, 40; L. 1979, ch. 312, §§4, 5; and L. 1980, ch. 308, §§5, 6), the legislature has not

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included the same or similar provision in K.S.A. 1980 Supp. 79-2101. Had the legislature intended the boards of county commissioners of counties having a population of less than 100,000 to possess the discretion allowed to the boards of counties having a population of more than 100,000, it easily could have so provided. The legislature did not do so, however. Thus, we can but conclude the legislature intended to bestow no such authority as is contained in 79-2017 upon those counties which are subject to 79-2101.

In addition to the foregoing conclusion, we believe counties may not establish, through the exercise of "home rule power," a point in time beyond which efforts to collect delinquent personal property taxes are to be discontinued. While both 79-2017 and 79-2101 concern the subject of delinquent personal property tax collection procedures, and it is clear there is no single legislative enactment on that subject which applies uniformly to all counties, it is our opinion the establishment of a point in time beyond which efforts to collect delinquent personal property tax judgments are to cease is not a matter of local county business. Hence, in our judgment, counties may not exercise their home rule powers concerning that subject.

The power of "home rule" is bestowed upon counties by the provisions of K.S.A. 1980 Supp. 19-101a. Said statute, in relevant part, provides: "Counties are hereby empowered to transact all county business and perform such powers of local legislation and administration as they deem appropriate . . . ." (Emphasis added.)

In a very recent opinion (Attorney General Opinion No. 81-112, dated May 14, 1981), concerning the transaction of county business, we informed the Shawnee County Counselor it was our opinion the Board of County Commissioners of Shawnee County lacked the authority under "home rule power" to implement a proposed plan for the taking of an annual county census, since the plan was to include a county resolution directing the county treasurer to refuse to accept payment of real property taxes, if the tender of payment was not accompanied by a completed "Local Census Report." In reaching that conclusion, we stated:

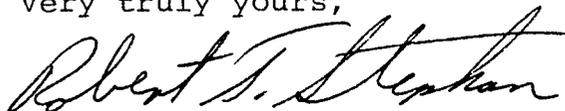
"While the collection of real property taxes 'pertains locally to the county,' and 'concerns county business,' it also pertains to other taxing districts and the business of each such district. Thus, not only could the prohibition suggested by Shawnee County preclude the county from receiving taxes levied by it, said prohibition

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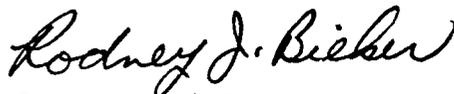
could preclude other taxing districts from receiving taxes levied by them. In our judgment, the power granted to counties pursuant to K.S.A. 1980 Supp. 19-101a is not broad enough to allow the county to adopt a policy such as that which is now proposed and which could affect every taxing district in the county. While the county can 'transact county business,' it cannot, in our judgment, transact the business of other taxing districts."

The establishment of a period of time beyond which efforts to collect delinquent personal property taxes are to cease is a matter which affects taxing districts other than the county. Therefore, in our judgment, such is not a matter of "county business" or "local legislation and administration," within the purview of K.S.A. 1980 Supp. 19-101a. Therefore, in our judgment, while both K.S.A. 1980 Supp. 79-2017 and 79-2101 concern the same subject and reflect a nonuniform state position relative to the time at which efforts to collect delinquent personal property tax judgments may be allowed to cease, counties may not exercise their home rule powers, pursuant to K.S.A. 1980 Supp. 19-101a, to establish their own policy concerning that subject.

Very truly yours,



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