



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81- 277

The Honorable Roy M. Ehrlich
State Senator, Thirty-Fifth District
Route 1, Box 92
Hoisington, Kansas 67544

Re: Kansas Constitution--Legislature--Imposition of
Taxes

Synopsis: The legislature has the power to levy and collect
an excise or license tax on any business or
occupation. Cited herein: Kan. Const., Art. 2, §1.

* * * * *

Dear Senator Ehrlich:

You seek an opinion on whether the legislature has the authority
to impose a tax upon the privilege of engaging in the business
of "severing" water from the earth.

The Kansas Supreme Court has held: "All governmental sovereign
power is vested in the legislature, except such as is granted
to the other departments of the government, or expressly with-
held from the legislature by constitutional restriction."
Leek v. Theis, 217 Kan. 784, Syl. §7. Moreover, the Supreme
Court has stated that, by Article 2, Section 1 of the Kansas
Constitution, the general legislative power of this state is
vested in the House of Representatives and the Senate. See,
e.g., Hines et al. v. City of Leavenworth et al., 3 Kan. *186 (1865).

In City of Newton v. Atchison, 31 Kan. 151 (1883) the Kansas
Supreme Court stated:

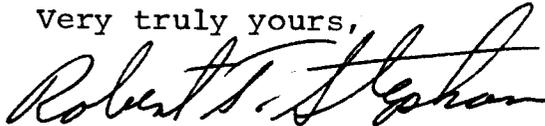
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"Taxation is a legislative power. Full discretion and control therefore in reference to it are vested in the legislature, save when specially restricted. There is no inherent vice in the taxation of avocations. On the contrary, business is as legitimate an object of the taxing power as property." Id. at 154.

Also, in Pacific Mutual Ins. Co. v. Hobbs, 152 Kan. 230 (1940), the Supreme Court flatly stated: "The legislature has power to levy and collect an excise or license tax on any business or occupation." Id. at 233. A tax upon the privilege of engaging in the business of severing a mineral from the earth is an excise tax, specifically, a privilege tax. See State, ex rel., v. Kirchner, 182 Kan. 622, 625 (1958).

Based upon the foregoing statements of the Court, we are of the opinion the legislature has the authority to impose a tax upon the privilege of engaging in the business of "severing" water from the earth.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
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RTS:BJS:RJB:jm