



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

September 3, 1982

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CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 82- 189

Thomas L. Wilson
Woodson County Attorney
P. O. Box 181
Yates Center, Kansas 66783

Re: Taxation--Intangibles Tax--Repeal Thereof

Synopsis: A board of county commissioners, which has chosen to impose the tax authorized by 1982 House Bill No. 3142 without a vote of the electorate, may determine subsequently that the tax should no longer be imposed by the county and, without a vote of the electorate, may repeal the county resolution pursuant to which the tax is imposed. Cited herein: 1982 HB 3142 (L. 1982, ch. 63, §1).

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Dear Mr. Wilson:

At the request of the Board of County Commissioners, you seek an opinion concerning the following question: If a board of county commissioners adopts a resolution imposing the "intangibles" tax, can the board, in a subsequent year, adopt a resolution repealing the tax, without having first submitted the question of repealing the tax to the voters of the county?

This question concerns the provisions of 1982 House Bill No. 3142 (HB 3142), now found in chapter 63 of the 1982 Session Laws of Kansas. This enactment is the "new intangibles tax law."

Under subsection (a) of section 1 of this law, the board of county commissioners of any county, "[i]n the year 1982 or any year thereafter," is "authorized to adopt a resolution imposing a tax for the benefit of such county upon the gross earnings derived from money, notes and other evidence of debt having a tax situs in such county." (Emphasis added.) This language clearly does not require the board of county commissioners of any county to impose a tax upon the gross earnings derived from money, notes and other evidence of debt. Under this section, the levy of the tax is solely within the discretion of the board of county commissioners. The board may choose to levy the tax or it may choose not to levy it.

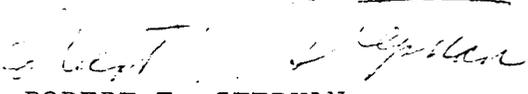
However, under the provisions of subsections (e) and (f) of section 1 of this law, the decision of a board of county commissioners is subject to a referendum of the county voters. Specifically, if a board of county commissioners elects to impose this tax, subsection (e) of section 1 provides that a petition may be filed requesting a vote on the question of whether the tax should be eliminated.

On the other hand, if a board of county commissioners decides not to impose the tax, subsection (f) of section 1 of the law provides that a petition may be filed requesting a vote on the question of whether the board should be required to impose said tax.

It is to be noted that under this new law a board of county commissioners is required to impose or eliminate this tax only if a petition requesting a vote is filed and the vote of the people results in a mandate that the county take action. Until a vote of the county electors is had, however, it is our opinion that the board of county commissioners retains the authority to decide, in its discretion, whether to impose the tax or to refrain from doing so.

We also are of the opinion that a board of county commissioners, which has chosen to impose the tax authorized by 1982 H.B. 3142 without a vote of the electorate, may determine subsequently that the tax should no longer be imposed by the county and, without a vote of the electorate, may repeal the county resolution pursuant to which the tax is imposed.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm