



STATE OF KANSAS

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December 2, 1982

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ATTORNEY GENERAL OPINION NO. 82- 252

Philip W. Martin, Director
Property Valuation Division
Department of Revenue
5th Floor, State Office Building
Topeka, Kansas 66612

Re: Taxation--Property Exempt From Taxation--
Determination of Exempt Status

Synopsis: Due to the provisions of K.S.A. 1981 Supp. 79-213, the State Board of Tax Appeals is the appropriate agency to determine which property is exempt from property taxation. Cited herein: K.S.A. 1981 Supp. 79-213, L. 1982, ch. 390, §§3, 4.

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Dear Mr. Martin:

You request us to determine whether, based upon certain hypothetical fact situations, certain items of tangible personal property are exempt from property taxation under the provisions of section 3 or 4 of L. 1982, ch. 390. These sections, respectively, concern the exemptions from property taxation of "farm machinery and equipment" and certain aircraft.

In response to your inquiry, we are compelled to call your attention to the provisions of K.S.A. 1981 Supp. 79-213, which, in our judgment, render the initial determination of whether property is exempt from property taxation to be an administrative function, not a judicial one. Therefore, we believe it would be inappropriate for this office to interpose an opinion on these

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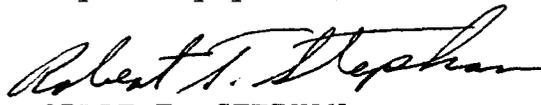
questions, at this time, since the appropriate administrative agency, i.e., the Board of Tax Appeals, has not had an opportunity to render a decision in accordance with K.S.A. 1981 Supp. 79-213. Thus, we shall not respond, specifically, to your inquiries.

We can, however, echo the advice given you by your legal staff that statutory provisions granting exemptions from property taxation are strictly construed and that the burden of establishing exemption from taxation is on the one claiming it. See In re Board of Johnson County Comm'rs, 225 Kan. 517, 519 (1979) and Lutheran Home, Inc. v. Board of County Commissioners, 211 Kan. 270, 275 (1973). Thus, in providing assistance and advice to county taxing officials, prior to the time the Board of Tax Appeals rules upon cases involving factual situations such as you presented in your letter, we can advise you only to be guided by the rules of construction established by the Kansas Supreme Court.

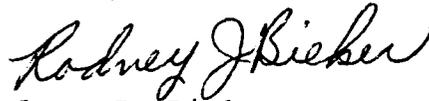
However, in response to your letter, we are constrained to advise you that, if actual fact situations, such as those hypothecated in your inquiry, arise, the Board of Tax Appeals is the appropriate agency to consider the matter.

Of course, if you desire to confer with this office in regard to these or other matters concerning the property tax system, or any aspect thereof, we certainly are willing to do so.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm