



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

ATTORNEY GENERAL OPINION NO. 88- 4

Frank M. Rice
Schroer & Rice, P.A.
115 East Seventh Street
P.O. Box 2667
Topeka, Kansas 66601

Re: Federal Jurisdiction--Surplus Property of Federal Agencies--Surplus Property and Airport Authority, Certain Cities and Counties; Authority Constitutes Political and Taxing Subdivision

Synopsis: The Metropolitan Topeka Airport Authority is subject to a special assessment for a water main extension project of the city of Topeka. Cited herein: K.S.A. 12-6a01; 27-330.

* * *

Dear Mr. Rice:

As attorney for the Metropolitan Topeka Airport Authority (M.T.A.A.), you request our opinion as to whether the Authority is subject to a special assessment for a water main extension project of the city of Topeka. You advise that the project is being undertaken pursuant to the provisions of the general improvement and assessment law, K.S.A. 12-6a01 et seq.

In response, we first note that the M.T.A.A. is the beneficiary of a statutory exemption set forth in subsection (a) of K.S.A. 27-330:

"An authority created pursuant to the provisions of this act shall be a political and taxing subdivision separate and distinct from any other municipality, and shall be exempt from the payment of costs, damages, charges, taxes and fees levied by any other political or taxing subdivision of this state."

In determining whether the above-quoted exemption applies to a special assessment levied pursuant to the provisions of K.S.A. 12-6a01 et seq., we are guided by the decision in State Highway Commission v. City of Topeka, 193 Kan. 335, 339 (1964), wherein the court stated as follows:

"An exemption of property of the state, county and municipalities from 'taxation' does not carry an exemption from special assessments for public improvements. Running through our decisions is the holding that public property is liable for special assessments for public improvements and this can only be overcome by a positive declaration in the statutes that the public property shall not be liable therefore but that the costs will be borne by the city at large."
(Emphasis added.)

Reviewing the language of subsection (a) of K.S.A. 27-330, we must conclude that the same falls short of the "positive declaration" mandated by the State Highway Commission case. Specifically, while there are references to "costs" and "charges," there is no explicit statement that property of an airport authority is exempt from a special assessment levied for public improvements of a Kansas city. Accordingly, it is our opinion that the Metropolitan Topeka Airport Authority is subject to a special assessment for a water main extension project of the city of Topeka.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General