



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 89- 68

Charles E. Wetzler
City Attorney
7700 Mission Road
Prairie Village, Kansas 66208

Re: Cities and Municipalities--Ordinances of Cities;
Initiative and Referendum Ordinances--Petition for
Proposed Ordinance; Requirements

Constitution of the State of Kansas--Finance and
Taxation--System of Taxation; Classification;
Exemption

Synopsis: A proposed ordinance submitted under the provisions of K.S.A. 12-3013 provides for the imposition of a "special park development fee upon all real estate upon which there is proposed to be constructed any structure for multi-family or single family residential purposes equal to 10% of the fair market value of the real estate proposed to be so utilized." In our opinion, the proposed ordinance would violate Article 11, Section 1 of the Kansas Constitution, and, therefore, need not be voted on by the council or submitted to a referendum under the authority of K.S.A. 12-3013. Cited herein: K.S.A. 12-3013; Kan. Const., Art. 11, §1.

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Dear Mr. Wetzler:

You request our opinion as to whether a proposed ordinance, attached hereto as Exhibit "A", must be voted on by the

Prairie Village city council, or submitted to a city referendum, in accordance with the provisions of K.S.A. 12-3013. The ordinance would impose "a special park development fee upon all real estate upon which there is proposed to be constructed any structure for multi-family or single family residential purposes equal to 10% of the fair market value of the real estate proposed to be utilized." Monies raised by the imposition of such fee would be placed in a fund to be used solely for the purpose of acquiring and/or developing real estate for park purposes.

The Kansas Supreme Court has held that a city will not be forced to place on an election ballot an unconstitutional initiative ordinance. State v. Paulsen, 204 Kan. 857 (1970). In this regard, it is necessary to determine whether the park development fee imposed by the proposed ordinance is in harmony with the provisions of Article 11, Section 1 of the Kansas Constitution. Article 11, Section 1 requires a uniform and equal basis of valuation and rate of taxation of all property subject to taxation, subject to classification and exemption as prescribed therein. Under said constitutional provision, real property used for residential purposes, (including multi-family residential real property) is to be assessed uniformly at 12% of its value.

Although the exaction imposed by the attached ordinance is denominated a "fee," it is a levy on real property according to its value. Accordingly, we are impelled to conclude that the fee is in reality an ad valorem property tax, and subject to the provisions of Article 11, Section 1 of the Kansas Constitution. See State, ex rel. v. Barton County Commissioners, 142 Kan. 624 (1935); State, ex rel. v. State Commission of Revenue on Taxation, 163 Kan. 240 (1947).

The Constitution requires that real property used for residential purposes be uniformly assessed at 12% of its value and taxed at a uniform rate applied to that value. There is no classification in the Constitution which would permit undeveloped residential real estate to be assessed at its full fair market value and taxed at the rate of 10% of that value. Accordingly, it is our opinion that the proposed ordinance violates the provisions of article 11, section 1 of the Kansas Constitution.

In summary, a proposed ordinance submitted under the provisions of K.S.A. 12-3013 provides for the imposition of a "special park development fee upon all real estate upon which

there is proposed to be constructed any structure for multi-family or single family residential purposes equal to 10% of the fair market value of the real estate proposed to be so utilized." In our opinion, the proposed ordinance would violate Article 11, Section 1 of the Kansas Constitution, and, therefore, need not be voted on by the council or submitted to a referendum under the authority of K.S.A. 12-3013.

Although it appears that the proposed ordinance is also deficient under subsection (e)(3) of K.S.A. 12-3013, our conclusion regarding the constitutionality of the ordinance makes it unnecessary to discuss that deficiency.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JLM:TRH:jm