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ATTORNEY GENERAL OPINION NO. 91- 71

Tom R. Smith
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Re: Constitution of the State of Kansas--Legislative--
Uniform Operation of Laws of a General Nature;
1991 House Bill No. 2194

Constitution of the State of Kansas--Finance and
Taxation--System of Taxation; Classification;
Exemption; 1991 House Bill No. 2194

Synopsis: Since the exemption meets the public purpose test
and since there is no prohibition against special
legislation, it is our opinion that 1991 House Bill
No. 2194, section 2(d) is not violative of the
uniform and equal provision in article 11, section
1 or article 2, section 17 of the Kansas
Constitution. Cited herein: Kan. Const., art.
2, § 17, art. 11, § 1; 1991 House Bill No. 2194.

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Dear Mr. Smith:

You request our opinion regarding 1991 House Bill No. 2194,
new section 2, which creates a property tax exemption for
certain publicly owned property primarily used in operating an
airport. Subsection 2(d) of the bill provides:

"All property taxes, including any
penalties and interest accrued thereon,

imposed upon any property described in subsection (a) and (b) for all taxable years to which such subsections apply are hereby declared to be cancelled but any such amounts paid in any such year shall not be refunded except that with respect to Liberal municipal airport such amounts shall be refunded." (Emphasis added).

You question whether this provision, in particular the underscored portion, renders the bill unconstitutional in that it does not apply "uniformly and equally across the state." You do not specify which constitutional provision you believe may be violated, so we will address two provisions which appear pertinent based on language used in your request letter.

Article 2, section 17 of the Kansas Constitution provides as follows:

"All laws of a general nature shall have a uniform operation throughout the state: Provided, The legislature may designate areas in counties that have become urban in character as 'urban areas' and enact special laws giving to any one or more of such counties or urban areas such powers of local government and consolidation of local government as the legislature may deem proper."

In Ulrich v. Board of Thomas County Comm'rs, 234 Kan. 782 (1984) the Kansas Supreme Court analyzed this provision:

"The present version of Article 2, Section 17, was adopted by the people at the general election in 1974. The 1974 amendment completely eliminated language previously contained in that section providing that 'in all cases where a general law can be made applicable, no special law shall be enacted.' This language was in the original version of Article 2, Section 17, as adopted in 1859 and it was retained in subsequent amendments passed in 1906 and 1954.

"In the recent case of Stephens v. Snyder Clinic Ass'n, 230 Kan. 115,

631 P.2d 222 (1981), the opinion discusses in depth Article 2, Section 17, and its history from its original adoption in 1859 to the present time. In the Stephens opinion (230 Kan. at 127), Article 2, Section 17, is analyzed as follows:

"Article 2, Section 17, in its present form, was revised and adopted by the people at the general election of 1974. It now provides as set forth above at the beginning of the discussion on this point. It is important to note that the 1974 amendment of Article 2, Section 17, has completely eliminated the second sentence which provided that "in all cases where a general law can be made applicable, no special law shall be enacted." It is thus to be emphasized that Article 2, Section 17, of the Kansas Constitution as of 1981, simply requires that all laws of a general nature shall have a uniform operation throughout the state. The effect of this change is that the only prohibition contained in Article 2, Section 17, relates to laws of a general nature which affect the people of the state generally. Such laws must apply uniformly throughout the state and thus be geographically uniform. [Emphasis in original]. We, therefore, hold that Article 2, Section 17, of the Kansas Constitution as it exists today is not applicable to constitutional challenges based upon a denial of equal protection of the laws not involving a claim of lack of geographical uniformity.'

"It should be noted that in Sossoman v. Board of County Comm'rs, 230 Kan. 210, 630 P.2d 1154 (1981), there is language in the opinion on page 212 which might be interpreted to mean that Article 2, Section 17, in its present form still prohibits special legislation.

"We wish to make it clear at this time that since the 1974 revision of Article 2,

Section 17, the enactment of special legislation by the Kansas legislature is no longer prohibited by that section, and the Kansas legislature has the authority to enact special legislation applicable to a single county without the legislation being subject to attack under the provisions of Article 2, Section 17, as special legislation. We hold that under Article 2, Section 17, special legislation, as such, is no longer prohibited even when a general law might have achieved the same purpose. As stated in Stephens, the only legislation now prohibited by Article 2, Section 17, is legislation of a general nature which does not operate with geographical uniformity throughout the state." 234 Kan. at 786, 787. (Emphasis added).

Based on this analysis, it appears that article 2, section 17 does not prohibit special legislation such as that found in section 2(d) of 1991 House Bill No. 2194.

Article 11, section 1(b) of the Kansas constitution provides in part:

"Except as otherwise hereinafter specifically provided, the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation. . . ."

Thus, while the state of Kansas has switched to a classification taxing scheme rather than a pure uniform and equal system, there is still a uniform and equal provision which applies when no other provision is applicable.

Although the Kansas appellate courts have not published an opinion dealing with the uniform and equal clause subsequent to the adoption of the classification amendment, the Supreme Court has interpreted the uniform and equal language of pre-classification provisions on numerous occasions. The court held early-on that the uniform and equal provision does not prevent the legislature from enacted exemptions beyond those specifically stated in the constitution. Commissioners of Ottawa County v. Nelson, 19 Kan. 234, 237 (1877). By its terms, the uniform and equal provision applies only to

"property subject to taxation." In discussing the power of the legislature to exempt property from taxation, the Kansas Supreme Court has stated:

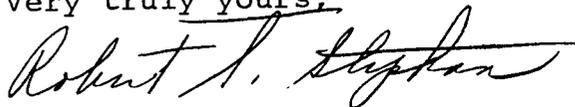
"Under the general rule all property is subject to taxation unless specifically exempted. Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. 39, 41-42, 542 P.2d 278 (1975). Property which is subject to taxation is taxed at a uniform and equal rate. State ex rel. Stephan v. Martin, 227 Kan. 456, 608 P.2d 880 (1980); Gunkle v. Killingsworth, 118 Kan. 154, 156, 233 Pac. 803 (1925); Sumner County v. Wellington, 66 Kan. 590, 593, 72 Pac. 216 (1903). However, tax exemptions are constitutionally permissible. One type of tax exemption is the constitutional exemption which demands the property be 'used exclusively' for specified purposes. Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. at 42; Washburn College v. Comm'rs of Shawnee Co., 8 Kan. 344, 349 (1871). The constitution does not provide, however, that other exemptions may not be made. City of Harper v. Fink, 148 Kan. 278, 280, 80 P.2d 1080 (1938); Gunkle v. Killingsworth, 118 Kan. at 156. The legislature may provide other statutory exemptions if such exemptions have a public purpose and promote the general welfare. Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. at 42; State, ex rel., v. Board of Regents, 167 Kan. 587, 596, 207 P.2d 373 (1949); Sumner County v. Wellington, 66 Kan. at 593. Such statutory exemptions may be broader than the constitutional ones. State, ex rel., v. Board of Regents, 167 Kan. at 595-96; Alpha Tau Omega v. Douglas County Comm'rs, 136 Kan. 675, 684 18 P.2d 573 (1933). 'Within the scope of legislative power, the legislature itself is the judge of what exemptions are in the public interest and will conduce to the

public welfare.' Gunkle v. Killingsworth, 118 Kan. at 157. Accord, State, ex rel., v. Board of Regents, 167 Kan. at 596." State, ex rel., Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, 411, 412 (1981).

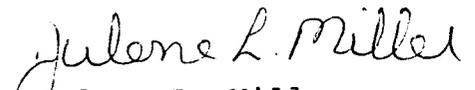
In Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. 39, 42 (1975) the court stated that "[i]t is obvious that statutory exemptions based upon public ownership of property may have a rational basis and that a public purpose may be served thereby." (Emphasis in original). See City of Harper v. Fink, 148 Kan. 278 (1938). In 1991 House bill No. 2194 the exemption is for publicly owned and operated property and we believe it is a valid exemption with a public purpose. See also State, ex rel., Tomasic v. City of Kansas City, 237 Kan. 572, 579 (1985) (test for determining whether exemption is for a public purpose).

Since the exemption meets the public purpose test and since there is no prohibition against special legislation, it is our opinion that 1991 House Bill No. 2194, section 2(d) is not violative of the uniform and equal provision in article 11, section 1 or article 2, section 17 of the Kansas Constitution. We note that governmental entities are not entitled to the protections of the equal protection clause of the United States Constitution. See Attorney General Opinion No. 89-145.

Very truly yours,



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