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November 13, 1991

ATTORNEY GENERAL OPINION NO. 91- 147

The Honorable Rick Bowden
State Representative, Ninety-Third District
433 Walnut
Goddard, Kansas 67052

Re: Constitution of the State of Kansas--Finance and
Taxation--System of Taxation; Classification;
Uniform and Equal Requirement on State Assessed
Taxes

Synopsis: Statutorily requiring different boards of education
to impose different amounts of mill levies with the
state recapturing a portion of those levies for use
in other school districts would constitute a state
tax. As such, the plan would not be consistent
with article 11, section 1(b) of the Kansas
constitution because the rate of taxation would not
be uniform and equal across the state. Cited
herein: Kan. Const., art. 11, § 1; L. 1965,
ch. 417, § 16.

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Dear Representative Bowden:

You request our opinion regarding school finance and whether
the state can, over a period of years, require different local
boards of education to impose different amounts of mill levies
so that all districts will eventually levy the same number of
mills. Specifically, you question whether this phase-in of
uniform mill levies by the various school districts would
comply with article 11, section 1(b) of the Kansas
constitution. We presume that this phase-in provision would

be accompanied by a state recapture provision as suggested in your request for Attorney General Opinion No. 91-142.

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

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

Prior to adoption of the classification amendment, article 11, section 1 required the legislature to "provide for a uniform and equal rate of assessment and taxation." The Kansas Supreme Court interpreted this language to require uniformity in the basis of assessment as well as in the rate of taxation. Addington v. Board of County Commissioners, 191 Kan. 528, 531 (1963); Beardmore v. Ling, 203 Kan. 802, Syl. ¶ 2 (1969); State, ex rel. Stephan v. Martin, 227 Kan. 456, 461 (1980) ("Uniformity in taxation implies equality in sharing the burden of taxation, and this equality cannot exist without uniformity in the basis of assessment as well as in the rate of taxation"). The term "assessment" has been held to mean valuation of property. Martin 227 Kan. at 462. Thus, the predecessor to article 11, section 1(b)(1) was held to require the same uniformity and equality in the basis of valuation and rate of taxation as does the current provision. We therefore may look to cases analyzing the requirements of the prior provision to determine how the court will interpret the current provision's requirements.

In State, ex rel., v. Hayden, 197 Kan. 199, 205 (1966) the Kansas Supreme Court stated:

"[T]he provision for uniform and equal rates of assessment does not require that the levy and amount raised by the tax be the same in each taxing district. The constitution only requires a uniform and equal rate throughout the territory in which the tax is levied and the principle of equality is fully satisfied by making local taxation equal and uniform as to all property within the limits of the taxing district." (Emphasis added). See also Elevator Co. v. Stewart, 50 Kan. 378, 383 (1893).

In Hayden the court found that the taxing district, for purposes of L. 1965, ch. 417, § 16 requiring certain counties to pay out-district tuition to help fund community junior colleges, was the county or the community junior college district involved rather than the state. Id. Thus, the court held that L. 1965, ch. 417, § 16 was not violative of article 11, section 1 merely because different counties or community junior college districts might levy different amounts under its provisions. The court has held, however, that the state can be and is the "taxing unit" when levying state general taxes. Board of County Commissioners v. Brookover, 198 Kan. 70, 77 (1967). Hayden therefore does not stand for the proposition that the state is never the "taxing unit" in which the basis of valuation and rate of taxation must be uniform and equal, but merely that it was not the "taxing unit" for purposes of the out-district tuition levy under the community junior college act.

L. 1965, ch. 417, § 16(b) did not specify a particular number of mills a particular county was required to levy; the amount was based on the number of county residents attending the community junior college. Nor was there a recapture provision; the tax was to be transferred from the county's general fund directly to the appropriate community junior college. Further, the tax in Hayden directly benefited the entity levying it. The scenario you envision would place a state-imposed requirement of the number of mills to be levied, would involve the state recapturing a portion of the tax and the entity collecting the tax would not be the sole beneficiary of the tax. For these reasons, we believe the tax would be deemed a state tax (see Attorney General Opinion No. 91-142) and thus the basis of valuation and rate of taxation, except as required for classification, of all property subject to taxation would have to be uniform and equal across the state to be in compliance with article 11, section 1(b)(1) of the Kansas constitution.

Very truly yours,



ROBERT T. STEPHAN
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