

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by SENATOR PAUL "BUD" BURKE at
Chairperson

11:00 a.m./~~p.m.~~ on March 2, 1984 in room 526-S of the Capitol.

All members were present ~~except~~:

Committee staff present: Tom Severn, Research Dept.
Wayne Morris, Research Dept.
Don Hayward, Revisor's Office

Conferees appearing before the committee:

Senator Gordon
Representative Robin Leach
Frances Jorgensen, Mitchell County Commissioner, Beloit
Richard Malm, Chairman Jefferson County Commissioners, Valley Falls
Mike Beam, Kansas Livestock Association
Fred Allen, Kansas Association of Counties
Darrel Montei, Kansas Fish and Game Commission
Senator Bogina
Richard Keithley, Attorney, Johnson County Legal Dept., Olathe
Ron Gaches, Kansas Chamber of Commerce and Industry
Fred Allen, Kansas Association of Counties
Chris McKenzie, League of Kansas Municipalities

The committee held a hearing on SB 815 which requires the Fish and Game Commission to pay counties in which leased land is located an amount equal to 75% of the determined lease value.

The chairman recognized Senator Gordon to explain the reasons for requesting this bill and the background leading to the request. (Attachment #1)

The following appeared in support of SB 815:

Representative Leach told the committee SB 815 needed to be amended to include the Bureau of Reclamation of the U.S. Dept. of Interior in the bill. He said the original policy of all counties affected by any Corp land was that 75% of the revenue from the leased land went to the county where located. The Fish and Game Commission, with its license agreement with the Corp, is permitted to collect and utilize the revenues only for use in the wildlife project it is conducting around the reservoirs. Federal policy does not permit any reimbursement to counties from these moneys, which are usually generated when the Fish and Game Commission subleases the land to area farmers. He said there is no effort on the part of Fish and Game to do anything except take from the tax base, and this bill is an attempt to reach a legal agreement and try to reimburse the counties.

Frances Jorgensen, Mitchell County Commissioner, said the county government cannot continue to serve the taxpayers in their vicinity near the Glen Elder Reservoir.

Richard Malm, Jefferson County Commissioner, said there are three areas that cause increased cost to local governments because of these lands managed by the Kansas Fish and Game Commission; 1) increased road maintenance; 2) health services during hunting season which overloads an already limited ambulance service and 3) additional law enforcement. (Attachment #2) Because the money they could pay local governments would probably not be as much as the employer wages in these areas, the Fish and Game Commission may come out ahead.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,
room 526-S, Statehouse, at 11:00 a.m. ~~p.m.~~ on March 2, 1984.

Fred Allen, KAC, said the problems in these counties are quite real and should be considered. They are working at the legislative level nationally through the national KAC to follow through on this problem around the federal reservoirs.

The following appeared in opposition to SB 815:

Darrel Montei, Fish and Game Commission, said that data presented at the 1983 interim study committee indicated that counties may be receiving more from the combined federal payments than was received through property taxes prior to the existence of the reservoir. He said no financial case has been built showing that counties are subsidizing the wildlife area. (Attachment #3)

The committee held a hearing on SB 817 which would provide that if any owner of personal property which is used for business purposes surrenders or transfers, by any voluntary act, such property to another after the date the property is assessed and before the tax is paid, then the taxes on the personal property of the taxpayer shall become due and payable immediately, and a lien shall attach to the property transferred.

Senator Bogina told the committee this bill was requested by the Commissioners of Johnson County because of the problem of collecting taxes in the event of a repossession and accompanying sale.

The chairman recognized Richard Keithley, Johnson County attorney, who presented information regarding a Supreme Court decision with regard to tax liens. He attempted to draw up a new statute which allows the tax lien to follow the personal property. (Attachment #4)

Ron Gaches, KCCI, supports solving the problem described but believes the current language is a bit broader than it needs to be, especially concerning voluntary possession. He noted line 21 was not clear language on property transferred or on personal property held by the taxpayer. His other reservation is philosophical: he doesn't believe it necessary to encompass business transfers of property to avoid the problem he described. He would like to work up revisions to the bill to keep the intent of the sponsor.

The chairman indicated the bill will be held in committee until a floor amendment is ready.

Fred Allen, KAC, said they believed the counties had this authority, but at some point a loophole developed. He would ask support for this measure to clarify the intent of the law in a manner equitable to the taxpayer.

The committee considered SB 797, apportionment of revenue from the retailers' sales tax receipts in Geary County.

Senator Montgomery moved and Senator Johnston seconded a motion to recommend SB 797 favorable for passage. The motion carried.

The committee considered SB 517 which exempts rural water district construction projects from the sales tax.

Senator Allen moved and Senator Ehrlich seconded a motion to recommend SB 517 favorable for passage.

The chairman indicated that SB 517 had conceptual and fiscal problems and continues to erode the base from people who want to be exempt from tax. He said if it is fair for rural water districts, then it is certainly fair for any kind of water district and there is no end to it if we establish this procedure. He asked how can anyone in good conscience deny the request of other water districts, not even considering Johnson County. Also, the fiscal note increases rapidly. The motion failed to pass.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,
room 526-S, Statehouse, at 11:00 a.m. ~~XXX~~ on March 2, 19 84

The committee considered SB 589, which exempts custom cutters from the property tax.

Senator Ehrlich moved and Senator Montgomery seconded a motion to report SB 589 favorable for passage.

Senator Montgomery made a substitute conceptual motion to amend SB 589 to include "leased farm equipment". Senator Allen seconded the motion and the motion carried.

Senator Montgomery moved and Senator Ehrlich seconded the motion to report SB 589 as amended favorable for passage. The motion passed.

The committee considered SB 464 which concerns the redemption period of real estate sold for delinquent taxes.

Chris McKenzie, League of Kansas Municipalities, presented a balloon of SB 464 and explained the amendments to the committee. (Attachment #5)

Senator Johnston moved and Senator Allen seconded a motion to adopt the balloon. The motion passed.

Senator Allen moved and Senator Thiessen seconded a motion to report SB 464 favorable as amended for passage. The motion passed.

The chairman adjourned the meeting at 12:00 noon. The committee will meet on Monday, March 5, at 11:00 a.m.

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
MARCH 2	Janice Marcum	Topeka	P.V.D.
	Baird Covey	Topeka	KRTA
	Mrs. Roy Ireland	Topeka	
	Ron Calbert	Newton	U.I.U.
	Fred Allen	Topeka	K.H.E.
	Denny Burgess	Wamego	K.W.F.
	Kent Jackson	Pratt	Ks Fish & Game
	Clyde Nelson	Beloit	Mitchell Co.
	Kevin J. Jansen	Beloit	Mitchell Co.
	Samuel J. Plymire	Beloit	Mitchell Co.
	Leroy Jones	Overland Park	B.L.E.
	M. C. German	Topeka	Ks Railroad Assn.
	Jim McBride	Topeka	United Way
	Sherry Ray	Clatton	Co. of Johnson
	Roy Ireland	Topeka	Mysell
	Don Caches	TOPEKA	KCC1
	Richard Malm	Valley Falls	Jefferson Co.
	Dennis H. Schwartz	Tecumseh Ks	Ks Rural Water Assn
	M. Hawco	Topeka	Capital Journal
	Forward Osile	Valley Falls Ks	Farm Service Corp. in
	James M. Fenell	Valley Falls Ks	Farmer
	RAY BURNS	Valley Falls, Ks	Farmer-Johnson

Statement by Senator Francis Gordon

Attachment #1

Senate Assessment and Taxation Committee

In support of Senate Bill No. 815

Last Wednesday Senator Ross Doyen requested that since he was to be out of town that I appear before your committee with this bill. During the last summer a special interim committee on Energy and Natural Resources chaired by Senator Angell studied Proposal #24 - Land around Federal Reservoirs and other Recreational Areas - and this is more legislation from that study.

Senate Bill 815 is a companion bill to SCR 1644 that memorializes the President and Congress to amend the procedures by which the Corps of Engineers licenses land to the Kansas Fish and Game Commission.

You may recall when the Senate approved SCR 1644 on February 15, that the necessity of changing the license was to allow Fish and Game to pay a so-called "in lieu of tax" on land that it leases from the Corps of Engineers.

As long as the Corps of Engineers lease the crop land around the reservoir to farmers, they return to the local county 75% of the profit derived from the crop production. However, when they license the land to the Fish and Game Commission, the contract between the Kansas City Division of the Corps and the Kansas Fish and Game Commission does not provide for them to make a profit, so if a profit is made over a 5-year period, it must be forwarded to the Corps of Engineer's fund. In summary, there are two sets of rules on Corps of Engineer's lands.

So that was the reason for SCR 1644 - - which I thought you needed the background information before starting into the bill.

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Now for Senate Bill 815 -

With the hopes that a change in the license procedure by the Corps of Engineers, then this bill is needed for direction to the Fish and Game Commission to pay the in lieu of tax to the local county.

Presently, the Fish and Game Commission is paying an "in lieu of tax" on Fish and Game owned land, therefore, we are just requesting that the leased land also be paid to local school districts and county general funds -- another case where we are dealing with two sets of rules. This is a very needed piece of legislation.

There are those that are appearing here today that will state that when the provisions are made, the Fish and Game Commission can make changes in their lease operations to the local farmers to finance the payment that is provided in this bill. Of concern to me has been the reluctance of the Fish and Game Commission to correct the problem.

With this background information and with others wishing to present their testimony to you, I would like to start by asking Representative Robin Leach to give his statement, then some county commissioners, and so on. Should you have any questions that I can assist with, I'll certainly do my best to provide the needed information as I don't want anyone telling Ross Doyen that I let him down on this bill.

JEFFERSON COUNTY OFFICES

COURTHOUSE
OSKALOOSA, KANSAS 66066

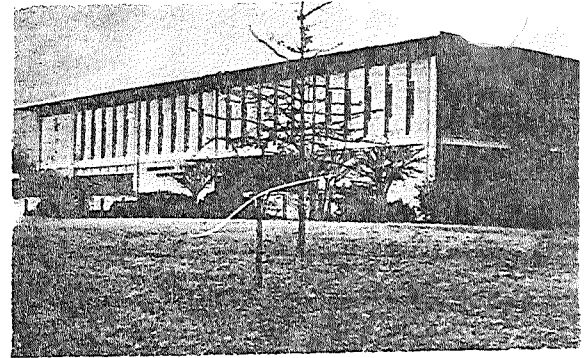
BOARD OF COUNTY COMMISSIONERS

CLIFFORD HOUK
1st District

ROLLIN CLARK
2nd District

RICHARD MALM
3rd District

Office Phone (913) 863-2272



Thank you. I am Richard Malm, Chairman of the Jefferson County Commission. I am here in support of Senate Bill 815. I will touch on three areas that cause increased cost to Local Governments because of these lands managed by the Kansas Fish & Game Commission and make some general statements.

Increased road maintenance cost in these areas and the roads that sportsmen use to get to these areas.

The Fish & Game Commission should be able to agree with us now as recently they let a bid for blading approximately 10 miles of road. The low bid of three bids was for approximately \$10,000.00. This was for blading the roads at least once a month and mowing one time per year. This bid does not include any rock. Another cost is the added population during hunting season requiring health services. This overloads an already limited Ambulance Service.

Besides road maintenance cost, there is an additional law enforcement cost.

For the last several years we have had a contract with the Corps of Engineers for law enforcement around Lake Perry. Our contract with the Corps was for April 15 through October 1. The Lake patrolmen can only patrol when the campers and boats are around the main body of the Lake. This contract ends before the main influx of hunters hits us. Besides we do not make money on this as it is for services rendered. We have to

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hire six Lake patrolmen for this contract.

We now get money from the Corps of Engineers. They rent agricultural land around the lower end of the Lake. We get 75% of this cash rent. This amounts to approximately \$82,100.00.

I have enclosed a chart that was put together by Tom Severin of Legislative Research. It shows how much the counties would have received from taxes ~~if~~ the Lake would not have been built and how much the Counties get from the Bureau of Land Management and Corps of Engineers. Jefferson County is about \$80,000.00 short.

When these projects (Federal Lakes) start, everyone talks about big figures on how much the county will gain, which may or may not be true. But the real problem is the Headwater Area - where most of the Fish & Game land is located.

In Delaware Township where almost all of the Lake Perry Fish & Game land is located the valuation in 1965 was \$1,703,275.00

1969 \$1,438,750.00

1975 \$1,526,900.00

1982 \$1,762,650.00

It has taken 17 years to get back to the valuation in Delaware than before the Lake was built. If the inflation factors are figured in for the last 17 years, we are still behind. I expect the valuation to drop again because we have lost a large business that added a lot of value to this area. If Lake Perry and these Fish & Game areas are helping Jefferson County so much, why are we on rock bottom of the per capita income of all the counties in Kansas. This is based on a study done by KSU and KU. I have included their articles for you to review.

According to the license between the Corps of Engineers and Kansas Fish & Game, the Fish & Game can use moneys received off this land to pay wages for employees engaged in fish and wildlife enhancement in these project areas. So the money that this bill takes from the fee fund could be offset by paying these wages.

Because the money they could pay local governments would probably not be as much as the employer wages in these areas, the Fish & Game Commission may come out ahead.

The Fish & Game Commission manages approximately 145,000 acres of agricultural land statewide. With just \$30.00 per acre income, this amounts to 4.3 million dollars. But of course, the Commission would rather raise fees and have the youth and elderly pay to hunt.

Several counties have contacted me and would like to have expenses to help local governments from Fish & Game. They are Miami, Marion, Trego, Neosho, Republic, Marshall, Clay, Osage and Douglas.

In closing, I would like to say that the Corps has helped some in supporting the counties and the schools, I just hope the Fish & Game Commission would do the same.

Reservoir	County	Acres	1	2	3	4
				Estimated 1982 Property Tax on Land Only	Estimated 1982 Property Tax with Improvements	Federal FY 82 Payments in lieu and Lease dec
Fall River	Greenwood .9014	15147		\$21409	\$23752	\$32202
Toronto	Greenwood .9014	3692		4231	4694	(included above)
	Woodson .829	4931		7595	8701	7825
Ellen Elder	Mitchell .8834	24561		83597	94631	16937
	Osborne (same)	3348		7988	9042	2308
Hillsdale	Miami .587	13122		34919	59487	99842
	N.F.S.					
Melvern	Osage .7699	23464		99835	129667	77994
Pomona	Osage (same)	10500		44675	58024	(included above)
Wilson	Russell .9072	21789		24201	26677	18250
Tuttle Creek	Reley .6068	16817		67459	111173	17361
	Pottawatomie .8657	16817		45268	52289	13648
John Redmond	Colley N.F.S. .795	29798		46854	59683	31992
Marion	Marion .8295	12249		68790	82927	30307
El Oorado	Butler N.F.S. 80.0=	13414		25583	31970	44968
Clinton	Douglas .6992	22554		141870	203190	37263
Council Grove	Morris .8954	5975		19970	22304	7515
Kanopolis	Ellsworth .9252	21221		29192	31554	136685
Milford	Leary .8206	44552		153082	186544	35516
Perry	Jefferson .6746	39339		129122	191417	109543

SENATE BILL 815

Ment
Testimony of Kansas Fish and Game Commission on S.B. 815
Presented to Senate Assessment and Taxation Committee on
March 2, 1984

This act would require the Fish and Game Commission to make an annual payment to certain counties within which Corps of Engineers reservoirs are located. Such payments would come from the Forestry, Fish and Game Fee Fund. The Commission would be required to determine the average per acre cash lease value of land currently leased by the U.S. Army Corps of Engineers to agricultural lease holders. That amount is to be multiplied by the number of acres that were in agricultural use at the time the Commission entered into a license agreement covering such acres. Seventy five (75) percent of the resulting sum is to be paid to the counties having Corp agricultural leases.

Corps reservoir projects in Kansas are authorized and constructed for various project purposes including; flood control, water quality, navigation, fish and wildlife, and recreation. A cabinet level document, known as a "Master Plan", is prepared which dedicates certain Corps owned lands to fish and wildlife management in accordance with project purposes. These lands are then licensed to the Fish and Game Commission to manage for fish and wildlife and for public use and enjoyment of those resources. This is partially in response to separation of powers concept (re-affirmed by K.S.A. 32-212) which recognizes a state's right to manage state fish and wildlife resources.

Agriculture is recognized by the Corps and the Commission as a management tool for providing food and cover for wildlife. However; agriculture for the sole purpose of producing crops or revenue is not a project purpose nor is it an approved practice under our license with the Corps. Any funds generated by the

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Commission which are not used back on the management area for approved purposes must be remitted to the Corps.

Several forms of federal government payment to counties occurs annually. The Bureau of Land Management administers a payment in-lieu-of tax program for federal land that amounts to about \$.75 per acre -- the actual amount varies annually due to congressional appropriations. The Corps of Engineers retains some operations lands which may be cash leased for agricultural use plus all grazing leases are issued through the Corps. Seventy five (75) percent of resulting revenues are returned to the various counties. The Corps also negotiates an annual law enforcement contract with the several counties. That sum is made available to the county and the county provides agreed to levels of law enforcement effort on reservoir projects.

The fiscal impact of S.B. 815 on the Commission would be at least \$626,250, but could exceed \$1.25 million for the first year. Succeeding year amounts would depend on annual cash lease values and administrative expenses. If grazing is also incorporated, the amount could exceed \$1.47 million for the first year.

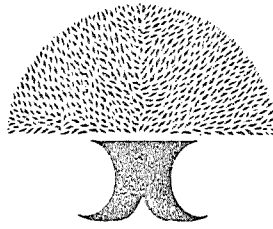
These estimates were based on Corps appraisal values of lands to be leased. The actual cash value received cannot be less than appraised value and generally exceeds the appraised value. Data was not available to determine acreage of agricultural cultivation at time of licensing. Current acreage of agricultural cultivation was increased by 20% to approximate the acreage that may have existed at time of licensing. That figure does not include acreages that are no longer farmable due to factors beyond our control. Consequently, the fiscal impacts listed are considered ultra conservative.

The fiscal impact may be further compounded because Kansas accomplishes most wildlife efforts through the Pittman-Robertson Federal Aid Program. The P.R. program provides approximately \$2,200,000 to the Commission annually for use in various approved wildlife conservation efforts. Provisions of the P.R.

act specify that should a state's fee fund revenue be redirected for purposes unrelated to wildlife conservation, then a diversion of dedicated funds is deemed to exist. S.B. 815 may place Kansas in a position of non-compliance with the P.R. act and would no longer be eligible to receive any P.R. funds. It does not appear that any repayment of previously received P.R. funds would be required as a result of this act.

The subject of payments to counties by the Commission was reviewed during 1983 by an interim study committee. Data presented at their hearings indicated that counties may be receiving more from the combined federal payments than was received through property taxes prior to existence of the reservoir. Increased property evaluations due to new homes, businesses and developments; decreased or increased services required of a county due to the reservoir; and economic impacts of public visitation to a reservoir project are all items which should require review. No doubt there are other items which would also require consideration.

The Commission, in formal action taken at their February meeting in Topeka, strongly opposes S.B. 815. The Commission is not suggesting that counties underwrite the presence of a wildlife management area in their county. However, no financial case has been built showing that counties are subsidizing the wildlife area. Without such data, it is impossible to determine any deficit nor the magnitude of any deficit.



Johnson County

BEFORE THE KANSAS SENATE COMMITTEE ON ASSESSMENT AND TAXATION,
March 2, 1984, at 11:00 a.m., in Room 526-S, regarding Senate
Bill No. 817.

Legislative packet in support of S.B. 817, prepared by Johnson
County, Kansas.

Richard E. Keithley
Staff Attorney

Contents:

1. Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth National Bank and Trust Co., 229 Kan. 511, 625 P. 2d 494 (1981).
2. Letter, Leon Patton (attorney, Bennett, Lytle, Wetzler, Winn & Martin) to Richard E. Keithley (attorney, Johnson County Legal Department), dated November 29, 1983; re: Personal property tax liability of Leland's Beauty Salon.
3. Letter, Charles J. Schmelzer (attorney, Linde, Thomson, Fairchild, Langworthy, Kohn & Van Dyke) to Daniel D. Hamblin (sergeant, Delinquent Tax Division, Johnson County Sheriff's Office), dated November 16, 1983; re: James Frank Hodgson, M.D., Chartered personal property tax liability.
4. Letter, F. Stannard Lentz (attorney) to Pam Soper (Delinquent tax division, Johnson County Sheriff's Department), dated October 4, 1983; re: Personal property tax liability of Georgetown Health Care Center, Inc.
5. Newspaper article, Olathe Daily News, by George B. Pyle, dated November 18, 1983, "County seeks to plug property tax loophole".
6. Memorandum, Richard E. Keithley (attorney, Johnson County Legal Department) to Prather H. "Pat" Brown (appraiser, Johnson County, Kansas), re: proposal of new statute to avoid the Robbins problem.

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Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat'l Bank & Trust Co.

No. 52,233

ROBBINS-LEAVENWORTH FLOOR COVERING, INC., *Plaintiff-Appellee*,
v. LEAVENWORTH NATIONAL BANK AND TRUST CO., *Defendant-Appellee*, and COUNTY OF LEAVENWORTH, KANSAS, *Defendant-Appellant*.

(625 P.2d 494)

SYLLABUS BY THE COURT

1. UNIFORM COMMERCIAL CODE—*Debtor's Voluntary Surrender of Personal Property to Secured Party—Possession Not Obtained by "Legal Process."* Where a debtor voluntarily surrenders personal property to a secured party after the debtor's default, the secured party has not obtained possession through the use of "legal process."
2. TAXATION—*Lien on Personal Property—Seizure by "Legal Process"—Neither Concept Applicable to This Case.* In a civil action the record is examined and it is held the trial court did not err in: 1) holding a tax lien does not attach to the personal property in this case pursuant to K.S.A. 79-2109 and 79-2110; and 2) holding K.S.A. 79-2111 inapplicable to the case.

Appeal from Leavenworth district court, division No. 1, KENNETH HARMON, judge. Opinion filed March 25, 1981. Affirmed.

Michael Crow, of Leavenworth, argued the cause and was on the brief for plaintiff-appellee Robbins-Leavenworth Floor Covering, Inc.

H. Lee McGuire, Jr., of Davis, Davis, McGuire & Thompson, Chartered, of Leavenworth, argued the cause and was on the brief for the defendant-appellee Leavenworth National Bank and Trust Company.

Patrick J. Reardon, county attorney, argued the cause and was on the brief for defendant-appellant County of Leavenworth.

Charles N. Henson and *John H. Wachter* of Edison, Lewis, Porter & Haynes, of Topeka, were on the brief *amicus curiae*, the Kansas Bankers Association.

The opinion of the court was delivered by

HERD, J.: Plaintiff-appellee Robbins-Leavenworth Floor Covering filed a declaratory judgment action against defendant-appellee Leavenworth National Bank and Trust Company and defendant-appellant Board of County Commissioners of Leavenworth County. Plaintiff prayed for judgment requiring the county to issue license tags to Robbins for three motor vehicles without first requiring the bank to pay the property taxes. The trial court held in favor of Robbins and ordered the county to issue license tags to the vehicles. The county appeals.

The facts are undisputed. The bank held a security agreement on three vehicles belonging to Leavenworth Floor Covering, Inc. (No relation to plaintiff.) Leavenworth Floor Covering defaulted on its note. On August 10, 1978, the bank gave official notice of

Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat'l Bank & Trust Co.

Cir. 1968); *State v. Fields*, 85 Wash. 2d 126, 530 P.2d 284 (1975); *Cutler v. Cutler*, 28 Misc. 2d 526, 217 N.Y.S.2d 185 (1961); *Campbell v. Goode*, 172 Va. 463; *Laub et al. v. State*, 49 Okla. Crim. 171, 292 Pac. 891 (1930); *Loy v. Home Ins. Co.*, 24 Minn. 315, 31 Am. Rep. 346 (1877); 72 C.J.S., Process § 1. Although some courts have broadened the term to include all steps and proceedings taken pursuant to valid law (*Mobley v. Jackson*, 40 Ga. App. 761, 151 S.E. 522 [1930]; *Cooley v. Davis*, 34 Iowa 128 [1871]), we believe the term "legal process" cannot include proceedings "carried on wholly outside of court . . . without the aid of its process or decree." *Loy v. Home Ins. Co.*, 24 Minn. at 319.

We find, therefore, that taking possession of collateral that is voluntarily surrendered is a procedure independent of legal process, and K.S.A. 79-2111 is inapplicable. Possession of the vehicles was accomplished without the aid of judicial process, pursuant to K.S.A. 84-9-503.

We hold the three motor vehicles are not subject to a lien for taxes. The judgment of the trial court is affirmed.

Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat'l Bank & Trust Co.

proceeds of the sale of the property so taken on such legal process, in preference to all other claims against it.

The county claims the personal property was seized by legal process and the taxes should be paid from the proceeds of the sale of the vehicles. The bank argues K.S.A. 79-2111 does not apply because legal process was not used to obtain possession of the vehicles. The bank claims it took possession of the vehicles pursuant to K.S.A. 84-9-503 which provides a secured party "may proceed without judicial process if this can be done without breach of the peace" It is undisputed that the former owners of the vehicles in question acknowledged default and voluntarily surrendered the property to the bank. The question then becomes: Did the bank acquire possession as a result of seizure by legal process?

Seizure is defined in Black's Law Dictionary 1219 (5th ed. 1979) as:

"The act of taking possession of property, *e.g.*, for a violation of law or by virtue of an execution. Term implies a taking or removal of something from the possession, actual or constructive, of another person or persons. [Citation omitted.]

"The act performed by an officer of the law, under the authority and exigence of a writ, in taking into the custody of the law the property, real or personal, of a person against whom the judgment of a competent court has passed Or the act of taking possession of goods in consequence of a violation of public law."

A voluntary surrender of property does not comport with the concept of a seizure, which implies a forcible taking under authority of law. More important, however, is our interpretation of "legal process." The term legal process is to be given its "ordinary and commonly accepted meaning." *Campbell v. Goode*, 172 Va. 463, 466, 2 S.E.2d 456 (1939).

In *State v. Wagoner*, 123 Kan. 586, 588, 256 Pac. 959 (1927), this court was asked to construe the phrase "legal process" as it appeared in R.S. 1923, 21-431. The court stated:

"Process . . . means a warrant, writ, order, mandate, or other formal writing, issued by some court, body, or official having authority to issue process, and legal process means process not merely fair on its face, but in fact valid."

Various jurisdictions have defined legal process and the term is generally used to describe proceedings begun by a writ, warrant, summons, order or mandate; proceedings which invoke the aid of judicial process or decree. See *Berger v. C.I.R.*, 404 F.2d 668 (3d

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ordinary course of retail trade it shall not be so liable in the hands of the purchasers."

The statute clearly provides if the *owner* sells all of a class of property, after assessment but before payment, to any one person, the taxes are immediately due and become a lien on the property and are collectable from the purchaser, who has a claim against the owner. The statute further provides if the property is seized and sold for taxes the purchaser has a claim against the owner for the taxes. The statute does not establish a tax lien in this case because under the statute, the sale must be made by one who is the owner of the property at the time of assessment. Leavenworth Floor Covering Inc., was the owner at the time of assessment and the bank was the seller pursuant to K.S.A. 84-9-503. K.S.A. 79-2109 does not govern the sale of personal property in this case.

K.S.A. 79-2110 provides:

"If any person in this state, after his or her personal property is assessed and before the tax thereon is paid, shall sell all of the same to any one person, and not retain sufficient to pay the taxes thereon, the tax for that year shall be a lien upon the property so sold, and shall at once become due and payable, and the county treasurer shall at once issue a tax warrant for the collection thereof, and the sheriff shall forthwith collect it as in other cases. The one owing such tax shall be civilly liable to any purchaser of such property for any taxes he or she owes thereon, but the property so purchased shall be liable in the hands of the purchaser or purchasers for such tax: *Provided, however,* If the property be sold in the ordinary course of retail trade it shall not be so liable in the hands of the purchasers; *Provided further,* That no personal property which has been transferred in any manner after it has been assessed shall be liable for the tax in the hands of the transferee after the expiration of three years from the time such tax become originally due and payable."

This statute is the immediate successor to R.S. 1923, 79-317, which was substantially the same. The former provision was interpreted to apply to bulk sales of personal property. *Andrews v. Hunter*, 122 Kan. 325, 251 Pac. 1106 (1927); *Lumber Co. v. Chandler*, 90 Kan. 561, 135 Pac. 601 (1913); *Witschy v. Seaman*, 83 Kan. 634, 112 Pac. 739 (1911). K.S.A. 79-2110 does not apply to the facts in this case. There was no bulk sale.

Finally, appellant argues the bank obtained possession of the three vehicles pursuant to K.S.A. 79-2111, which provides:

"If the personal property of any taxpayer be seized by any legal process and if the taxpayer does not have a sufficient amount of other property to pay the taxes which is exempt from levy and sale under such legal process, then the taxes on the personal property of such taxpayer shall at once fall due, and be paid from the

Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat'l Bank & Trust Co.

taxes are due November 1 of each year and further provides:

"A lien for all taxes shall attach to the real property subject to the same on the first day of November in the year in which such tax is levied, and such lien shall continue until such taxes . . . shall be paid"

This statute creates a lien on real estate for taxes assessed thereon after the taxes become due. The lien is an interest in the property, and attaches to and remains with the property until paid. Each parcel of land stands good for its own taxes. There is no comparable provision for personal property for very practical reasons. Personal property is transitory. The expense and impracticability of looking to each article of personal property for the taxes assessed thereon necessitates a different taxing scheme. As a result, the tax assessed upon personal property may properly be made a charge upon other personal property of the owner through the use of a tax warrant enforceable by execution upon all property of the taxpayer. If the warrant is returned unsatisfied, the total amount owed is entered on the judgment docket and thereby becomes a lien against any real estate of the owner. It provides no lien against personal property.

The difficulties attendant to the collection of personal property taxes have given rise to various statutory techniques. K.S.A. 79-319 provides if, after assessment and before the taxes are paid, an owner threatens to remove all his property from a county without leaving sufficient property to pay the taxes, those taxes become immediately due and can be collected by the issuance of a tax warrant. K.S.A. 1980 Supp. 79-2004a provides the dates for payment of personal property taxes, for penalty and interest for failure to pay, but it establishes no liens for nonpayment of taxes.

The only statutes which create liens against the owner's personal property are K.S.A. 79-2109 and K.S.A. 79-2110. K.S.A. 79-2109 provides:

"If any owner of personal property after the date as of which personal property is assessed and before the tax thereon is paid, shall sell all of a class of the same to any one person, the tax for that year shall be a lien upon the property so sold, and shall at once become due and payable, and the county treasurer shall at once issue a tax warrant for the collection thereof, and the sheriff shall forthwith collect it as in other cases. The property so sold shall be liable in the hands of the purchaser for such tax, but in the event that a purchaser shall pay the tax or any part thereof or, if said property be seized and sold for such tax the seller thereof shall be civilly liable to the purchaser for the amount of the taxes the purchaser has paid or the amount of taxes due on the property so seized; but if the property be sold in the

Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat'l Bank & Trust Co.

default and Leavenworth Floor Covering voluntarily surrendered possession of the collateral to the bank, waiving notice of subsequent proceedings. The bank held a private foreclosure sale in September, 1978, in compliance with the provisions of K.S.A. 1980 Supp. 84-9-504, and sold all three vehicles to the plaintiff, Robbins-Leavenworth Floor Covering, Inc. for \$4,253.63 in excess of the amount owed on the note. The bank remitted the excess to Leavenworth Floor Covering, ignoring the tax question. The certificates of title to the motor vehicles were not executed or delivered until January, 1979.

The 1978 personal property tax assessment of Leavenworth Floor Covering, Inc. included the three motor vehicles. The 1978 taxes on the vehicles amounted to \$1,409.86 plus 10% interest from December 20, 1978. When Robbins went to the Leavenworth County Treasurer to register and purchase tags for the vehicles, a claim was asserted for the delinquent taxes and registration and tags were refused. This suit followed.

The question presented is whether K.S.A. 79-2109 or 79-2110 imposed a tax lien on the personal property which is the subject of this lawsuit. Additionally, the county alleges the bank is liable for the taxes pursuant to K.S.A. 79-2111.

Let us first examine the general nature of the imposition and collection of taxes. It is uniformly recognized that the power to levy taxes is inherent in the power to govern but the exercise of that power is dependent upon the existence of legislation designating the kinds of property to be taxed. The authority to impose taxes rests upon legislation. Nothing is taxable unless clearly within a taxing statute. 71 Am. Jur. 2d, State and Local Taxation § 192, p. 512. See *Shriver v. Board of County Commissioners*, 189 Kan. 548, 370 P.2d 124 (1962); *Kucera v. State*, 160 Kan. 624, 164 P.2d 115 (1945); *Sherman County Comm'rs v. Alden*, 158 Kan. 487, 148 P.2d 509 (1944); K.S.A. 79-101.

By the same token, taxes are not a lien upon the property against which they are assessed except by specific statutory authority, particularly prior to the date the taxes are due. Statutes creating tax liens are strictly construed in favor of the taxpayer. Real estate and personal property, although subject to the same requirements of uniformity and equality in assessment and taxation, are subject to different methods of collection due to the nature and character of each. K.S.A. 79-1804 provides all property

BENNETT, LYTTLE, WETZLER, WINN & MARTIN
ATTORNEYS AT LAW

ROBERT F. BENNETT
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CHARLES E. WETZLER
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LYLE D. PISHNY
RICHARD S. WETZLER
JAMES R. ORR
JANICE S. CLOTHIER
LEON J. PATTON

SECOND FLOOR
JOHNSON COUNTY NATIONAL BANK
AND TRUST COMPANY
(SOUTH OFFICE)
5100 WEST 95TH STREET

P O BOX 8030
PRAIRIE VILLAGE, KANSAS 66208
(913) 642-7300

November 29, 1983

Mr. Richard Keithley
Johnson County Legal Department
Johnson County Court House
Olathe, Kansas 66061

Re: Personal Property Tax Liability of Janice Henderson

Dear Mr. Keithley:

This letter is provided to supplement our telephone conversations concerning personal property taxes due on the equipment which my client, Janice Henderson, owns at Leland's Beauty Salon. As I see it, the question is whether there is a personal property tax lien on that equipment in favor of the county for unpaid personal property taxes which accrued prior to the time my client bought the property in February, 1982. I believe the answer to our situation can be found in Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth National Bank and Trust, 229 Kan. 511, 625 P.2d 494 (1981), and the statutes cited therein. I think we agree that under K.S.A. 79-2109 and K.S.A. 79-2110 that there is no lien against Mrs. Henderson's personal property. As in the Robbins-Leavenworth case, she did not buy the property from the owner of the property. She bought the property from the Internal Revenue Service, who had seized it from the previous owner, Leland L. Heinze. Since the owner of the property, Mr. Heinze, did not sell the property to Mrs. Henderson, there is no tax lien on the property under K.S.A. 79-2109 and K.S.A. 79-2110.

We disagree, however, on the application of K.S.A. 79-2111. It is true that our situation is distinguishable from the Robbins-Leavenworth case in that in our situation the property was seized

Legal Dept

11/30/83

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Mr. Richard Keithley
November 29, 1983
Page Two

by legal process, but the property in Robbins-Leavenworth was voluntarily surrendered. I must point out that in Robbins-Leavenworth the argument of the county was that under K.S.A. 79-2111 the taxes should have been paid from the proceeds of the sale of the personal property. As I understand it, you are arguing that K.S.A. 79-2111 imposes a lien on Mrs. Henderson's property. If the county wishes to argue that it has first priority on the proceeds of the sale of the beauty salon equipment, that is a matter for the county to take up with the Internal Revenue Service. K.S.A. 79-2111 does not in any way affect the tax liability of Mrs. Henderson. The Robbins-Leavenworth case clearly states that "taxes are not a lien upon the property against which they are assessed except by specific statutory authority . . . Statutes creating tax liens are strictly construed in favor of the taxpayer." 229 Kan. at 512. K.S.A. 79-2111 does not create a tax lien. "The only statutes which create liens against the owner's personal property are K.S.A. 79-2109 and K.S.A. 79-2110." 229 Kan. at 513.

Again, let me stress that K.S.A. 79-2111 merely provides that the taxes which were due prior to seizure under legal process are to be paid from the proceeds of the sale of the property. There is no provision therein to create a tax lien on the property now owned by Janice Henderson. I know that you have an obligation to the county to protect its interests, but I am fully confident that there is no provision in the law which holds my client liable for the personal property taxes accrued prior to her purchase of the property. I would appreciate your consideration of these arguments and a prompt decision one way or the other about the county's official position in this matter. We would like to have this matter concluded as soon as we can.

Very truly yours,

BENNETT, LYTLE, WETZLER, WINN & MARTIN



Leon J. Patton

ck

cc: Mrs. Janice Henderson

November 16, 1983
Seargent Daniel D. Hamblin
Page Two

am contacted immediately so that this matter may be straightened out once and for all. In the event that any further information is needed, then please contact me.

Very truly yours,

LINDE THOMSON FAIRCHILD
LANGWORTHY KOHN & VAN DYKE, P.C.

By:
Charles J. Schmelzer, III

CJS:blp
cc: Appraiser's Office
Richard E. Keithley
Dr. James F. Hodgson

LAW OFFICES
F. STANNARD LENTZ, P.A.

5811 REEDS ROAD
P. O. BOX 1704
MISSION, KANSAS 66222
(913) 384-2464

F. STANNARD LENTZ
CARL R. CLARK

October 4, 1983

Ms. Pam Soper
c/o Johnson County Sheriff's Office
Johnson County Courthouse
Olathe, Kansas 66061

Re: **Georgetown Health Care Center, Inc.**

Dear Ms. Soper:

This will acknowledge our telephone conversation of Monday, October 3, 1983 regarding the above-captioned matter.

I was advised on October 4, 1983, that a representative of the Sheriff's Department had paid a visit to the Georgetown Health Care Center, Inc., regarding the past due property taxes. It is my understanding that no warrants, notices or summonses were left at the business premises.

You advised that there are personal property taxes outstanding from Fairway Pharmacy, Inc., from 1981-1982 of \$4,472.76, and Georgetown Neighborhood Pharmacy of \$20,155.74. I indicated to you that Fairway Pharmacy, Inc. is a Kansas corporation, which at one time had two business locations, one in the City of Fairway and one in the Georgetown Shopping Center on 75th Street. You should not confuse the Georgetown location by name with the new corporate entity referenced above.

Fairway Pharmacy, Inc. had a significant debt due and owing MidAmerican Bank, collateralized by all assets of Fairway Pharmacy. As a result of an inability to pay the debt, a repossession took place by MidAmerican Bank on November 9, 1982. All assets were subsequently sold by MidAmerican Bank towards satisfaction of its debt to the Georgetown Health Care Center, Inc.

I would call your attention to the provisions of K.S.A. 79-2109 and 2110 and Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Bank and Trust Co. 229 Ks. 511, 625 P.2d 494 (1981). I would submit that with the repossession by MidAmerican Bank that the tax lien of the county would no longer be operative. By copy of this letter

Page 2

Re: Georgetown Health Care Center, Inc.

October 4, 1983

to Phil Harness, I am asking that he give me a call after he's had an opportunity to review this letter.

Sincerely,

F. Stannard Lentz
F. Stannard Lentz

FSL/mp

cc: Darrell Corson
Phillip S. Harness

8P-Fairway

PERSONAL PROPERTY DELINQUENT TAX NOTICE

STATE OF KANSAS, JOHNSON COUNTY, ss.
OFFICE OF COUNTY TREASURER, OLATHE, KANSAS 68061

1983

TAX DIST. 233 RECEIPT NO. 3038916

ASSESSED VALUE	GENERAL TAX	INTANGIBLE TAX	GRAIN TAX	TOTAL TAX	18% INTEREST PRORATED MONTHLY	TOTAL AMOUNT
* 74980	9100.32	0.00	0.00	9100.32	\$409.51	\$9,509.83

GEORGETOWN NEIGHBORHOOD PHAR
FAIRWAY PHARMACY INC
9338 W 75
SHAWNEE MSN, KS 66204

WITH REMITTANCE INCLUDE
1. PERSONAL PROPERTY TAX BILL
2. PAYMENT CARD
3. THIS DELINQUENT TAX NOTICE

PAY THIS AMOUNT
DATE ISSUED 02/10/84
DUE BY 03/05/84

DESCRIPTION OF PROPERTY TAXED

* * * DELINQUENT * * * EGPT08 EQPT12
INV 14 PNTY35

The law requires the County Treasurer issue to the Sheriff, Tax Warrants for collection of all unpaid personal taxes. By paying these taxes within 25 days of this notice, you will avoid paying Sheriff's fees. The law requires publication of names of all delinquent personal property taxes.

County seeks to plug property tax loophole

By GEORGE B. PYLE

Daily News Reporter

Johnson County Appraiser Pat Brown Thursday asked county commissioners to support a change in state law to enable the county to collect personal property taxes owned by companies that go bankrupt or out of business.

Brown said the county and the other government units it collects taxes for lost at least \$125,000 in two recent cases of disappearing businesses. No figures are available on what those losses cost altogether.

Probably the largest recent case of such a tax loss — \$100,000 — was the one involving the now defunct Tri-County Farm Equipment Company.

That company folded last May when co-owner James Loyd disappeared in the midst of a district attorney's investigation of deceptive business practices. Loyd has not been heard from since.

Brown said that left the county with no one to charge for more than \$100,000 in current and back taxes the local John Deere dealership owed to the county, city and school district.

"We really took a bath on that John Deere case," said county staff attorney Richard Keithley.

"We tried to serve a tax warrant on them, but that was shot down before the ink was even dry," Brown said.

Brown said that under current state law, the county could not collect the inventory taxes on the equipment when the property went back to the Deere company or others to cover debts. When that happens, the county has no claim on it for any taxes.

The basic business of Tri-County was purchased by Dave Webb.

Brown says Webb is up to date on his taxes, but the taxes Tri-County owed are lost forever.

Brown said a related problem can come from people who dissolve a corporation, then start a new corporation that does the same thing the old one did. With the first corporation no longer in existence, all the personal property taxes it owed are uncollectable.

The same problem does not exist with real estate taxes, he said, because back taxes on real estate already follows the land, no matter who owns it.

The appraiser urged commissioners to ask the Kansas Legislature to pass a new law that would allow the county to go after back taxes by placing a first lien on the personal property of businesses that fold.

Keithley said any new law would only apply to future cases, not past ones.

Commissioner Robert Bacon warned that the county had to be careful about such a plan. He said if a bank or another business took over the inventory and equipment of a defunct company, the county should follow that property to collect the taxes owed.

But he said if, for example, one car from a bankrupt business would be bought by an individual who had no knowledge of that car's history, that person should not be liable for the back taxes on it.

Commissioners asked Keithley to redraw the proposed law with Bacon's concerns in mind, and said they would look at it again next week.

"I don't want to get it from some innocent party," Bacon said.

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JOHNSON COUNTY

LEGAL DEPARTMENT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS 66061
913-782-5000

October 31, 1983

M E M O R A N D U M

TO: Pat Brown, County Appraiser

FROM: Richard E. Keithley, Staff Attorney *REK*

RE: Opinion Request No. 107-83, proposed bill to allow liens on property voluntarily surrendered or transferred.

Attached to this memorandum is a copy of a proposed statute to allow the county to avoid situations such as described in Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth National Bank & Trust, 229 Kan. 511(1981). Basically, that case holds that a voluntary surrender of personal property to a secured party after default does not constitute the use of "legal process" or does not allow a tax lien to attach to the personal property. The effect of this decision is to leave the county open for an unpaid tax bill in the event of a repossession and accompanying sale coupled with a dissolution or bankruptcy of the owner of the taxed property.

I will attempt to explain the proposed statute in terms of how I arrived at the wording and the considerations of the various provisions.

The Robbins case points out a flaw in the statutory structure of K.S.A. Sections 79-2109, 79-2110, and 79-2111. Although these sections apparently are meant to cover every proceeding and protect the county in its tax collection, when taken in the light of strict construction as the courts have, unless specifically set out by statute a lien will not be created. Thus I have homogenized the three sections and included them into a separate section dealing with the situation described above. I have taken the language of 79-2109 and 2110 as sufficient to open up the new section 79-2113, and included those safeguards to the situation where a person would surrender or transfer personal property to another. Without trying to be overbroad, I have tried to include situations which most commonly would occur and which would minimize the lost to the county. Those situations would be where a person might agree to transfer property without actual sufficient consideration to a family friend or relative, where there is a voluntary relinquishment of the property pursuant to repossession statutes, or a person would sell the business to another who would again sell the business to another thereby creating a third party interest, and also to any other situation done without judicial process.

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Memorandum - Pat Brown
October 31, 1983
Page 2

If the bank should repossess the property without judicial process, then the lien would follow the property and would be transferred either to the bank or to a subsequent buyer. That subsequent buyer would be responsible for the payment of taxes. In order to protect an innocent buyer or possessor, I have included an expressed provision providing for civil action in the event there is a dispute over who owes the taxes between those parties.

I have provided two exceptions which should not cause too much difficulty. The first is a type of "holder in due course" proviso which allows a person to purchase the property in a retail situation such as an ordinary customer. Thus that person would be protected from inconvenience and expense should he or she innocently purchase the product. The second is a proviso allowing for a statute of limitations of three years. This should allow ample opportunity for the county to take advantage of the provisions of this statute.

This new section 79-2113 is a direct response to the Robbins case. This is also meant to be in addition to lien provisions of K.S.A. 79-1804. I might point out several statements in the Robbins case which may be of importance to you in assessing this new proposed section. The Robbins case states that a lien is an interest in the property, and attaches to and remains with the property until paid. Also the tax assessed upon personal property may properly be made a charge upon other personal property of the owner through the use of a tax warrant enforceable by execution upon all property of the taxpayer. If the warrant is returned unsatisfied, the total amount owed is entered on the judgment docket and thereby becomes a lien against any real estate of the owner. It provides no lien against personal property. The only statutes creating liens against the owner's personal property are K.S.A. 79-2109 and 79-2110. Statute K.S.A. 79-2109 clearly provides if the owner sells all of a class of property, after assessment but before payment, to any one person, the taxes are immediately due and becomes a lien on the property and are collectable from the purchaser, who has a claim against the owner. Statute further allows the purchaser to have a claim against the owner for taxes if the property is ceased and sold for taxes. However, the statute does not establish a tax lien in this case because the sale must be made by one who is the owner of the property at the time of assessment. K.S.A. 79-2110 is considered only to apply to bulk sales of personal property. See Andrews v. Hunter, 122 Kan. 325(1927); Lumber Company v. Chandler, 90 Kan. 561 (1913); Witschy v. Seaman, 83 Kan. 634(1911). The Robbins case deals primarily with the application of K.S.A. 79-2111 and determines that a voluntary surrender of property does not comport with the concept of a seizure and thus the taking possession of collateral that is voluntarily surrendered is a procedure independent of legal process thereby rendering K.S.A. 79-2111 inapplicable. Therein lies the need for a separate statute involving a voluntary repossession of personal property upon which taxes owed.

Memorandum - Pat Brown
October 31, 1983
Page 3

Time considerations do not allow further discussion, however
please feel free to contact me regarding this proposed statute.

REK/pws

enclosure

JOHNSON  COUNTY

LEGAL DEPARTMENT
JOHNSON COUNTY COURTHOUSE
OLATHE, KANSAS 66061
913-782-5000

October 31, 1983

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Memorandum - Pat Brown
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