Approved Robert D. Miller 2/14/85
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by REPRESENTATIVE R. D. MILLER at
Chairperson

1:30 ~~a.m./~~p.m. on FEBRUARY 13, 1985 in room 521-S of the Capitol.

All members were present except: Representative Ivan Sand (excused)
Representative Clyde Graeber (excused)

Committee staff present: Mike Heim, Legislative Research Department
Mary Hack, Revisor of Statutes Office
Gloria M. Leonhard, Secretary to the Committee

Conferees appearing before the committee: Representative Richard Harper -- HB 2183
Mr. Fred Allen, KS Assn. of Counties -- HB 2189
Mr. Henry Bisseau, St. Mary's, KS. -- HB 2189

Vice Chairman, Robert D. Miller, called for the introduction of new legislation.

Mary Hack, Staff, explained that Shawnee County Clerk, Patsy A. McDonald, had requested legislation which authorizes appraisal and taxation of property left off the tax rolls. (See Attachment I.)

Rep. Phil Kline made a motion to introduce the proposed legislation as a Committee bill. Rep. Samuel Sifers seconded the motion. The motion carried.

Vice Chairman Miller called for hearing on the following bills.

HB 2183, authorizing hospital district No. 1, Linn and Bourbon Counties, to enter into a contract to borrow money for the purpose of building an addition to an existing home for the aged. (See Staff Overview-ATTACH.II.)

Rep. Richard Harper, sponsor of the bill, appeared and gave background and intent. Rep. Harper explained that the bill would allow an addition to a nursing home located at Prescott, Kansas; that a private $200,000 loan has been offered, interest free for two years; that this is a local bill.

The hearing on HB 2183 was closed.

HB 2189, concerning roads and bridges in counties; relating to the special bridge fund; authorizing construction of culverts. (See Staff Overview-ATTACH.III.)

Mr. Fred Allen, representing Kansas Association of Counties, appeared as a proponent for the bill. Mr. Allen explained that the amendment would allow the expense of tax monies for smaller bridges as well as larger bridges. Mr. Allen suggested using the phrase "special bridge and culvert fund" in the bill.

It was questioned why a change is needed in the law now after many years.

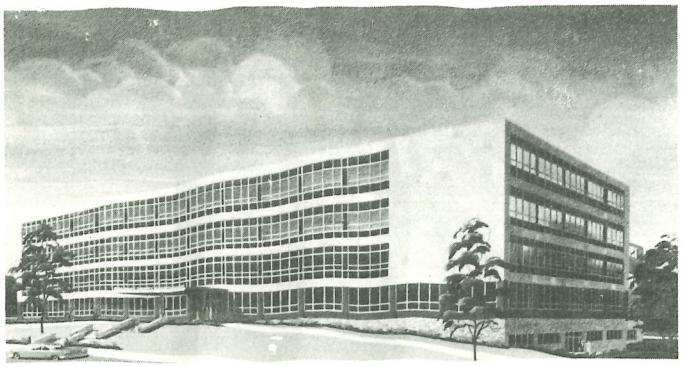
Mr. Henry Bisseau, City Manager, St. Marys, Kansas, spoke as an opponent to the bill. Mr. Bisseau stated he disagrees with the tax levy unless the money can be funneled into the township or city.

The meeting was adjourned.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

DATE Feb. 13, 1985

NAME	ADDRESS	REPRESENTING
Henry W Bryan	St. Marys	City of St. Marys
Don Laine	Maple Hill	Visitor
Betty Laine	Maple Hill	Visitor
Kenneth Peterson	Kansas City	Visitor
Fred Allen	Topeka	K.A.C.



(ATTACHMENT I) 2/13/85

SHAWNEE COUNTY
OFFICE OF COUNTY CLERK
Patsy A. "Pat" McDonald
COUNTY CLERK
(913) 295-4155 CLERK
(913) 295-4159 ACCOUNTING
COURTHOUSE – ROOM 107
TOPEKA, KANSAS 66603

February 6, 1985

Rep. Ivan Sand, Chairman
Local Government Committee
Kansas House of Representatives, Rm. 183-W
State Capitol Building
Topeka, KS 66612

Re: Added Tax Bill

Rep. Sand:

Wanda Coder has told us that perhaps you can help in creation of a new bill (See Attached).

In 1981, when K.S.A. 79-1427 (escaped property tax law) was in effect, the Attorney General issued an opinion (attached) that no tax would be added to the November 1 tax roll, stating as follows:

> "Under the statutory procedure outlined above, the tax roll must be completed on or before November 1. After that date, the tax roll is no longer in the care and custody of the county clerk. Thereafter, the only phase of the taxing process for that particular tax year which remains to be completed is the collection process. See, e.g., Mobil Oil Corporation vs. Medcalf, 107 Kan. 100, 107 (1971). In our judgment, November 1 is the date beyond which no adjustments may be made in either the assessment roll or the tax roll, under K.S.A. 49-417."

This was brought to the attention of all counties in 1984 by the Division of Property Valuation, and their feeling was that the interpretation meant not only real, but personal and vehicles not under the tax and tags law. Therefore, we desperately need a new bill drafted which will allow us the continuing process of adding tax (either as added to the current tax roll or escaped 'prior years').

Under this ruling, if property is missed, we must hold the tax bill and submit two (or more) tax bills the following November 1. Currently, most county clerks acorss the State are adding the missed property immediately to the current tax roll as an added statement, or if for prior years, as an "escaped" assessment using the proper levy for the year in which taxation was escaped.

Attachment 1

We need some language added back into the law to allow the clerks to do this added tax. Also attached, is a 1910 Supreme Court ruling regarding adding of tax.

Any help you can provide in this matter will be appreciated. If you have any questions, please do not hesitate to contact me.

Sincerely,

Pat

Patsy A. McDonald
Shawnee County Clerk

PAM/llh

Attachments

PROPOSED NEW BILL

AN ACT relating to property taxation; and placing of missed property on the tax rolls.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Whenever the County appraiser discovers any property subject to taxation as required by law, that has been omitted from the tax rolls, such property shall immediately be listed and valued by the appraiser and returned to the county clerk. The county clerk, upon receipt of the value of the property, shall compute the amount of tax due, based upon the mill levy for the year in which such tax should have been assessed and forthwith certify the amount of tax to the county treasurer as an added or escaped appraisal.

Section 2. The county treasurer shall proceed to collect and distribute tax in the same manner as other tax.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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

August 12, 1981

ATTORNEY GENERAL OPINION NO. 81-187

Eugene Bryan, Jr., CKA
McPherson County Appraiser
P.O. Box 530
McPherson, Kansas 67460

Re: Taxation--Listing and Valuation of Real Property--Lands or Improvements Omitted from Rolls

Synopsis: In determining the assessment of real property under K.S.A. 79-417, the county clerk should seek assistance from the county appraiser.

It is the date upon which the county clerk discovers that real property has been omitted from the assessment and tax rolls that determines upon which year's assessment and tax rolls the property is to be placed. If the discovery is made on or after November 1 and prior to January 1, the property is to be placed on the assessment and tax rolls of the next tax year. If the discovery is made on or after January 1 and prior to November 1, the property is to be placed on the assessment and tax rolls of the current tax year. Cited herein: K.S.A. 19-430, 19-432, 79-408, 79-417, 79-1412a, Second, Eighth, 79-1801, as amended by L. 1981, ch. 380, §2, 79-1803, as amended by L. 1981, ch. 379, §2, 79-1804, 79-2001, as amended by L. 1981, ch. 173, §78, K.S.A. 1980 Supp. 79-2004.

19-1427 appeal taxpayer would receive 2 tax bills 2111 Nov. 1.

* * *

Dear Mr. Bryan:

You seek an opinion on three questions concerning K.S.A. 79-417, which provides:

> "It shall be the duty of the county clerks in all cases where any lands or improvements in their respective counties for any reason have not been assessed for taxation or have escaped taxation for any former year or years when the same were liable to taxation, to place the same upon the assessment and tax rolls, and to charge against said lands or improvements taxes equal to and in accordance with the tax levies that would have been charged against said lands or improvements had they properly been listed and assessed at the time they should have been assessed under the provisions of the general laws governing the assessment and taxation of land: Provided, That no lands or improvements shall be assessed under the provisions of this section, where the same have changed ownership other than by will, inheritance or gift."

You inquire:

> "1. If it is discovered that property has not been assessed in any tax year and should have been, how shall the county clerk proceed to determine what assessment should be placed on such property?
>
> "2. After having determined the assessment to be placed on such omitted property, when and upon what tax roll should the clerk place such omitted property?
>
> "3. If such omitted property is to be entered on the tax rolls immediately, in the case of property which has been omitted for a period of more than one year, does the county treasurer have the right to 'close' her books during any part of the year and refuse to send out a tax statement for such omitted property once the request for such tax statement is given by the county clerk?"

In response to your first inquiry, we are of the opinion the county clerk, in determining the assessment of property under K.S.A. 79-417, should seek the assistance of the county appraiser. The county appraiser is the official who is trained to appraise property (K.S.A. 19-430 and 19-432) and who is required to "carry on continuously throughout the year the process of appraising real property." K.S.A. 79-1412a, Eighth.

Your other inquiries concern the period of time during which real property that was omitted from the assessment and tax rolls is to be placed on those rolls. Also, upon which year's rolls the property is to be placed.

The taxation of real property, including the listing and valuation of such property is to be accomplished, by statute, on a yearly basis. That is, each year a new assessment roll is to be prepared by the county clerk and delivered to the county appraiser. K.S.A. 79-408. As delivered to the county appraiser, the assessment roll is to contain a correct and pertinent description of each piece, parcel or lot of real property. Id. Upon delivery of the roll, the county appraiser assesses the property listed on the roll. K.S.A. 79-408 and 79-1412a, Second. The county appraiser is required to complete the assessment of real property and deliver the assessment roll to the county clerk not later than March 31 of each year. K.S.A. 79-408.

Based upon the assessed values of real property reported by the appraiser, as adjusted by the county board of equalization and the state board of tax appeals, and the amount of taxes certified to the county clerk (K.S.A. 79-1801, as amended by L. 1981, ch. 380, §2 and K.S.A. 79-1803, as amended by L. 1981, ch. 379, §2), the county clerk prepares the tax roll. The tax roll is required to be completed and delivered to the county treasurer "on or before November 1." K.S.A. 79-1803, as amended by L. 1981, ch. 379, §2. Each year, after receipt of the tax roll from the county clerk and before December 15, the county treasurer is required to mail to each taxpayer, as shown on the rolls, a tax statement. K.S.A. 79-2001, as amended by L. 1981, ch. 173, §78. The real property taxes shown on the tax roll are "due on the first day of November of each year" (K.S.A. 79-1804), although said taxes are not delinquent until December 21. K.S.A. 1980 Supp. 79-2004.

Under the statutory procedure outlined above, the tax roll must be completed on or before November 1. After that date, the tax roll is no longer in the care and custody of the county clerk. Thereafter, the only phase of the taxing process for that particular tax year which remains to be completed is the collection process. See, e.g., Mobil Oil Corporation v. Medcalf, 207 Kan. 100, 107 (1971). In our judgment, November 1 is the date beyond which no adjustments may be made in either the assessment roll or the tax roll, under K.S.A. 79-417.

Thus, in our judgment, it is the date upon which the county clerk discovers that real property has been omitted from the assessment and tax rolls that determines upon which year's

assessment and tax rolls the property is to be placed under the provisions of K.S.A. 79-417. If the discovery is made on or after November 1 and prior to January 1, the property is to be placed upon the assessment and tax rolls of the next tax year. If the discovery is made on or after January 1 and prior to November 1, the property is to be placed upon the assessment and tax rolls of the current tax year.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Rodney J. Bieker

Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm

The language used does not necessari
nsactions—one in which an order wa
ther in which a contract for the sal
g liquors was made. If an order was
ot be a perversion of terms to charac
ion as a contract for the sale of int
Evidently both parties intended tha
sult. Whether denominated "taking an
ng a contract of sale" is merely a differen
cterizing the transaction. Taking an ord
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d the making of a contract for the sale o
g liquors would be sufficiently establishe
t an order therefor had been taken.
id then and there contract . . . for
not refer to a completed sale, but to a
on only; and in this sense there is no
difference between that transaction and
order.

nk a fair interpretation of the informa
he conclusion that the language used in cha
fense, all taken together, was used simply
ze the transaction which constituted the
he defendants by this transaction intended
rating liquor to citizens of Kansas in vio
law of the state, thinking they would be pro
the federal law relating to interstate com
e district court held that they were mistaken
rights under the law, and we concur with the

ment is affirmed.

THE STATE OF KANSAS, *ex rel. Joseph Taggart, as County Attorney, et al., Plaintiffs*, v. F. M. HOLCOMB, *as County Clerk, etc., Defendant.* THE CUDAHY PACKING COMPANY, *Intervenor.*

No. 16,760.

SYLLABUS BY THE COURT.

1. MANDAMUS—*County Clerk—Entering Property upon the Tax Rolls.* Mandamus is an appropriate remedy to compel a county clerk to enter upon the tax rolls taxable property omitted from the assessor's returns, where such officer admits the existence and value of the property but declines to correct the assessment and enter it upon the tax rolls because of a contention that the property is not taxable and because he is in doubt as to his power in the premises.

2. TAXATION — *Property Not Listed — Time of Adding to Tax Rolls.* Taxable property, not listed for taxation nor returned by the assessor, may be added to the tax rolls by the county clerk after the settlement with the county treasurer in October of the year the assessment should have been made, and after the tax rolls have been turned over to the county treasurer.

3. ——— *Finished Product of a Manufacturer.* The finished product of a manufacturer is subject to taxation, and it is his duty to list such property, and where it has not been listed by the owner nor returned by the assessor it is the duty of the county clerk or the board of county commissioners to take steps to correct the assessor's return and of the county clerk to enter such omitted property on the tax rolls.

Original proceeding in mandamus. Opinion filed February 12, 1910. Judgment for the plaintiffs on the propositions submitted.

Joseph Taggart, county attorney, and *Keplinger & Trickett*, for the plaintiffs.

R. W. Blair, H. A. Scandrett, and *B. W. Scandrett*, for the intervenor; *Thomas Creigh, C. W. Sears, J. E. McFadden*, and *O. Q. Claflin, jr.*, of counsel.

The opinion of the court was delivered by

JOHNSTON, C. J.: This proceeding was brought by the state of Kansas, on the relation of Joseph Taggart, as county attorney, and also the board of county commissioners of Wyandotte county, against F. M. Holcomb, county clerk of Wyandotte county, to compel that officer to add to the personal-property statement of the Cudahy Packing Company property (termed the "finished product") of the value of $498,178.41, which had not been listed by it or returned by the assessor, and to enter the same on the tax rolls of the county. Proceedings were instituted in August, 1909, to correct the property statement of the company and to add this property to the tax rolls, and in October, 1909, the company made and filed with the board of county commissioners a written statement showing the amount on hand in March, 1908, and in each succeeding month of the tax year, and that the average value of the finished product of their packing business was $498,178.41. In November, 1909, the board made an order requiring the county clerk to correct the returns of the assessment and add this amount to the tax rolls, but the county clerk, while admitting that he had information that the property had been omitted from the assessor's returns and was of the value stated, answered that the company contended that the omitted property was not taxable, and, further, that the county clerk had no power to add omitted property after November 1, 1909, and being doubtful of his own power he declined to make the correction until ordered to do so by a court of competent jurisdiction. After this proceeding had been commenced the Cudahy Packing Company intervened, and among other things alleged that it was engaged exclusively in the manufacturing business and that its finished product was in no event subject to taxation; that its taxable property had been listed and returned by the assessor and that a check for the amount of

taxes due on its assessment had been delivered to the county treasurer and accepted by him, and that neither the board of county commissioners nor the county clerk had authority to add omitted property at the time when the order mentioned had been made.

Three propositions arising on the answer of the company have been argued and submitted for decision: (1) Can mandamus be employed to compel the county clerk to place omitted personal property on the rolls? (2) Is there any power in the county clerk or board to correct returns or to add omitted property after the October settlement with the county treasurer has been made and after the tax rolls have been delivered to the county treasurer? (3) Is the finished product of a manufacturer taxable?

On the first proposition there can be little change or controversy. Mandamus is an appropriate remedy to compel an officer to perform a duty which the law positively imposes upon him. The statute requires the county clerk to enter upon the tax rolls personal property subject to taxation which has not been listed by the owner and returned by the assessor. (Gen. Stat. 1901, § 7500.) After an inquest, of which the company had notice, had been ascertained that personal property belonging to the company was not listed by it or returned by the assessor, and that it is of a certain value. This was disclosed by the county clerk, who declines to complete the assessment and make the entry, as the statute requires, because of a claim of the owner that the property is exempt from taxation and a desire on his part to obtain a judicial decision of the question before he acts upon it. In effect he says: "The property is owned by the company; it was not listed or returned; it has a certain value; but a question of law has arisen as to whether such property is taxable, and hence I refuse to make the entry." Assuming that the property is taxable, the duty of the county clerk is clear. He has no discretion but to make the entry, and no right

taxes due on its assessment had been delivered to the county treasurer and accepted by him, and that neither the board of county commissioners nor the county clerk had authority to add omitted property at the time when the order mentioned had been made.

Three propositions arising on the answer of the company have been argued and submitted for decision: (1) Can mandamus be employed to compel the county clerk to place omitted personal property on the tax rolls? (2) Is there any power in the county clerk or the board to correct returns or to add omitted property after the October settlement with the county treasurer has been made and after the tax rolls have been delivered to the county treasurer? (3) Is the finished product of a manufacturer taxable?

On the first proposition there can be little chance for controversy. Mandamus is an appropriate remedy to compel an officer to perform a duty which the law enjoins upon him. The statute requires the county clerk to enter upon the tax rolls personal property subject to taxation which has not been listed by the owner or returned by the assessor. (Gen. Stat. 1901, § 7599.) In an inquest, of which the company had notice, it has been ascertained that personal property belonging to the company was not listed by it or returned by the assessor, and that it is of a certain value. This is confessed by the county clerk, who declines to correct the assessment and make the entry, as the statute requires, because of a claim of the owner that the property is exempt from taxation and a desire on his part to have a judicial decision of the question before he takes action. In effect he says: "The property is owned by the company; it was not listed or returned; it is of a certain value; but a question of law has arisen whether such property is taxable, and hence I refuse to make the entry." Assuming that the property is taxable, the duty of the county clerk is clear. He has no alternative but to make the entry, and no right to postpone

action until a court has determined it to be his duty. As to the propriety of the state employing mandamus to require official action there is no room for contention. The action is brought in the name of the state, by the county attorney, who, for this purpose, represents the people of the state.

On the second proposition it is contended that the time has passed in which the assessment may be corrected or omitted property entered upon the tax rolls. The statute provides that the board and the county clerk may take action to correct an assessment and add omitted property "at any time before the final settlement with the county treasurer." (Gen. Stat. 1901, §7599.) In this matter there was no delay nor lack of diligence on the part of the county officers. Proceedings to make the correction were instituted in August, and the only apparent reason for the delay was the opposition of the company, which, although admitting the existence of the property and its omission from the tax rolls, resisted every effort to place it upon the tax rolls. A party can not escape taxation by contesting the right of officers to impose a tax and keeping it in litigation beyond the time fixed by law for making the assessment. Nor is an officer justified in setting up the excuse in a mandamus proceeding that the time fixed by statute to do the act has passed, when it was his own failure to perform the duty within the statutory time which made it necessary to bring the mandamus proceeding. An officer can not by failure to perform a duty nullify the statute imposing it nor defeat the public in compelling performance where it takes reasonably prompt action to enforce performance. In *Lewis v. Comm'rs of Marshall Co.*, 16 Kan. 102, it was said:

"As a general rule, when a duty is at the proper time asked to be done, and improperly refused to be done, the right to compel it to be done is fixed, and is not destroyed by the lapse of the time within which in the first place the duty ought to have been done." (Page 108.)

(See, also, *The State, ex rel., v. Comm'rs of K*
Co., 42 Kan. 739.)
Aside from these considerations, the time in
omitted property might be added by the clerk ha
passed. It is contended that the October settl
mentioned in the statute, before which the corr
must be made, is the settlement of the year in
the assessment is made, and reference is made
ferret cases of *Douglas County v. Lane*, 76 Kan.
Jackson County v. Kaul, 77 Kan. 715. Thos
were disposed of upon the theory that the stat
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things be settled and closed up until the Oct
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the tax rolls are turned over to the treas
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funds and different municipalities, and,
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(See, also, *The State, ex rel., v. Comm'rs of Kearny Co.*, 42 Kan. 739.)

Aside from these considerations, the time in which omitted property might be added by the clerk had not passed. It is contended that the October settlement mentioned in the statute, before which the correction must be made, is the settlement of the year in which the assessment is made, and reference is made to the ferret cases of *Douglas County v. Lane*, 76 Kan. 12, and *Jackson County v. Kaul*, 77 Kan. 715. Those cases were disposed of upon the theory that the statute has fixed an absolute limitation for the revision of the tax rolls or the imposing of taxes on omitted property. It was held that when the October settlement is had between the treasurer and the county commissioners of the financial affairs of the county, and a new set of accounts, transactions and proceedings is started and the business of the year is closed up, the right to impose additional taxes for that year is ended. The accounts and transactions arising out of the assessment and tax proceedings of 1909 can not in the nature of things be settled and closed up until the October settlement of 1910. Although not definitely stated, the settlement referred to is manifestly the one following the levy and collection of taxes for the preceding tax year. When the taxes are extended by the county clerk and the tax rolls are turned over to the treasurer he collects the taxes, apportions them among the various funds and different municipalities, and, that being done, he makes a final settlement. It was evidently the intention of the legislature that a revision might be made or omitted property added until the tax proceedings, including the assessment and collection of the taxes, had been completed and a settlement thereon had with the county treasurer. That was the view taken in *Lappin & Scrofford v. Commissioners of Nemaha County*, 6 Kan. 408, where proceedings to revise the assessment and to add omitted property were taken

before the board of county commissioners in December, after the tax roll had been turned over to the county treasurer. The right to make a revision at that time was directly challenged, and the court said the "county commissioners have authority in December and January, after the tax roll has passed into the hands of the treasurer, to place on the tax roll property omitted by the assessor, and charge up the proper taxes thereon." (Syllabus.)

That the power of the county clerk to enter omitted property for taxation does not end with the October settlement of the year when the assessment is made is indicated by the provision relating to the taxation of merchants, which is to the effect that parties who begin merchandising after March 1 and before November 1, and whose property has not been listed in another county, shall report to the county clerk the average value employed in the business during this period, and it is the duty of that officer to enter the property upon the assessment rolls and it is taxed the same as if returned by the assessors. This provision necessarily contemplates action by the county clerk after the October settlement by the county treasurer. (Gen. Stat. 1901, § 7543.) Another provision in the county officers' act makes it the duty of the county treasurer, in case he shall learn that property subject to taxation has not been assessed, to notify the county clerk, who is required to place the same on the tax roll. (Gen. Stat. 1901, § 1669.) It has been suggested that this ancient provision has been superseded by section 7599, supra, and it may well be argued that the specific provisions of the latter section will control the county clerk as to the time and manner of correcting assessments. There remains in the section, however, the admonition to the county treasurer that when he learns of property not upon the tax roll he shall notify the county clerk of the omission, and thus aid in bringing it upon the tax roll and subjecting it to taxation. These statutory provi-

sions, although only incidental to the question, tend some degree to support the view that corrections be made after the October settlement following assessment.

Is the finished product of a manufacturer subje taxation? This question depends alone upon the i pretation of our statutes, and little aid can be de from either argument or illustration. The proper question is tangible and subject to ownership, and course, taxable unless it is exempted by force of statutory provision. The statute provides tha property in this state, real and personal, not exp exempt therefrom, shall be subject to taxation manner prescribed by this act." (Gen. Stat. § 7502; Laws 1907, ch. 408.) The legislature the word "property," as used in the act relating t tion, to "mean and include every kind of proper ject to ownership." (Laws 1907, ch. 408, § 1.) being no question as to the existence or owner the property spoken of as the finished produc reason is there for exempting it from taxatio general theory of the law is that all property s tribute equally to the support of the governme competent for the legislature to exempt prope taxation, but to the extent that one is relieved burden it is necessarily imposed on others. a before a person can have such a discriminat favor he must clearly show it to have been legislative purpose. The policy of our law be all property not expressly exempt, it devol claiming to have been relieved from paying of the public burden to find and clearly point press constitutional or statutory exemption been said:

"Any person claiming immunity from burdens of taxation, which should rest equa must bring himself clearly within the exe hence it is held that a provision creating should be strictly construed." (*Ottawa U Comm'rs of Franklin Co.*, 48 Kan. 460, 45

sions, although only incidental to the question, tend in some degree to support the view that corrections may be made after the October settlement following the assessment.

Is the finished product of a manufacturer subject to taxation? This question depends alone upon the interpretation of our statutes, and little aid can be derived from either argument or illustration. The property in question is tangible and subject to ownership, and is, of course, taxable unless it is exempted by force of some statutory provision. The statute provides that "all property in this state, real and personal, not expressly exempt therefrom, shall be subject to taxation in the manner prescribed by this act." (Gen. Stat. 1901, § 7502; Laws 1907, ch. 408.) The legislature defines the word "property," as used in the act relating to taxation, to "mean and include every kind of property subject to ownership." (Laws 1907, ch. 408, § 1.) There being no question as to the existence or ownership of the property spoken of as the finished product, what reason is there for exempting it from taxation? The general theory of the law is that all property shall contribute equally to the support of the government. It is competent for the legislature to exempt property from taxation, but to the extent that one is relieved from this burden it is necessarily imposed on others, and hence before a person can have such a discrimination in his favor he must clearly show it to have been within the legislative purpose. The policy of our law being to tax all property not expressly exempt, it devolves on one claiming to have been relieved from paying his share of the public burden to find and clearly point out an express constitutional or statutory exemption. So it has been said:

"Any person claiming immunity from the common burdens of taxation, which should rest equally upon all, must bring himself clearly within the exemption; and hence it is held that a provision creating an exemption should be strictly construed." (*Ottawa University v. Comm'rs of Franklin Co.*, 48 Kan. 460, 464.)

(See, also, *Washburn College v. Comm'rs of Shawnee Co.*, 8 Kan. 344; *Stahl v. Educational Assoc'n*, 54 Kan. 542; *National Council v. Shawnee County*, 63 Kan. 808; 1 Cooley, Tax., 3d ed., p. 356.)

Now, we have a provision enumerating the articles and classes of property that are exempt, and the finished product of manufacturers is not among those named. (Laws 1907, ch. 408, § 2.) It is contended that the statute providing that all property not expressly exempt shall be subject to taxation is qualified by the added clause, "in the manner prescribed by this act." (Gen. Stat. 1901, § 7502.) The argument is that this clause in effect limits taxation to the kinds of property specially named in the act; that the finished product can not be taxed until it is named as one of the subjects of taxation, and that up to this time the legislature has omitted to make provision for taxing it. It has provided a method for taxing the raw material which the manufacturer has on hand, and since the manufactured product was not included in this provision it is argued that the legislature did not intend that it should be taxed. The clause referred to relates to the method of imposing taxes upon property already declared to be subject to taxation. It is not a limitation on the declaration that all property not expressly exempted shall be subject to taxation. It deals with methods, not subjects, of taxation. Various methods are prescribed for the assessment and taxation of the different classes of property. The act prescribes one method for listing and assessing the property of banks, another for the property of merchants and certain property of manufacturers, another for telegraph and telephone property, and still others for railroad and other kinds of property, and as to the property for which no special manner is prescribed as to listing and valuation there is a general rule that all property shall be listed and valued as of the first day of March. (Gen. Stat. 1901, § 7514.) Then there are many provisions prescribing

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in detail the duties of owners as well as assessors and other taxing officers respecting the assessment and collection of taxes. As to manufacturers, it is provided that when they list their property for taxation they shall also return the average amount of material purchased or held to be used in manufacturing, refining or combining which they have had on hand during the preceding year. This is to be ascertained by taking the amount on hand in each month and dividing the aggregate by the number of months of the year they have been engaged in business. (Gen. Stat. 1901, § 7545.) Another section specially provides that they shall list the value of engines, tools and machinery which form no part of the real estate. (Gen. Stat. 1901, § 7546.) The fact that the legislature prescribes a special manner for taxing the raw material held for manufacturing purposes does not mean that other tangible property of the owner shall escape taxation. Except as limited by the constitution, the whole matter of taxation is within the discretion and power of the legislature. It may choose its own methods of assessment, and different ones for different classes of property. It may give specific directions as to the manner in which officers shall determine valuations, but the absence of such directions as to a class of property does not argue that such property is not taxable under a general provision. (*The State ex rel. Milwaukee Street R. Co. v. Anderson*, 90 Wis. 550.) The section providing a method for assessing raw material proceeds on the theory that the manufacturer shall list his other property. The fact that a manner of valuing one kind of property is prescribed does not warrant the inference that another kind of property shall be exempt from taxation. The provision that all property shall be taxed unless expressly exempted precludes the making of a mere implied exemption. Reference has been made to the statutes and rules of Ohio and some other states, but none of them is of special value in interpreting our own statute. The

property, not having been expressly exempted, must be listed and valued the same as other tangible property for which a special method has been prescribed.

On the questions submitted on the pleadings it must be held that mandamus is a proper remedy to compel the entry on the tax rolls of omitted property, that such corrections and entry may be made after the tax rolls are turned over to the county treasurer, and that the finished product of a manufacturer is subject to taxation.

THE STATE OF KANSAS, *ex rel. Fred S. Jackson, as Attorney-general, Plaintiff*, v. THE ANHEUSER-BUSCH BREWING ASSOCIATION *et al., Defendants.*

No. 15,488.

CONTEMPT — *Violation of Judgment of Ouster — Intoxicating Liquors.* The conclusion of a commissioner that the defendants were not guilty of contempt in violating an order prohibiting a brewing association from holding or using property in this state in violation of law and forbidding its agents from engaging in or carrying on any business for it here was supported by the findings.

Original proceeding for contempt. Opinion filed February 12, 1910. Judgment for the defendants.

Fred S. Jackson, attorney-general, *John Marshall*, assistant attorney-general, and *Charles D. Shukers*, special assistant attorney-general, for the plaintiff.

S. B. Amidon, D. M. Dale, and *Jean Madalene*, for the defendants.

Per Curiam: This is a prosecution against the Mahan Mercantile Company, Thomas Mahan and William Meyer for contempt in violating the commands of the

solicited orders for beer and sold beer in ...ch violation of law within the period covered by the ...ation. He also found and described the man... which the liquor traffic was carried on by me... orders solicited by Mahan and Meyer, as agents ...ercantile company, a Missouri corporation ...usiness in that state, and deliveries made b... agents to the purchasers at Wichita. The find... not state that beer was sold upon the prem... ...cribed, and it is found that Mahan and Mey... not officers, agents, employees or servants of th... ...ing association, and that the mercantile comp... no such relation to that association.

The judgment of ouster prohibits the d... brewing association from holding or using ... in this state in violation of law, and prohibi... ...cers, agents, employees and servants from en... or carrying on any business for it here. ... property is described in the judgment. Th... are not parties to the action.

The state does not ask for a review of th... and it is not abstracted. Upon an examina... findings the conclusion of the commissio...

MEMORANDUM

February 11, 1985

(ATTACHMENT II)
2/13/85

TO: House Local Government
Chairman

FROM: Kansas Legislative Research
Department

RE: H.B. 2183

H.B. 2183 authorizes the board of directors of hospital district No. 1 in Linn and Bourbon counties to borrow money by contract from any individual or individuals for an addition to an existing home for the aged. A copy of the proposed contract would have to be published and would be subject to a 5 percent protest petition-election procedure.

The bill is effective upon publication in the Kansas Register.

Attachment 2

MEMORANDUM

February 11, 1985

(ATTACHMENT III)
2/13/85

TO: House Local Government
Chairman

FROM: Kansas Legislative Research
Department

RE: H.B. 2189

H.B. 2189 amends statutes dealing with the special bridge fund of counties to add culverts and thus permit expenditures for the building and reconstruction of these structures also.

Attachment 3