

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

The meeting was called to order by Senator Fred A. Kerr at
Chairperson

11:00 a.m. ~~XXX~~ on Tuesday, April 2, 1985 in room 519-S of the Capitol.

All members were present ~~except~~ XXXX.

Committee staff present:

Tom Severn, Research Department
Melinda Hanson, Research Department
Don Hayward, Revisor's Office
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee:

Linda Terrill, Board of Tax Appeals

Copies of a letter from David Litwin (Kansas Chamber of Commerce and Industry) clarifying the organization's position on a sales tax or income tax increase regarding H.B. 2159 were distributed to the Committee (Attachment 1).

H.B. 2434 - Administration of property tax law by various authorities

Linda Terrill reviewed her memorandum regarding provisions of H.B. 2460 (Attachment 2). She explained the Court's opinion (Attachment 3) means that any real or personal property which has received any funding from the National Housing Act is exempt from taxation. The Board recommends that the phrase in K.S.A. 79-201b Fourth: "assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto, and" be stricken. This would prevent the exemption from being interpreted to be much broader than the Legislature intended. Ms. Terrill noted that the amendment would not affect adult care homes in general. Senator Mulich moved that the suggested amendment be incorporated into H.B. 2434. Senator Thiessen seconded the motion, and the motion carried.

Ms. Terrill then explained that the Board recommends that K.S.A. 79-201d Third be amended by adding the phrase: "and all used farm storage and drying equipment meeting such eligibility requirements but for the fact that the same was not purchased from the commodity credit corporation". This would have the effect of bringing Kansas statutes into compliance with federal law and would treat new and used bins the same. Senator Allen moved that the suggested amendment be incorporated into H.B. 2434. Senator Mulich seconded the motion, and the motion carried.

Ms. Terrill said that the Chairman of the Board asked her to convey a request that the subject area of adult care homes, children's foster homes, etc. be made a part of an interim study.

Senator Frey moved that H.B. 2434, as amended, be recommended favorably for passage. Senator Hayden seconded the motion, and the motion carried.

H.B. 2333 - Concerning the motor vehicle inventory stamp tax act

Copies of a letter from Richard Davis (Kansas Motorcycle Industry Council) were distributed to the Committee (Attachment 4).

Chairman Kerr advised that he, Vice-Chairman Thiessen and Ranking Minority Member Hayden agreed to suggest an amendment (Attachment 5) which would increase the stamp tax by approximately 35-40% rather than the 50% provided by the bill. A chart showing the rates (Attachment 6) under the amendment was provided to the Committee. Chairman Kerr said that the Senators also agreed to suggest that the indexing provision be removed from the bill. The Committee discussed the fact that, under the amendment, almost \$700,000 would go to local units of government and approximately \$14,000 would go to the state general fund. The indexing provision of the bill was also discussed, and it was noted that present law does not provide for indexing of the stamp tax act. Senator

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,
room 519-S, Statehouse, at 11:00 a.m.~~pm~~ on Tuesday, April 2, 1985

Frey moved that the amendment reducing the increases provided in H.B. 2333 be adopted (Attachment 5). Senator Mulich seconded the motion, and the motion carried. Senator Karr moved that the indexing provision be deleted from the bill. Senator Allen seconded the motion, and the motion carried. Senator Mulich moved that the bill, as amended, be recommended favorably for passage. Senator Hayden seconded the motion, and the motion carried.

H.B. 2159 - Income tax credit for inventory property taxes

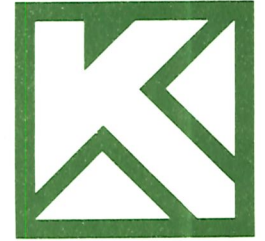
H.B. 2512 - Cigarette tax rate increase

Chairman Kerr discussed comments made concerning the two bills. Concern has been expressed about raising the cigarette tax so far above the level of surrounding states. He said that no one denies there is a big problem with the inventory tax, but there is concern about instituting a new state program which would provide for state reimbursement of a local property tax for a business group. He mentioned that possibly the 40% merchant's inventory valuation reduction could be increased to 50%, but that would not alleviate problems of manufacturers. Chairman Kerr pointed out that there will likely be an even greater inventory tax burden in the next year or so because of apparently more aggressive enforcement. Senator Karr questioned the linkage between the two bills. Staff advised that the inventory tax refund (H.B. 2159) would not take effect until the effective date of the cigarette tax increase (H.B. 2512), but that H.B. 2512 is not linked to H.B. 2159. The Committee discussed opposition to earmarking of funds and that the subject bills were intended to be an interim relief measure until a classification amendment could become effective. Senator Karr asked about the fiscal impact of inventories. Staff advised that the approximately 90 million dollar revenue from inventories breaks down as follows: a little less than 2 million dollars to the state, approximately 45-46 million dollars school taxes, approximately 18 million dollars county taxes and the balance would be city and district taxes. Approximately 45 million dollars of merchants' inventories, approximately 30 million dollars of manufacturers' inventories and approximately 15 million dollars of livestock inventories would comprise the 90 million dollar total. Senator Frey asked how the refund would be treated on state and federal income tax returns. Staff said that they expect it to be treated as income for the following year. There was discussion about how much income this would mean to the state and how much to the federal government because of income tax increases.

Senator Allen moved that the Chairman request the President of the Senate to rerefer H.B. 2159 and H.B. 2512 to either Ways and Means or Federal and State Affairs for purposes of keeping them alive past the deadline. Senator Thiessen seconded the motion, and the motion carried.

Senator Salisbury moved that the minutes of the March 29, 1985 meeting be approved. Senator Thiessen seconded the motion, and the motion carried.

Meeting adjourned.



**Kansas
Chamber of
Commerce
and Industry**

A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

March 28, 1985

The Honorable Fred Kerr
Kansas Senate
State Capitol, Room 143-N
Topeka, Kansas 66612

Dear Senator Kerr:

The entry in the minutes of the committee meeting on Tuesday, March 26 concerning my statement that KCCI would support a sales tax or income tax increase to fund HB 2159 has come to my attention. Our position in this matter was also questioned at the meeting today, so I would like to explain the basis for my statements.

On the whole, we advocate primary reliance on broad-based taxes on income and sales to meet government's revenue needs. This is specifically reflected in policy TF-22, which was initiated in 1976 and which has the approval of the KCCI Board of Directors.

"General Tax Sources. KCCI is vigorously opposed to further dependence on property tax; and when additional state revenue is needed, for state or local governmental purposes, KCCI favors use of non-ad valorem tax sources, with major emphasis on sales tax and income tax."

I also stated in response to a question that our acceptance of income taxes does not include the "booster tax" surtax. This position is supported by the 1985 Action Plan of the KCCI Taxation and Public Finance Committee, which was adopted by the Board of Directors at its meeting on December 6, 1984. Objective number 9 reads: "Oppose efforts to re-enact the expiring 'Booster Tax' or any similar tax scheme."

I was also questioned about whether we would support raising the corporate income tax to fund HB 2159. While we do not have a policy or objective precisely on this point, it so happens that from the economic development viewpoint, our tax rate on corporate incomes over \$25,000 is already the highest of the states that border on Kansas. Only Nebraska is close. Thus this particular revenue source appears to be fairly dry at this point in time, and I think it is highly likely that if the issue were presented to it, our board would oppose funding of HB 2159 from this source. Obviously, a specific answer can only be given when based on a specific proposal.

Attachment 1

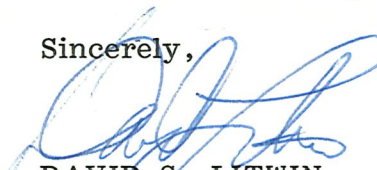
Senator Fred Kerr
March 28, 1985
Page 2

With regard to HB 2512, as I said to the committee, we are not in a position to support or object to this bill. However, inventory tax relief is of critical importance to our merchant and manufacturer members, and thus we do give a very high priority to enactment and funding of the moderate relief which HB 2159 would provide.

I'd appreciate your sharing of this information with the members of the committee.

If there are other questions, I would be pleased to answer them.

Sincerely,



DAVID S. LITWIN
Director of Taxation

cc: Senator Burke

M E M O R A N D U M

TO: The Honorable Senator Fred Kerr
and Members of the Senate Assessment &
Taxation Committee

FROM: Linda Terrill, Chief Attorney
State Board of Tax Appeals

RE: House Bill No. 2460

DATE: April 1, 1985

H.B. 2460 makes 3 changes in current law, all in the area of exemptibility of personal property from ad valorem taxation. All changes were requested by the State Board of Tax Appeals.

The first change was requested because of the recent Kansas Supreme Court opinion, Board of Johnson County Commissioners v. Ev. Lutheran Good Samaritan Society, 236 Kan. 617 (1985).

In that case, the Board of Tax Appeals granted an exemption on a nine-story building in Olathe, Kansas, known as Olathe Towers. Exemption was granted pursuant to K.S.A. 79-201b Fourth and Fifth. Those statutes read as follows:

Fourth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto, and which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for the purposes of such housing.

Fifth. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation, in which charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of

which are provided to residents at the lowest feasible cost, taking into consideration such items as reasonable depreciation and interest on indebtedness and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for the purpose of such housing. The provisions of this section shall apply to all taxable years commencing after December 31, 1976. (Emphasis added)

The controversy surrounded the use of 8 of the apartments. Four were rented to non-elderly handicapped persons and four were rented to elderly persons who did not qualify for federal rent subsidies.

The taxpayer essentially contended that "lowest feasible cost" meant that the home spent all that it took in. The home could be a Cadillac as long as it was a "lowest feasible cost" Cadillac.

The county, in order to be uniform in the application of K.S.A. 79-201b Fifth appealed seeking a definition of "lowest feasible cost."

The court skirted the issue of "lowest feasible cost" under K.S.A. 79-201b Fifth and granted exemption under K.S.A. 79-201b Fourth.

The court said there were 3 issues:

- " 1. Rental of four apartments to non-elderly handicapped persons precludes exemption under K.S.A. 79-201b Fourth or Fifth as the property is not exclusively used for the housing of elderly persons;
2. Rental of apartments to four persons not qualifying for federal rent subsidies precludes exemption under K.S.A. 79-201b Fourth or Fifth.
3. The "exclusive use" requirement contained in K.S.A. 79-201b Fourth and Fifth mandates that the property be exclusively used for purposes set forth in either Fourth or Fifth and a hybrid utilization destroys any exemption."

First the court found that even though the exemption refers only to housing "used exclusively for housing for elderly persons having a limited or lower income," the renting to non-elderly handicapped persons did not preclude exemption. Indeed, the court found that the legislature exempted all real and personal property "assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto." The national housing act has a program for non-elderly handicapped persons. The court, in essence, amended all of the provisions of the 800 page national housing

act into K.S.A. 79-201b Fourth. It is interesting to note that the national housing act was amended to include handicapped persons in 1964 and K.S.A. 79-201b Fourth became effective in 1976.

The court also addressed the non-exclusive use argument.

"To gain the tax exemption set out in Fourth, an applicant does not need to show qualifying operating costs--only that it is a qualifying not-for-profit corporation operating a National Housing Act facility for the elderly (and qualified handicapped). Any such operation not in compliance with the mass of regulations is subject to penalties including the loss of federal rent subsidies. The federal government can effectively shut down the facility for non-compliance. The legislature in enacting K.S.A. 79-201b Fourth obviously relied upon federal regulation to assure the goals and public purposes of the program designed to provide adequate housing for low income elderly and handicapped persons have been and continue to be met. The presence of the four elderly residents in Olathe Towers not receiving rent subsidies is a matter between applicant, as operator of the facility, and HUD. Burrowing through the financial statements of the elderly residents of Olathe Towers is neither required nor pertinent to a determination of applicant's eligibility for tax exemption under K.S.A. 79-201b Fourth.

This decision was disturbing to the Board and clearly exceeds legislative intent. Therefore, as a stop-gap measure, the Board recommends that the legislature strike the reference to "national housing funds."

The second request deals with the grain bin exemption. The amendatory language does 2 things:

1. Complies with changes in the Code of Federal Regulations, Title 7, Chapter XIV, Subchapter B as to qualifying storage materials. (This would add haylage and silage.)
2. Eliminates the requirement that the used bins be purchased from the Commodity Credit Corporation. Apparently these are non-existent and this change would treat new and used bins in the same manner.

The last request concerns K.S.A. 79-201j, specifically the exemption of farm trailers. The farm machinery exemption does not exempt trailers unless it is a "farm trailer" as defined in K.S.A. 8-126. This statute reads as follows:

(z) "Farm trailer." Every trailer as defined in subsection (h) of this section and every semitrailer as defined in subsection (i) of this section, designed and used primarily as a farm vehicle.

Looking at K.S.A. 8-126 (h) and (i):

(h) "Trailer." Every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

(i) "Semitrailer." Every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle.

In summary, the Board believed legislative intent was to exempt non-tagged farm trailers. The exemption, as drafted, exempts alot more. Indeed, a semi-trailer used primarily as a farm vehicle would appear to qualify for exemption.

The language on page 4 limits the exemption to:

"A nonself-propelled vehicle which is only incidentally moved or operated upon the highways and is not subject to registration and registration fees."

I would be happy to discuss any points raised here on an individual basis if any one wishes.

Board of Johnson County Comm'rs v. Ev. Luth. Good Samaritan Soc.

No. 56,668

IN RE: APPEAL OF THE BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS, BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, Appellant, v. EV. LUTHERAN GOOD SAMARITAN SOCIETY-GOOD SAMARITAN TOWERS, Appellee.

SYLLABUS BY THE COURT

1. TAXATION—*Exemption from Ad Valorem Taxes for Low Income Housing for the Elderly—Application of Exemption to Apartment Building That Rents to Both Low Income Elderly and Handicapped Non-elderly Persons.* The exemption from ad valorem taxation granted by K.S.A. 79-201b *Fourth* for low income housing for elderly persons, the construction of which has been financed under the National Housing Act, is discussed and held applicable to an apartment building renting to both low income elderly persons and handicapped non-elderly persons pursuant to federal regulations for the operation of such facilities.
2. SAME—*Exemption from Ad Valorem Taxes for Low Income Housing for the Elderly—Financial Statements of Individual Tenants Not Pertinent to Determination of Exemption.* Financial statements of individual tenants are not pertinent to a determination of whether a housing facility is entitled to an exemption from ad valorem taxation pursuant to K.S.A. 79-201b *Fourth*.

Appeal from Shawnee district court, E. NEWTON VICKERS, judge. Opinion filed January 26, 1985. Affirmed.

Bruce F. Landeck, assistant county counselor, argued the cause, and Philip S. Harness, assistant county counselor, was with him on the briefs for appellant.

Eugene T. Hackler, of Hackler, Londerholm, Corder, Martin & Hackler, Chartered, of Olathe, argued the cause, and Robert C. Londerholm, of the same firm, was with him on the brief for appellee.

The opinion of the court was delivered by

McFARLAND, J.: This is an appeal by the Johnson County Board of County Commissioners from a decision of the Kansas State Board of Tax Appeals granting a South Dakota not-for-profit corporation, Ev. Lutheran Good Samaritan Society, exemption from ad valorem taxation on a nine-story building in Olathe, Kansas, known as Olathe Towers. The exemption was granted based upon K.S.A. 79-201b *Fourth and Fifth*. The Board of County Commissioners appealed the decision to the Shawnee County District Court which, subsequently, affirmed the BOTA decision. The matter is before us on the appeal therefrom by the Board of County Commissioners.

The following two issues are raised on appeal:

1. Did BOTA and the district court err in holding Ev. Lutheran

Board of Johnson County Comm'rs v. Ev. Luth. Good Samaritan Soc.

Good Samaritan Society was entitled to exemption from ad valorem taxation pursuant to K.S.A. 79-201b *Fourth and Fifth* on the property known as Olathe Towers?

2. Is the term "lowest feasible cost" utilized in K.S.A. 79-201b *Fifth* impermissibly vague?

Ordinarily, the proper procedure would be to determine the constitutional issue first. However, it is believed reversing the usual order is warranted by virtue of the issues raised.

The facts are essentially uncontroverted. The basic dispute raised in the first issue is whether, under the facts, applicant is entitled to exemption from ad valorem taxation.

Highly summarized, the facts of the use of the property are as follows. The improved real estate involved herein consists of 3.52 acres commonly described as 1425 East College Way, Olathe, Kansas. The property is owned by Good Samaritan Society, Inc., a South Dakota not-for-profit corporation. Ev. Lutheran Good Samaritan Society, Inc., is a North Dakota not-for-profit corporation founded in 1922 and is the parent corporation of the subsidiary, Good Samaritan Society, Inc. The boards of directors and operating policies of both corporations are identical. Both parent and subsidiary corporations have exemption letters from federal income taxation under § 501(c)(3) of the Internal Revenue Code, and both corporations are authorized to transact business in Kansas. The housing project on the subject property is operated by Ev. Lutheran Good Samaritan Society, Inc. (hereinafter referred to as "applicant"), and there is no challenge to said corporation being the proper entity to file the exemption application herein.

Situated on the subject real estate is a nine-story, 150-apartment building called "Olathe Towers." Direct loan financing of the construction was obtained by applicant from the Department of Housing and Urban Development (HUD) under § 202 of the National Housing Act in the amount of \$5,426,700.00. The forty-year mortgage provides for monthly payments of \$36,792.41. Sec. 202 of the National Housing Act provides in part that low income for the elderly projects are to operate in such a way that residents will not pay more than twenty-five per cent of their income for rent, based upon scheduled maximum annual income for various sized families. Olathe Towers contains 141 one-bedroom apartments and eight two-bedroom apartments plus the resident

Board of Johnson County Comm'rs v. Ev. Luth. Good Samaritan Soc.

manager's apartment. Neither meals nor medical services are included in the rentals charged. Occupancy began February 1, 1981. The exemption sought and granted is for 1981 and years subsequent thereto.

As of the date of the hearing before the BOTA (December 9, 1981) there was apparently one hundred per cent occupancy of the premises. The controversy herein rages over the occupancy of eight apartments. Four apartments are rented to elderly persons who do not qualify for federal rent subsidies—that is, their incomes are in excess of HUD guidelines for subsidization. Four other apartments are rented to handicapped individuals who are not elderly. The appellant Board of County Commissioners contends these eight rentals preclude the granting of exemption from ad valorem taxation.

Article 11, § 1, of the Kansas Constitution provides in pertinent part:

"All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income, shall be exempted from property taxation."

K.S.A. 79-201b provides in pertinent part:

"The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

"*Fourth.* All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto, and which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for the purposes of such housing.

"*Fifth.* All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons, which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation, in which charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of which are provided to residents at the lowest feasible cost, taking into consideration

Board of Johnson County Comm'rs v. Ev. Luth. Good Samaritan Soc.

such items as reasonable depreciation and interest on indebtedness and contributions to which are deductible under the Kansas income tax act; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such corporation and used exclusively for the purpose of such housing.

"The provisions of this section shall apply to all taxable years commencing after December 31, 1976."

Appellant calls our attention to our well-established case law which mandates that constitutional and statutory provisions exempting property from taxation are to be strictly construed. Illustrative of this principle is *National Collegiate Realty Corp. v. Board of Johnson County Comm'rs*, 236 Kan. 394, 690 P.2d 1366 (1984).

Essentially this issue breaks down into the following three areas of complaint:

1. Rental of four apartments to non-elderly handicapped persons precludes exemption under K.S.A. 79-201b *Fourth* or *Fifth* as the property is not exclusively used for the housing of elderly persons;

2. Rental of apartments to four persons not qualifying for federal rent subsidies precludes exemption under K.S.A. 79-201b *Fourth* or *Fifth*;

3. The "exclusive use" requirement contained in K.S.A. 79-201b *Fourth* and *Fifth* mandates that the property be exclusively used for purposes set forth in either *Fourth* or *Fifth* and a hybrid utilization destroys any exemption.

We shall first consider the argument relative to the legal effect of the presence of the physically handicapped non-elderly persons in the facility.

K.S.A. 79-201b grants exemption to property "used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplementary thereto . . ." (Emphasis supplied.)

12 U.S.C. § 1701q (1982) provides in part:

"(a)(1) The purpose of this section is to assist private nonprofit corporations, limited profit sponsors, consumer cooperatives, or public bodies or agencies to provide housing and related facilities for elderly or *handicapped* families.

"(6) In reviewing applications for loans under this section, the Secretary may consider the extent to which such loans—

Board of Johnson County Comm'rs v. Ev. Luth. Good Samaritan Soc.

(A) will assist in stabilizing, conserving, and revitalizing neighborhoods and communities;

(B) will assist in providing housing for elderly and handicapped families in neighborhoods and communities in which they are experiencing significant displacement due to public or private investment;

"(d) Definitions as used in this section—

"(1) The term 'housing' means structures suitable for dwelling use by elderly or *handicapped* families which are (A) new structures, or (B) provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for proposed dwelling use by such families.

(4) The term 'elderly or *handicapped* families' means families which consist of two or more persons and the head of which (or his spouse) is sixty-two years of age or over or is *handicapped*, and such term also means a single person who is sixty-two years of age or over or is *handicapped*. A person shall be considered *handicapped* if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered *handicapped* if such person is a developmentally disabled individual as defined in section 102(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, the eligibility of families and persons for admission to and occupancy of housing constructed with assistance under this section." (Emphasis supplied.)

It is uncontroverted that the handicapped tenants in Olathe Towers meet the definition of handicapped persons contained in 12 U.S.C. § 1701q(d) (1982).

Olathe Towers was planned so that certain apartments were specifically designed for use by physically handicapped persons. It is true that elderly persons may be physically handicapped and require usage of such specially designed facilities and inclusion thereof in the building design does not establish, by itself, that the building was designed to accommodate non-elderly handicapped persons. Applicant contends it is required by amendments to the National Housing Act to accept as tenants handicapped persons as defined by 12 U.S.C. § 1701q(a) (1982) and that the legal effect of this is to broaden the exemption granted in K.S.A. 79-201b *Fourth*. This point has merit.

Prior to 1964 the National Housing Act provided direct loan financing for construction of homes for low income elderly persons. Significant changes occurred in 1964 when the act was amended by striking out the term "elderly families and elderly persons" wherever it appeared and substituting therefore "elderly or handicapped families." Numerous amendments and supplements to the Act occurred in the same legislation to broaden eligibility for federally financed housing to include handicapped as well as elderly families. See National Housing Act, ch. 847, 48 Stat. 1246 (1934) (codified at 12 U.S.C. § 1701 *et seq.* [1982]) amended by the Housing Act of 1964, Pub. L. No. 88-560, Title II, § 201 *et seq.*, 78 Stat. 783 *et seq.* (1964). The previously cited 12 U.S.C. § 1701q (1982) was a part of the 1964 amendments to the Act.

Therefore, the handicapped residents of Olathe Towers are there by virtue of federal legislation authorizing their presence in such facilities constructed by direct loan from National Housing Act funds. Appellant does not challenge this fact. Rather, appellant argues that K.S.A. 79-201b *Fourth* states exemption from ad valorem taxation shall be granted for such federally financed facilities *used exclusively* for low income elderly and, hence, under strict construction, the presence of the handicapped persons therein establish applicant is not entitled to the exemption. We do not agree. Appellant's position ignores the provision of K.S.A. 79-201b *Fourth* which states:

"*Fourth.* All real property . . . actually and regularly used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the *national housing act and acts amendatory thereof and supplemental thereto* . . ." (Emphasis supplied.)

Appellant's rigid interpretation of K.S.A. 79-201b *Fourth* would effectively destroy the exemption. The National Housing Act, by acts amendatory and supplemental thereto, grants eligibility for residence in such facilities to handicapped persons. The clear intent of K.S.A. 79-201b *Fourth* was to exempt such public housing from ad valorem taxation. The "acts amendatory and supplemental thereto" language of K.S.A. 79-201b *Fourth* clearly shows that exemption is to be granted to facilities constructed under auspices of the National Housing Act as it originally existed and as it might be subsequently amended or supplemented.

Appellant additionally argues that the exemption is limited to facilities "used exclusively" for low income elderly on the basis that K.S.A. 79-201b *Fourth* was enacted in 1975—subsequent to the 1964 amendments to the National Housing Act previously discussed. Appellant reasons that inasmuch as handicapped persons had already been granted eligibility to live in such facilities by federal legislation, then, if the exemption was intended to include such persons, the legislature would have amended K.S.A. 79-201b *Fourth* to specifically include handicapped persons. We do not agree. The legislative history of K.S.A. 79-201b *Fourth* clearly shows it was a part of a general codification of ad valorem tax exemption laws. See 1975 Session Laws of Kansas, ch. 495 and Minutes of the House Committee on Assessment and Taxation, March 12, 1975.

The second aspect of this issue is whether the presence of four elderly tenants on the premises whose incomes are above federal guidelines for rent subsidies precludes exemption from ad valorem taxation. The battle on this question has been fought on rather curious terrain. The BOTA and the district court granted the applicant exemption on the basis of K.S.A. 79-201b *Fourth* and *Fifth*. Section *Fourth* grants the exemption to facilities for low income elderly (and handicapped, as previously determined) persons where the construction of the facility has been financed by the National Housing Act. Section *Fifth* grants exemption to housing facilities for low income elderly persons where:

"charges to residents produce an amount which in the aggregate is less than the actual cost of operation of the housing facility or the services of which are provided to residents at the lowest feasible cost."

Although not clearly spelled out in either the BOTA or district court opinions herein, the granting of the exemption in both K.S.A. 79-201b *Fourth* and *Fifth* apparently comes about from a conclusion that the handicapped residents qualify under *Fourth* and the non-rent subsidized elderly residents qualify under *Fifth*. This conclusion is consistent with the arguments of the parties herein. Bringing K.S.A. 79-201b *Fifth* into the fray spawns the previously referred to arguments relative to the constitutionality of *Fifth* and the propriety of hybridizing exemptions. We do not believe applicant's exemption requires consideration of K.S.A. 79-201b *Fifth*.

Let us look closely at K.S.A. 79-201b *Fourth*, repeated at this point for simplification:

"*Fourth*. All real property and tangible personal property, actually and regularly used exclusively for housing for elderly persons having a limited or lower income, assistance for the financing of which was received under the national housing act and acts amendatory thereof and supplemental thereto, and which is operated by a corporation organized not for profit under the laws of the state of Kansas or by a corporation organized not for profit under the laws of another state and duly admitted to engage in business in this state as a foreign, not for profit corporation; and all intangible property including moneys, notes and other evidences of debt, and the income therefrom, belonging exclusively to such a corporation and used exclusively for the purposes of such housing." (Emphasis supplied.)

To what does the term "assistance for the financing of which was received under the national housing act" refer? Note use of "was" received. Clearly this can refer only to construction costs, as rent subsidies are ongoing items of expenditure. The use of the term "financing," again, indicates construction as opposed to rent subsidies of residents. Yet the case is argued along the lines that the presence of elderly residents whose rents are not federally subsidized and who personally pay the full rent somehow requires the applicant to seek exemption under K.S.A. 79-201b *Fifth*. We do not agree.

The exemption provided for in K.S.A. 79-201b *Fifth* requires the facility to be operated on a below cost or on a "lowest feasible cost" basis. Nothing comparable is found in *Fourth*. Why? The answer is simple. It is common knowledge that when construction of public housing for the elderly (and handicapped) is financed through the National Housing Act, the operation of the facility is subject to ongoing federal control. Resident eligibility, amount of rent to be charged, amount of rent subsidy, operational expenses, etc., are the subjects of a plethora of federal statutes and regulations. To gain the tax exemption set out in *Fourth*, an applicant does not need to show qualifying operating costs—only that it is a qualifying not-for-profit corporation operating a National Housing Act facility for the elderly (and qualified handicapped). Any such operation not in compliance with the mass of regulations is subject to penalties including the loss of federal rent subsidies. The federal government can effectively shut down the facility for noncompliance. The legislature in enacting K.S.A. 79-201b *Fourth* obviously relied

upon federal regulations to assure the goals and public purposes of the program designed to provide adequate housing for low income elderly and handicapped persons have been and continue to be met. The presence of the four elderly residents in Olathe Towers not receiving rent subsidies is a matter between applicant, as operator of the facility, and HUD. Burrowing through the financial statements of the elderly residents of Olathe Towers is neither required nor pertinent to a determination of applicant's eligibility for tax exemption under K.S.A. 79-201b *Fourth*.

We therefore conclude Olathe Towers is entitled to exemption from ad valorem taxation based upon K.S.A. 79-201b *Fourth*. By virtue of this determination, other issues raised need not be addressed.

The judgment is affirmed.

KANSAS MOTORCYCLE INDUSTRY COUNCIL
4806 S. TOPEKA BLVD.
TOPEKA, KANSAS 66609

28 March 1985

Senator Fred Kerr
Room 143 N.
Capitol Building
Topeka, Kansas

Dear Senator Kerr,

Most of the motorcycle dealers in Kansas believe that we are already paying too much for our tax stamp, relative to the auto dealers.

However, I have more or less convinced the membership that because they are used to the \$1.00 stamp, it would naturally be fairly easy to continue it. All of our people do support the system (this method of paying taxes) and would hate to see it go away.

The problem with HB2333 is the ratio of increase. Motorcycles would go up 100%, where autos would go up only 50%. And, at that, the auto dealers are certainly complaining.

Would you like to guess how the motorcycle dealers feel?

You asked me during the committee hearing for my recommendation of how to reconcile this mutual problem. After much discussion with the officers of the Kansas Motorcycle Industry Council (KMIC), as well as the general membership, we have developed what we feel is a more than fair suggestion.

ALL NEW AND USED MOTORIZED BICYCLES AND MOTORCYCLES - \$1.00
EXCEPT NEW AND USED MOTORCYCLES OVER 1000CC - \$2.00

In 1984, 8063 new motorized bicycles and motorcycles were registered. Of that figure, 1265 were over 1000cc's. Of course, a large number of used machines were sold, but I don't have those figures.

One of the problems the membership has with the tax is that some, if not all, of the collected tax goes to the county for road repair. How bad can a motorcycle damage a road?

We want to pay our fair share of taxes, but to claim our tax stamp money goes to road repair that was caused by motorcycles is astonishing.

Extremely few people own only a motorcycle. Nearly everyone that owns a motorcycle also owns an auto.

Now he can't drive both at the same time and when he rides his motorcycle, he is really giving the county a break.

we don't have any problem paying inventory tax, but we think the tax dollars should be used realistically, and that means for something other than for road repair.

Personally I believe the money could be put to better use in the safety area for motorcycles. Such as, billboards advising auto drivers to be more aware of the motorcyclist and advising motorcyclists to wear their helmets.

Generally speaking, our members agree with the auto lobby in that we would be more than willing to sit down once a year to review the price of tax stamps.

If I can be of further assistance, please don't hesitate to call me at my office. 862-1053 in Topeka.

Sincerely,



Richard V. Davis
Vice President
KMIC

Proposed amendment to HB 2333 (As Amended by House Committee)

On page 1, in line 36, by striking "\$1" and inserting "\$2"; in line 37, by striking "\$7.50" and inserting "\$7"; in line 41, by striking "\$9" and inserting "\$8"; in line 43, by striking "\$12" and inserting "\$11"; in line 45, by striking "\$12" and inserting "\$11";

On page 2, in line 47, by striking "\$15" and inserting "\$14"; in line 49, by striking "\$15" and inserting "\$14"; in line 51, by striking "\$18" and inserting "\$16"; in line 52, by striking "\$27" and inserting "\$25"; in line 54, by striking "\$49.50" and inserting "\$45"; in line 59, by striking "(11)" and inserting "(12)";

Senate Committee on Assessment and Taxation

RATES FOR THE MOTOR VEHICLE STAMP TAX
(H.B. 2333)

Category	Tax Under Current Law	Tax Under H.B. 2333	Suggested Amendment
New Vehicles			
Motorcycles	\$1.00	\$2.00	\$2.00
< 3,000 lbs	6.00	9.00	9.00
3,000-4,000 lbs	8.00	12.00	11.00
4,000-4,500 lbs	10.00	15.00	14.00
4,500-8,000 lbs	12.00	18.00	16.00
> 8,000 lbs	33.00	49.50	45.00
Used Vehicles			
Motorcycles	1.00	1.00	2.00
< 3,000 lbs	5.00	7.50	7.00
3,000-4,000 lbs	6.00	9.00	8.00
4,000-4,500 lbs	8.00	12.00	11.00
4,500-8,000 lbs	10.00	15.00	14.00
> 8,000 lbs	18.00	27.00	25.00