

Approved On: _____

Minutes of the House Committee on Taxation. The meeting was called to order by E. C. Rolfs, Chairman, at 9:00 a.m. on March 18, 1988 in room 519 South at the Capitol of the State of Kansas.

The following members were absent (excused):

Representatives Wunsch and Fuller

Committee staff present:

Tom Severn, Legislative Research
Chris Courtright, Legislative Research
Don Hayward, Reviser of Statutes
Millie Foose, Committee Secretary

Beverly Bradley, representing Kansas Association of Counties, ^{*}(Attachment 1) read testimony of Mr. Steven Wiechman who is a proponent of HB-3041 - AN ACT relating to property taxation; concerning the abatement, cancellation and striking of certain taxes from the tax rolls. Linda Jeffrey appeared in opposition to the bill ^{*}(Attachment 2) for Doug Martin, Shawnee County Counselor. Representative Sand appeared for the Local Government Committee and endorsed the bill.


HB-3011 - An Act concerning mill levies for Mental Health Centers was considered. Representative Ramirez, Dr. Solomon ^{*}(Attachment 3) and Paul Klotz appeared in favor of the bill. Representative Smith moved, second by Representative Reardon that HB-3011 be reported favorably. Motion carried.

HB-2807 - An Act concerning inheritance taxes was brought up for final action. Representative Leach moved, second by Representative Roe, that an amendment be adopted making the bill revenue neutral. Motion carried. Representative Leach moved, second by Representative Francisco, that HB-2807 as amended be reported favorably. Motion carried.

HB-2995 - An Act concerning the sales tax refund for purchase of certain business machinery was brought up for final action. Representative Gatlin moved, second by Representative Grotewiel, that a sunset be established at July 1, 1990. Motion carried. Representative Leach moved, second by Representative Pottorff, that HB-2995 as amended be reported favorably. Motion carried.

HB-2854 - An act authorizing special mill levies by USDs for capital improvements was brought up for final action. Representative Vancrum moved, second by Representative Snowbarger, to report the bill favorably. Representative Francisco moved, second by Representative Aylward, to amend the bill to allow transfers to the capital outlay fund. Substitute motion failed. Representative Leach moved, second by Representative Wagon, to table the bill. Motion carried.

The minutes of the previous meeting were approved. There being no further business, the meeting was adjourned.



Ed C. Rolfs, Chairman

Kansas Association of Counties

Serving Kansas Counties

HOUSE COMMITTEE ON TAXATION

March 18, 1988

HOUSE BILL 3041

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

On behalf of the Kansas Association of Counties, I want to express our appreciation for the opportunity to appear before you. I am Steven R. Wiechman, representing the Association.

HB 3041 was introduced at the request of the Association by the Committee On Local Government. In working with counties, we have inquired as to areas of concern of commissioners, treasurers and other county officers. During our association platform preparation, the issue was raised concerning old personal property tax liens being eliminated from records of the county. Counties do not have any statutory authority to remove those personal property liens that cannot be collected. For example, if a taxpayer has died with or without an estate, but not within the county or even the state, it is probated, closed and assets distributed, the tax is uncollectable. In spite of the contention of some attorneys, certain personal property taxes are subject to discharge in bankruptcy. It is my understanding that a representative of the Kansas Bar Association Bankruptcy Panel is present to address those concerns or questions on that issue.

The problem is simple, there is no way to remove uncollectable, dormant or discharged personal property tax liens

Attach 1

from county records. We are seeking that authority and a procedure for accomplishing this action. We are not, in any fashion, attempting to eliminate real property taxes. Those attach to the property and can be collected at the time of sale or transfer.

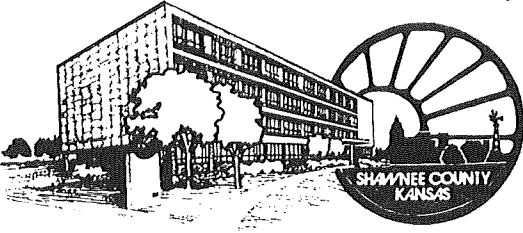
It is important to note that the proposed language contains discretionary language for a commission to act. Each county has a county attorney or county counselor to advise regarding the feasibility of such act. The mandatory provisions would rest in honoring a federal court's order of discharge.

Thank you for the opportunity to appear. We urge your favorable consideration and ask for passage of HB 3041. If there are any questions, I will be happy to respond.

Respectfully submitted,

STEVEN R. WIECHMAN
Kansas Association of Counties
General Counsel

*Linda Jeffrey will read
for Mr. Martin*
Shawnee County



Office of County Counselor

DOUGLAS F. MARTIN
County Counselor
JOSEPH W. ZIMA
First Asst. County Counselor
LINDA P. JEFFREY
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TESTIMONY OF DOUGLAS F. MARTIN, SHAWNEE COUNTY COUNSELOR

HOUSE BILL NO. 3041

HOUSE TAXATION COMMITTEE

I am here today to testify against this bill on behalf of the Shawnee County Commissioners. Under the present law, personal and real property taxes continue to be liens against real property in the county even after a bankruptcy. This is the main point of Kansas Attorney General Opinion No. 87-21. A copy of that opinion has been attached for your convenience.

Because real property taxes become a lien on the real property which generated the taxes, a discharge in bankruptcy should not affect such real property tax lien, because only the debtor is discharged, and not the particular taxes which are against pieces of property. Personal property taxes become a lien on real property that is owned by a taxpayer, but only after the personal property tax warrants are filed with the Clerk of the District Court.

Shawnee County is opposed to this bill for several reasons. First, all taxes should be listed as a priority in any bankruptcy proceeding, and there is absolutely no reason whatsoever for taxes to be discharged in a bankruptcy proceeding. Second, since both real and personal property taxes become a lien against real property owned by a taxpayer, no attempts ever have to ^{be} made to collect against the individual who was discharged in bankruptcy, only against the land itself. For better or worse, Shawnee County must collect these taxes at mortgage foreclosures and tax foreclosures. Very seldom are efforts made directly against individuals for the collection of these taxes. Third, taxes should be administrative in nature, and not discretionary. Once the legislature

Attach 2

TESTIMONY ON HOUSE BILL NO. 3041

March 18, 1988

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has established the tax policy of the state, local governments should administer the process, and not allow some properties to be discharged.

As the policy stands now, debtors have no encouragement to file for bankruptcy due to ad valorem property taxes. This bill would encourage more individuals and corporations to consider bankruptcy knowing that they would be able to avoid their ad valorem property tax obligations.

It is my opinion that the Federal Bankruptcy laws were never designed to discharge local government tax liens against real property. Some attorneys are of a different opinion. However, it is my hope that this Committee will not recommend this bill, because to do so would create the improper impression for those of us who are responsible for collecting ad valorem property taxes.

Thank you for the opportunity to testify before your committee. If can answer any questions I would be happy to make myself and my staff available at any time.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN
ATTORNEY GENERAL

February 5, 1987

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ATTORNEY GENERAL OPINION NO. 87- 21

Douglas F. Martin
Shawnee County Counselor
Shawnee County Courthouse, Room 203
200 E. 7th
Topeka, Kansas 66603-3922

Re: Taxation--Correction of Irregularities--Collection
of Judgments Subsequent to Taxpayer's Discharge in
Bankruptcy

Synopsis: Valid liens which are not otherwise avoidable
survive a discharge in bankruptcy and may be
executed as provided by law after the proceedings
in bankruptcy have come to an end. Judgments which
are not liens upon property of the estate may not
be enforced against the debtor subsequent to a
discharge in bankruptcy. Penalties and interest
owed on delinquent taxes are to be treated in the
same manner as the tax itself, unless punitive in
nature. Cited herein: K.S.A. 79-1703; 11 U.S.C.
§§101, 301, 302, 303, 362, 507, 523, 524, 944, 1328.

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Dear Mr. Martin:

As County Counselor for Shawnee County, Kansas, you request
our opinion regarding the effect of certain bankruptcy
proceedings on property tax judgments and liens.
Specifically, you ask what steps, if any, should be taken by
Shawnee County officials upon a final discharge in
bankruptcy with respect to property taxes, interest, penalties
and court costs that have been reduced to judgments.

We note initially that certain property taxes of individual debtors are not dischargeable in bankruptcy. 11 U.S.C. §§523(a)(1)(A) and 507(a)(7)(B). Additionally, under a Chapter 9 bankruptcy, a debtor is not discharged from any debt that is excepted from discharge by the plan or by the court order confirming the plan, 11 U.S.C. §944(c), and, generally speaking, the debts discharged by the court in a Chapter 13 bankruptcy have already been paid according to the plan, 11 U.S.C. §1328(a). This opinion will speak only to property taxes which are properly dischargeable. Tax claims which have become statutory or judicial liens, as those terms are defined in 11 U.S.C. §101(30) and (45), are secured interests to be disposed of by the bankruptcy court according to the Bankruptcy Code, 11 U.S.C. §§101 through 151326, and state law. See 9A Am. Jur. 2d Bankruptcy §§716,717 (1980); Palmer v. First National Bank of Kingman, 10 Kan. App. 2d 84, 88 (1984).

You question what, if any, actions should be taken by county officials with respect to taxes which, for one reason or another, have been discharged in bankruptcy. Section 524 of the Bankruptcy Code, 11 U.S.C. §524, provides in part as follows:

"(a) A discharge in a case under this title--

"(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, or 1328 of this title, whether or not discharge of such debt is waived;

"(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived. . . ."

This language is similar to that of the automatic stay of 11 U.S.C. §362(a) which prohibits any action to collect a debt after a petition is filed under §§301, 302 or 303 of the Bankruptcy Code. See 11 U.S.C. §362(c) for termination of stay.

Sections 771 et seq. of 9A Am. Jur. 2d Bankruptcy
discuss the purpose and effect of a discharge in bankruptcy:

"The power of Congress to prescribe regulations concerning discharge in bankruptcy, so long as they were not so grossly unreasonable as to be incompatible with fundamental law, was established early. In interpreting the statutes thus enacted by Congress, it was uniformly held that the right to discharge should be liberally construed; that it was not to be construed against the bankrupt; that it must be liberally construed in favor of the bankrupt at least where there was not intent to violate former 11 USCS §32; that, conversely, it must be construed strictly against one objecting to discharge; and that it must be liberally applied to achieve its primary purpose of giving debtors a new chance in life. [page 505].

.....
"According to the legislative history, 11 USCS §524(a) is intended to insure that once a debt is discharged, the debtor will not be pressured in any way to repay it. In effect, the discharge extinguishes the debt, and creditors may not attempt to avoid that. [page 511].

.....
"Case law under the 1898 Act indicated that despite the discharge in bankruptcy, the debt remained in existence after the discharge, although it was divested of its character as a personal obligation which was legally enforceable by a creditor. Thus, discharge neither destroyed the debt nor supplanted the moral obligation of the debtor to pay it. Rather, discharge merely served as a bar to the enforcement of a discharged debt by a legal proceeding. This included supplementary proceedings against the income of the

debtor. On the other hand, recent 1898 Act case authority is to the contrary, and this recent view seems more consistent with the 1978 Act's legislative history, discussed above. [pages 511, 512]." (Footnotes omitted.)

However, it is also stated in this publication that:

"Whatever else may happen to liens in a bankruptcy case, it was established under the 1898 Act that a lien is not affected by a discharge. It was held that a lien should be given effect after a bankrupt was discharged so as to give a judgment creditor a lien upon the proceeds from the sale of real estate to which the lien attached. (sic) and it was held that where tax liabilities secured by a tax lien were nondischargeable and, therefore, enforceable against the debtor individually and against his after-acquired assets despite his discharge, the Internal Revenue Service was entitled to retain its tax lien." 9A Am. Jur. 2d Bankruptcy §779 (1980).

In support of this proposition, the United States District Court, W.D. Wisconsin, has stated:

"It would be rather odd to bestow upon a docketed judgment the quality of a lien against real estate, but then to strip it of this quality whenever the judgment debtor petitions in bankruptcy, whether more or less than four months subsequent to the docketing of the judgment. Because bankrupts are frequently discharged in the bankruptcy proceedings at a time prior to the trustee's sale of the real estate and prior to the distribution of the proceeds of the sale, this oddity would arise with equal frequency unless the lien is given effect in the bankruptcy proceeding following the entry of the order discharging the bankrupt. This persuades me that the more reasonable course is to give the lien effect after the discharge

if the Wisconsin statutes permit it." In re Tillman Produce Co., Inc., 396 Fed. Supp. 500, 502 (W.D. Wis. 1975), aff'd, 538 F.2d 763 (7th Cir. 1976).

Also, the comment to §524 of the Bankruptcy Code states that "[s]ection 524(a)(2) clarifies that valid liens survive the discharge." 11 U.S.C. §524, comment.

In bankruptcy, existence and effect of liens on real estate are to be determined by state law. Kansas taxation statutes prohibit county officials from releasing, discharging, remitting or commuting any portion of taxes assessed or levied within their respective jurisdictions. K.S.A. 79-1703(a). Though this statute states in subsection (b) the procedure to be followed in cases involving a railroad in bankruptcy, it is silent as to the procedure to be followed when any other taxpayer files a bankruptcy petition. Attorney General Opinion No. 85-100 sheds some light on what can be done to collect taxes from a company that is in bankruptcy, though it is not dispositive of the issue currently before us, i.e. what is the effect of a discharge. Also of assistance is the Court of Appeals decision in Palmer v. First National Bank of Kingman, 10 Kan. App. 2d 84 (1984), though the case speaks primarily to taxes which were not discharged in the bankruptcy proceedings.

To bring these seemingly contradictory authorities into unison, it is our opinion that valid liens, which are not otherwise avoidable, survive a discharge in bankruptcy and may be executed as provided by law after the proceedings in bankruptcy have come to an end. Conversely, mere judgments which are not liens upon property of the estate may not be enforced subsequent to a discharge in bankruptcy. Other states have provisions by which a person discharged in bankruptcy may obtain a satisfaction of such a judgment from the court which entered it, thereby extinguishing the judgment. See Wis. Stat. §270.79 (1975). Kansas does not have such a provision. Thus, there appears to be no way in which to remove judgments from the records even though they cannot be legally enforced. Finally, the discharge of a debt of the debtor does not affect the liability of any other entity for such debt, except with regard to certain community claims. 9A Am. Jur. 2d Bankruptcy §782 (1980).

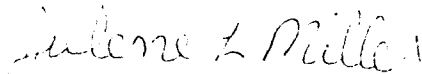
In conclusion, valid liens which are not otherwise avoidable survive a discharge in bankruptcy and may be executed as

to an end. Judgments which are not liens upon property of the estate may not be enforced against the debtor subsequent to a discharge in bankruptcy. Penalties and interest owed on delinquent taxes are to be treated in the same manner as the tax itself, unless punitive in nature.

Very truly yours,

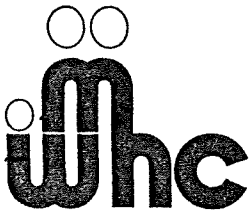


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Presentation to the House
Committee on Taxation concerning H.B. 3011
March 18, 1988
Steven J. Solomon, Ph.D.

The purpose of my presentation is to provide background information regarding H.B. 3011 and request your support for its adoption. H.B. 3011 amends two statutes that relate to county funding of mental health centers (K.S.A. 65-212 and K.S.A. 1987 Supp. 79-1947) and in no way alters the state's role in funding or monitoring such mental health clinics.

The impact of the proposed changes would be to clarify the existing relationship between a mental health clinic operating under K.S.A. 65-212 and the Board of County Commissioners in which it operates. Further, the changes would resolve potential confusion as to the Board of County Commissioners' prerogative in utilizing its taxing authority to support the functioning of a mental health clinic licensed by the state as a community mental health center.

H.B. 3011 is supported by the Association of Community Mental Health Centers of Kansas and the Board of County Commissioners of Wyandotte county.

Background

The Wyandot Mental Health Center, Inc. is a community mental health center licensed by the Department of Social and Rehabilitation Services of Kansas since the inception of the state's licensing authority. The Center is a private-not-profit corporation which was first incorporated as a Child Guidance Clinic in 1953. The Center is incorporated as a mental health clinic as outlined in K.S.A. 65-211 through 65-215. The Center has contracted annually with the Kansas City/Wyandotte County Health Department since 1957 to provide mental health services to all residents of Wyandotte County regardless of ability to pay. The Health Department is the direct recipient of County funding and contracts with the Center with those funds.



Presentation to the House
Committee on Taxation concerning H.B. 3011
March 18, 1988 Steven J. Solomon, Ph.D.

The programs of the Mental Health Center are clearly dependent on and responsive to the Wyandotte County Commissioners. In addition, however, the Center is perceived as a health care/social service agency that coordinates with other such organizations in the community. The Center has since its inception been a participating agency of the United Way. These roots and traditions are valued highly.

The Board of Directors for the Center and its Advisory Councils are broadly representative of the community. The County Commissioners support the functioning of the Center in its current corporate status and excellent communication exists between the Commissioners and Center Board and administration.

The main facility occupied by the Mental Health Center is a County-owned building. By virtue of a contract with the federal government, Wyandotte County allows the Center to utilize the facility without charge. Moreover, the County has begun to review future facility needs and is considering funding approaches to deal with these facility needs.

One question giving rise to the development of H.B. 3011 was to what extent the County could continue to participate in supporting facility costs. The Passage of H.B. 3011 would clarify this uncertainty and clearly permit such County participation.

It is our belief that statutory references to licensed community mental health centers have in the past omitted cross reference to K.S.A. 65-212. We observed this last during the 1987 legislative session when K.S.A. 75-3307B, a statute exempting licensed community mental health centers from sales tax, was passed. The statute references centers licensed under K.S.A. 19-4001 et. seq., but failed to cross reference K.S.A. 65-211 et. seq. We brought this matter to the attention of the Kansas Department of Revenue. Subsequently, there was an administrative determination exempting the Center from sales tax based on the consideration that all licensed mental health centers should be exempt.

We believe the legislation before you would clean up these possible confusions and potential unintended omissions. Moreover, H.B. 3011 would clarify with better precision the potential role of the Wyandotte County Board of Commissioners in supporting the licensed mental health center serving Wyandotte County.

We urge your support and positive action on H.B. 3011.