Approved March 1, 1988
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION.

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

11:00 a.m./p.m. on February 29, 1988 in room 519-S of the Capitol.

All members were present except:

Committee staff present:
Tom Severn, Research
Chris Courtwright, Research
Don Hayward, Revisor's Office
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:
Alan Alderson, KS. Business Aviation Coalition
Lucky DeFries, Atty. for Cessna & Beech Flying Clubs
Ken Lang, Cessna Flying Club
Mary Crofts, Flying Service Owner for Dodge & Garden City
Ben Neal,
Doug Martin, Shawnee County Counselor
Michael Burnham, Hot Air Balloon Company
Keith Farrar, Board of Tax Appeals
Melvin Current, Small Business Owner
Virginia Weatherford, Midwest Piper Sales

Chairman Kerr called the meeting to order and said the agenda would be to have hearings on Senate Bill 688.

SENATE BILL 688

Alan Alderson testified in support of S.B. 688. (Att. 1) He stated that the Kansas Business Aviation Coalition is a group of businesses that rely on aircraft use for their livlihood. He explained that it consists of fixed-base operators and others who rely on the lease or rental of their aircraft to others as part of their business. He stated that for several years, the businesses benefiting from the exemption were granted the exemptions routinely, but in 1985 and 1986, some counties and the Board of Tax Appeals began to take a different position regarding language of "exclusive use" determining if a rented aircraft is being used for business or pleasure. He stated that it is very difficult for an owner to have control over uses of a rented aircraft.

Lucky DeFries testified in support of S.B. 688. (Att. 2) He stated that he represented Cessna, Beech and Boeing Employees' Flying Clubs. He stated that in July of 1986, he obtained a ruling from the Court of Appeals that the flying clubs were entitled to the benefits of the business aircraft exemption. He stated that the case of Godfrey Aviation vs. Smith has caused serious confusion for the aircraft industry. He stated that originally, flying clubs enjoyed the exemption, but when given the opportunity to examine more closely, the Board determined that flying clubs were not entitled to the exemption. Mr. DeFries said that by focusing on the use by the lessee instead of the use by the owner of the aircraft, K.S.A. 79-201K has lost most of its original intent.

Ken Lang testified in support of S.B. 688. (Att. 3) He stated that the Cessna Employee Flying Club (CEFC) has enjoyed exemption and been able to offer aircraft rental at reasonable prices so that all employees have an opportunity to participate. He said that under the court's interpretation of K.S.A. 79 -201K, the organization's aircraft will most likely be returned to the tax rolls. This would create a $30,000 burden to CEFC and possibly put them out of business.

Mary Crofts testified. She stated that she started her business eleven years ago and she rents out several aircraft. She stated that she had enjoyed the exemption until 1987, and now finds it very difficult to prove that every aircraft rented is for business use only, since she has no control over the use of the aircraft being rented. She urged support of the bill.

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION,

room 519-S, Statehouse, at 11:00 a.m./p~~m~~. on February 29, 19 88

Ben Neal testified stating that he felt it was important to be able to understand exactly what the problem is concerning the "multiple use" test, which has caused much chaos. He felt that the Godfrey vs. Smith case had caused serious confusion and problems.

Doug Martin testified. (Att. 4,5,6 & 7) He drew attention to Att. 7 listing the number of aircraft in Shawnee County to be 190 on the tax rolls and 100 that are exempt.

He stated that he felt that if S.B. 688 were not passed, there would be somewhat of a lower number of aircraft exempt, but not a sizeable amount. He stated that Shawnee County has approximately 90% valuation of the aircraft not exempt.

Michael Burnham testified, stating that he owns a Hot Air Balloon Co. that gives rides for profit. He felt that his business dealt specifically in business purposes and therefore should be exempt. He stated that he had been denied exemption because it was felt that his company dealt in rides for pleasure also.

Keith Farrar stated that he had a problem with the court decision of Godfrey vs. Smith, and as it now stands, the Board of Tax Appeals will have to deny a lot of upcoming cases. He stated that he felt S.B. 688 would answer a lot of questions.
In response to a question, he stated that he didn't feel S.B. 688 would exempt a large number of aircraft that have not already been exempt since 1982. He stated that even though the owner has to apply for the exemption, he many times has no control over the rented aircraft and what it will be used for.

Melvin Current, small business owner of rental aircraft stated that if he were forced to pay taxes on his company's business, he would have serious difficulty maintinaing ownership.

Virginia Weatherford, Midwest Piper Sales of Great Bend stated that she felt there was extreme inconsistency in counties regarding aircraft taxation. Interpretations have proven to be different, causing serious problems.

Chairman Kerr stated that because of a lack of time S.B. 610 would have to be taken up later.

Senator Mulich made a motion to adopt minutes of Feb. 25th meeting. Sen. Allen seconded. Motion carried.

Meeting adjourned.

A & J
2-29-88

Visitor Sheet

1. Dana Fenell	Topeka	Budget
BILL PERDUE	TOPEKA	Ks Comm. SERVICES
[illegible]	[illegible]	[illegible]
BOB BRADLEY	Topeka	KS Assoc of Counties
Whitney B Damron	Topeka	McGill & Associates
[illegible]	Topeka	YMCA
Michael D Burton	Topeka	Adventures Unlimited
Kenneth Godfrey	Topeka	Ken Godfrey Aviation
Neil K Cutts	GARDEN CITY	CROTTS AIRCRAFT INC.
Mary Cutts	Dodge City	CROTTS Aircraft Service, Inc.
Smith	Topeka	McGill & Assoc
[illegible]	from Healy and	11 ~~junior~~ high school students
[illegible]	Overland Park	SUN.
Stu Entz	Topeka	
Melvin Current	Arkansas City, Ks.	Current Aircraft Inc.
JOE A. MORRIS	TOPEKA	KCSI
RICH DAME	HOISINGTON	BLE
Tom Whitaker	Topeka	Ks Motor Carriers Assn.
JANET STUBBS	Topeka	HBAK
Richard Funk	"	KANS
Ken Jaax	Wichita	Cessna Emp'ee Flying Club
Kirby Ortega	"	" "
M. L. Vaughn	"	" " "
Virginia Lee Weatherford	Great Bend, KS.	midwest piper sales of G.B. Inc.
Ed Weatherford	"	"
ALAN ALDERSON	TOPEKA	KANSAS BUSINESS AVIATION COALITION
BEN NEILL	Overland Park	Ks City Aviation Center
M. Havron	Topeka	Corp. Jet

ALDERSON, ALDERSON & MONTGOMERY
ATTORNEYS AT LAW
1610 SW TOPEKA AVENUE
P.O. BOX 237
TOPEKA, KANSAS 66612
(913) 232-0753

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON
STEVEN C. MONTGOMERY
JOHN E. JANDERA
JOSEPH M. WEILER

OF COUNSEL
C. DAVID NEWBERY
(913) 234-0195

MEMORANDUM

TO : MEMBERS OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE
FROM : ALAN F. ALDERSON, KANSAS BUSINESS AVIATION COALITION
RE : SENATE BILL NO. 688
DATE : FEBRUARY 29, 1988

The Kansas Business Aviation Coalition is a hastily-formed group of businesses who rely on aircraft use for their livelihood. It consists of fixed-base operators and others who rely on the lease or rental of their aircraft to others as an integral part of their business.

In 1982, this Legislature determined that the aircraft industry in this state was in need of aid. Nothing has changed to indicate the aircraft industry is not still in trouble, and aircraft production continues to drop. The Legislature responded with the enactment of K.S.A. 79-201k which provides an exemption from property taxes for " . . . all aircraft actually and regularly used exclusively in the conduct of a business or industry."

The stated purpose for the exemption, set forth in the statute, is as follows:

> "It is the purpose of this section to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of commerce within the state; to encourage the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain or increase the level of commerce within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by exempting aircraft used in

> business and industry, from imposition of the property tax or other ad valorem tax imposed by this state or its taxing subdivisions. Kansas has long been a leader in the manufacture and use of aircraft and the use of aircraft in business and industry is vital to the continued economic growth of the state."

From 1982 until recently, those who must invest a great deal in costly equipment and incur high operating costs to provide a service to the public and some demand for Kansas aircraft manufacturers, have enjoyed the benefit of the exemption. Given the substantial costs involved, the tax savings on the equipment can, in and of itself, spell the difference between positive and negative cash flow. Rest assured that aviation-related businesses are not flourishing.

For several years, the businesses who benefitted from the exemption were granted the exemption routinely. In 1985 or 1986, some counties and the Board of Tax Appeals began to take the position that the language of the exemption statute required scrutiny of the renters' uses of the aircraft to determine whether the statutory "exclusive use" requirement was being satisfied. The primary basis for this so-called "dual use" test was the case of In re Board of Johnson County Commissioners, 225 Kan. 517 (1979), which disqualified a hospital purposes exemption on the grounds that the lessor of the hospital equipment was engaged in a separate and distinct business unrelated to the purpose sought to be promoted by the exemption.

On December 17, 1987, the Kansas Court of Appeals decided the case of Kenneth Godfrey Aviation, Inc. v. Smith, 12 Kan. App. 2d 434 (1987), and review has since been denied by the Supreme Court. Approximately thirty other cases were awaiting the outcome of this case. The Court in this case decided that the "exclusive use" provision of K.S.A. 79-201k requires a

determination of business purpose with respect to those who use business aircraft--not limited to a determination of whether the owner of the aircraft has a business purpose.

The net effect of this decision may be that, not only will the fixed-base operators and charter services be unable to prove their exemption, but the commercial airlines are probably not exempt either under existing language. This exemption, with its broadly-stated purpose, may well be limited now to only the traditional "corporate jet." It will have a devastating effect on the commercials, charter services and fixed-base operators who have relied on this exemption to continue their operation. With the difficulty the City of Topeka, for example, has had in attracting air service, the potential for the imposition of property taxes could pose an insurmountable problem. This runs contrary to the stated purpose of the exemption and will inhibit and discourage the maintenance of aircraft by those who rent, lease, charter and provide flight instruction to the public.

It should be obvious that the economy of the State, the business climate and the aircraft industry are all promoted by the exemption of leased or rented aircraft. Ownership of an aircraft <u>by</u> a business unrelated to the aircraft industry was surely not intended to be the only criterion for exemption. In any event, those whose business consists of charter, flight instruction and aircraft rental have a business which should qualify for exemption as much as any other business.

While many aircraft owners who have more than one aircraft may be able to partially preserve their exemption by either limiting the use of certain aircraft to secondary business rentals, or by requiring renters to sign a

statement acknowledging an agreement to only use the aircraft for business purposes, the fact of the matter is that the renters' uses of aircraft is a matter over which the aircraft owner has little or no control. Neither should it have any bearing on whether the purpose of the exemption is being promoted.

Senate Bill No. 688 attempts to re-establish the exemption as promoting its original intended purpose by focusing on the owner's purposes as the only one which must be exclusively business related. We don't believe the original intent has been broadened in any way. Those who would be exempt under this bill will be those who were originally thought to be exempt and who were exempted for several years before the dual-use test was first applied.

Although the time between the Supreme Court's denial of review of the Godfrey case and today have not permitted any highly-organized effort on behalf of this bill, the number of businesses willing to support this effort continues to grow each day. On behalf of all of those businesses, I urge you to report Senate Bill No. 688 favorably.

I would be glad to answer any questions you may have.

LAW OFFICES
SCHROEDER, HEENEY, GROFF & COFFMAN
A PROFESSIONAL ASSOCIATION
SUITE 408 CAPITOL TOWER
400 SOUTHWEST EIGHTH AVENUE
TOPEKA, KANSAS
66603-3956

BARNEY J. HEENEY, JR., L.L.M.
J. R. GROFF, J.D.
H. HURST COFFMAN, J.D.
S. LUCKY DE FRIES, J.D.
KRISTINE K. SCHLAMAN, J.D.
MARGO E. BURSON, J.D.
RICHARD HARMON, J.D.

TELEPHONE 234-3461
AREA CODE 913

HAROLD R. SCHROEDER, J.D. (1986)
LEONARD H. AXE, S.J.D. (1975)

MEMORANDUM

To: Senate Assessment and Taxation Committee

From: S. Lucky DeFries, Counsel for
Beech Employees' Flying Club
Cessna Employees' Flying Club
Boeing Employees' Flying Club

Date: February 29, 1988

I appear today on behalf of the Cessna, Beech and Boeing Employees' Flying Clubs. In July of 1986, I would not have thought my appearance today would have been necessary. As counsel for the Beech Employees' Flying club, I had just been successful, along with counsel for the Cessna Employees' Flying club, in obtaining a ruling from the Court of Appeals that the flying clubs were entitled to the benefits of the business aircraft exemption. Unfortunately, the case of Godfrey Aviation v. Smith, decided by the Court of Appeals in December and which the Supreme Court declined to review in January, has injected a great deal of additional confusion into this area.

In the Godfrey case, the Court of Appeals cited their decision in Cessna and Beech, but apparently believed they could distinguish Godfrey from those decisions. However, since the Court of Appeals determined that non-business use by Godfrey lessees was a disqualifying use under K.S.A. 79-201K, we believe

this decision to be diametrically opposed to the decisions in Beech and Cessna. The Board of Tax Appeals apparently agrees since in two orders issued after the Godfrey decision became final, the Board denied Beech Employees' Flying Club exemption applications for newly acquired aircraft. Last week, I filed motions for rehearing in those cases, which represents the first step in relitigating the same issues decided by the Court of Appeals in our previous cases. Consequently, even though the Court of Appeals found Beech and Cessna to be exempt and cited those previous decisions in Godfrey without overturning them, Beech finds itself back in front of the Board, with the other flying clubs similarly at risk.

The confusion caused by the Godfrey decision epitomizes what we have encountered in attempting to construe K.S.A. 79-201K ever since it was passed. Originally, flying clubs enjoyed the exemption. Then when given the opportunity to scrutinize the situation more closely, the Board determined that flying clubs were not entitled to the exemption. However, during the time we were litigating the flying club cases, the Board consistently held that fixed base operators, charter services, and commercial airlines qualified for the exemption. Then, perhaps in part because of a perception that the Court of Appeals had not

addressed all of the relevant issues in the Beech and Cessna cases, the Board determined that fixed base operators were not entitled to the exemption. The Board did still believe that charter services and commercial airlines were entitled to the exemption despite some concerns regarding how their uses could be distinguished from those encountered with the fixed base operators. Now, in the aftermath of Godfrey, it is my opinion and that of many others that flying clubs, charter services, and commercial airlines are at risk in addition to the fixed base operators.

Suffice it to say that those who can qualify for the exemption after Godfrey, will represent a fraction of those that originally qualified following the enactment of K.S.A. 79-201K. Senate Bill 688 does not represent an attempt to expand the scope of K.S.A. 79-201K. We are merely hoping to preserve the exemption for those who have enjoyed it for many years and assure that what the Legislature originally intended has not slowly evaporated.

The statement of purpose which accompanies K.S.A. 79-201K clearly indicates that the exemption was originally intended to promote and encourage the expansion, relocation, or retention of business and industry by exempting aircraft used in business and

industry. By focusing on the use by the lessee instead of the use by the owner of the aircraft, which we believe the Court of Appeals did in the Cessna and Beech cases, we believe that K.S.A. 79-201K has lost most of the vitality which it once enjoyed.

In our opinion, by focusing on the owners and their reasons for owning the aircraft, Senate Bill 688 is clarifying the original intent of the Legislature and the standard which should have been used in construing K.S.A. 79-201K.

Finally, to assure that the flying clubs continue to enjoy the exemption which the Court of Appeals said they were entitled to in 1986 and which we believe they still enjoy today, we would urge this committee to report Senate Bill 688 favorably.

Respectfully submitted,

S. LUCKY DeFRIES

MR. CHAIRMAN AND COMMITTEE MEMBERS. MY NAME IS KEN LANG AND I APPEAR BEFORE YOU TODAY ON BEHALF OF THE CESSNA EMPLOYEE'S FLYING CLUB TO SPEAK IN SUPPORT OF SENATE BILL NO. 688, A PROPOSAL TO AMEND K.S.A. 79-201k DEALING WITH THE EXEMPTION OF BUSINESS AIRCRAFT FROM PROPERTY OR AD VALOREM TAX.

PERMIT ME, IF YOU WILL, TO BRIEFLY OUTLINE THE HISTORY OF OUR FLYING CLUB, IT'S SIGNIFICANCE TO THE AVIATION INDUSTRY IN WICHITA AND KANSAS COMMERCE, AND THE ADVERSE IMPACT WHICH THE CURRENT K.S.A. 70-201k WILL HAVE UNLESS AMENDED BY SENATE BILL NO. 688.

THE CESSNA EMPLOYEES' FLYING CLUB (CEFC) WAS ORGANIZED IN 1946 BY EMPLOYEES OF THE CESSNA AIRCRAFT COMPANY TO FOSTER AND PROMOTE INTEREST IN GENERAL AVIATION AND GENERAL AVIATION PRODUCTS, i.e. THE PLANES THESE PEOPLE WERE BUILDING IN WICHITA FOR SALE THROUGHOUT THE U.S. & WORLD. SENIOR MANAGEMENT PLACED THEIR FULL SUPPORT BEHIND THE EFFORTS OF THESE INDIVIDUALS AND PROVIDED THEM WITH THEIR FIRST AIRCRAFT. IN THE FORTY-ONE PLUS YEARS WHICH HAVE FOLLOWED, THE COMPANY HAS CONTINUED TO SUPPORT CEFC AND ITS OBJECTIVES BELIEVING THAT THE EMPLOYEE WHO UNDERSTANDS AND ACTIVELY ENGAGES IN AVIATION IS A BETTER PRODUCER OF THE PRODUCT. HE (THE EMPLOYEE) ALSO PROMOTES HIS PRODUCT WHEN HE OPERATES HIS AIRCRAFT TO REMOTE LOCATIONS WITHIN AND OUTSIDE OF KANSAS.

THROUGHOUT THE YEARS SINCE THE CLUB'S INCEPTION, CEFC HAS PROVIDED MANY INDIVIDUALS WITH THE OPPORTUNITY TO LEARN TO FLY, REFINE FLYING SKILLS, AND BECOME PROMOTERS OF A VALUABLE KANSAS PRODUCT, GENERAL AVIATION AIRCRAFT. NOT THE LEAST AMONG SUCH INDIVIDUALS HAS BEEN AIR FORCE GENERAL AND ASTRONAUT, JOE ENGELS, WHO FIRST SOLOED AS A MEMBER OF THE CLUB. THE PROMOTIONS OF SUCH KANSAS INDUSTRY HAS BEEN POSSIBLE

BECAUSE CEFC HAS BEEN ABLE TO OFFER AIRCRAFT RENTAL AT REASONABLE PRICES SO THAT ALL EMPLOYEES HAVE THE OPPORTUNITY TO PARTICIPATE.

YOU ARE ALL AWARE OF THE DEPRESSED ECONOMIC SITUATION WHICH HAS BESET THE SMALL AIRCRAFT INDUSTRY IN RECENT YEARS. KANSAS HAS PERHAPS FELT THE IMPACT OF THAT SITUATION MORE THAN ANY STATE. CESSNA NO LONGER HAS 16,000 EMPLOYEES TO SUPPORT AND PARTICIPATE IN IT'S FLYING CLUB. WE NOW DRAW FROM A POOL OF BARELY 3,000 WORKERS. WE HAVE BEEN AIDED TREMENDOUSLY BY HAVING ENJOYED OWNING AIRCRAFT WHICH ARE EXEMPT FROM TAXATION; AND HAVE BEEN ABLE TO REMAIN IN EXISTANCE, "PAYING OUR OWN WAY", AND KEEPING RATES AT A LEVEL WHERE USAGE HAS BEEN GOOD AND AFFORDABLE.

THE RECENT DECISION FROM THE KANSAS COURT OF APPEALS IN GODFREY AVIATION v. SMITH, DOC. NO 60920, MAKES THE FUTURE OF CEFC DOUBTFUL. UNDER THE COURT'S INTERPRETATION OF 79-201k, OUR AIRCRAFT, PREVIOUSLY EXEMPT, WILL LIKELY BE RETURNED TO THE TAX ROLLS. WE DO NOT BELIEVE THIS TO BE THE INTENDED RESULT OF THE KANSAS LEGISLATURE IN ENACTING K.S.A. 79-201k AND CREATING THE BUSINESS AIRCRAFT EXEMPTION. UNLESS THAT STATUE IS CLARIFIED, AS SENATE BILL NO. 688 PROPOSES, IT WILL CONTINUE TO BE LEFT TO THE COURTS TO DECIDE WHAT THE LEGISLATURE DID INTEND. WE DO NOT BELIEVE THE INTENT WAS TO IMPOSE UPON CEFC A $30,000 BURDEN WHICH COULD CAUSE AN INCREASE OF UP TO 40% IN RENTAL RATES, DIMISHED USAGE, AND POSSIBLY AN END TO A FLYING CLUB WHICH HAS PROMOTED KANSAS COMMERCE FOR 42 YEARS.

YOUR SUPPOORT AND ADOPTION OF SENATE BILL NO. 688 CAN AND WILL PREVENT THIS. IT CLARIFIES THE INTENT OF THE EXISTING STATUE, AND WILL REMOVE SPECULATION ABOUT ITS INTENT FROM THE COURTS.

I URGE YOUR SUPPORT ON BEHALF OF MY CLUB AS ONE OF IT'S MEMBERS, AND AN EMPLOYEE OF CESSNA AIRCRAFT.

THANK YOU.

No. 86-60290-A

IN THE COURT OF APPEALS
OF THE STATE OF KANSAS

KENNETH GODFREY AVIATION, INC.,
Petitioner/Appellee,

vs.

GARY SMITH, SHAWNEE COUNTY APPRAISER,
Respondent/Appellant.

and

WILLIAM H. SMITH,
Petitioner/Appellee,

vs.

GARY SMITH, SHAWNEE COUNTY APPRAISER,
Respondent/Appellant.

BRIEF OF APPELLANT

Appeal from the District Court
of Shawnee County, Kansas
Division No. 6
The Honorable Terry L. Bullock, Judge.
District Court Case Nos. 86-CV-348 and 86-CV-503

Douglas F. Martin
Shawnee County Counselor
Shawnee County Courthouse
200 East 7th Street, Room 203
Topeka, Kansas 66603
(913) 295-4042
Attorney for Appellant

A & T 2/29/88

Att. 4

TABLE OF CONTENTS

I. Brief Statement of the Nature of the Case.

This is an ad valorem tax exemption matter. Petitioners Kenneth Godfrey Aviation, Inc. and William H. Smith, hereinafter referred to as "Petitioners", applied for exemptions from ad valorem taxation as they claimed their aircraft were actually and regularly used exclusively in the conduct of a business or industry under the provisions of K.S.A. 79-201k. The Kansas Board of Tax Appeals, hereinafter referred to as "BOTA", denied the exemptions and after timely appeal to Kansas District Court by Petitioners, the decision was reversed. Appeal is now brought to the Kansas Court of Appeals from the District Court Orders dated November 7, 1986 and December 8, 1986, to reverse the District Court Orders and confirm the original orders of the BOTA.

II. Brief Statement of the Issues to be Decided on Appeal.

Are all aircraft owned by Petitioners actually and regularly used exclusively in the conduct of a business or industry, and accordingly eligible for the tax exemption of K.S.A. 79-201k? {In particular, is the use made by renters (lessees) of the aircraft to be

considered in determining the exclusive nature of the use}?

III. Factual Statement of the Case.

1. Petitioners own aircraft which they rent to the general public (either directly, as in the case of Petitioner Godfrey, or indirectly as in the case of William H. Smith), and accordingly, Petitioners are in the business of leasing such aircraft. (BOTA Order p. 1 at 86-CV-348 ROA Vol. 1, p. 56; BOTA Order p. 1 at 86-CV-503 ROA Vol. 1, p. 76).

2. Aircraft owned by both Petitioners are put to the same use. (86-CV-503 ROA Vol. 1, Transcripts before BOTA p. 3; 86-CV-503 ROA Vol. 2, p. 24-A).

3. The aircraft are rented to the general flying public for use by the renter for whatever purposes the renter chooses, be it business or personal. Such personal uses included use as a personal benefit by employees and use for flights to visit mothers. (BOTA Order p. 1 at 86-CV-348 ROA Vol. 1, p. 56; 86-CV-348 ROA Vol. 1, Transcripts before BOTA, p. 6).

4. Petitioners do not limit the uses made by lessees of the aircraft to business uses. (BOTA Order p. 1 at 86-CV-348 ROA Vol. 1, p. 56).

IV. Arguments and Authorities.

1. Exclusive Use Test Applies to Use by Lessees, Not Owners Alone.

The case of In re Board of Johnson County Comm'rs, 225 Kan. 517, 592 P.2d 875 (1979), is one of the latest authorities examining the concept of "simultaneous use" as it applies to exclusive use for tax exemptions. In Johnson, the Court held that "(t)he renting by the lessor and the physical use by the lessee constitute simultaneous uses of the property and when an owner leases his property to another, the lessee cannot be said to be the only one using the property." Id. at 880. (Emphasis added). In Johnson, the Court was considering a tax exemption for hospital facilities and equipment under K.S.A. 79-201b which requires "exclusive use" as does K.S.A. 79-201k.

The Johnson Court noted that "ownership is not a controlling factor in determining if property is exempt." Johnson at 520. Yet the District Court's Orders in this matter use ownership as the primary determining factor in its test, for the District Court itself limited its examination to the uses made by the owners, and not the lessees. Ownership was, inappropriately, the first test of the District Court.

For additional authority showing that ownership is not the test of "exclusive use", see generally, Mount Hope Cemetery Co. v. City of Topeka, 190 Kan. 702, 378 P.2d 30 (1963); Topeka Presbyterian Manor v. Board of County Commissioners, 195 Kan. 90, 402 P.2d 802 (1965). The Johnson Court clearly recognized the importance of considering lessors' and lessees' use of property.

The Johnson Court cited the case of Stahl v. Kansas Educational Association of the Methodist Episcopal Church, 54 Kan. 542, 38 P. 796 (1895), where practically the same facts were before the Kansas Supreme Court as are before this Court. In Stahl, property owned by a tax-exempt educational institution was leased to a tenant who paid rent for the house. Justice Brewer, speaking for the Court, stated that "(w)hen its real estate is rented to a tenant, or its funds invested in other property for profit, or loaned at interest, the property thus rented or invested or loaned will be liable for taxation, as much as any other property that is rented or invested or loaned, no matter in whose hands it might be." Id. at 549. (Emphasis added).

The exemption in Stahl was not granted because there was not a non-exempt use being made of the property by the lessees.

Exclusive use requires that the use be "only, solely and purely for the purposes stated, and without admission to participation in any other use." Seventh Day Adventist v. Board of County Commissioners, 211 Kan. 683, 508 P.2d 911 (1973). In Seventh Day Adventist, the Court examined several different types of property which the taxpayer claimed qualified for an educational exemption. The Court determined that farmland, rented commercial property, and houses rented to teachers specifically engaged in education did not qualify for an educational exemption. A very early Kansas case cited in Seventh Day Adventist, and thus reconfirmed is St. Mary's College v. Crowl, Treasurer, 10 Kan. 442 (1872). Id at 691.

The Court in Seventh Day Adventist cited St. Mary's directly where a long discussion pointed out the errors that would follow if a narrow interpretation of the term "exclusive" were not applied.

> ". . . If the employment of Indians on a farm, and teaching them how to cultivate it, would exempt all the cultivated land of such farm from taxation . . ., then every farmer in the state might obtain an Indian (or indeed he might obtain any other person,) and commence teaching him agriculture, and thereby exempt all his property from the burdens of taxation. And also, by analogy, every blacksmith, or other mechanic might obtain an

> apprentice and teach him his trade, and thereby exempt his shop and tools from a like burden. And also, every householder might teach his own children their alphabet, etc., and thereby relieve his homestead from the burdens of taxation, for his homestead would then of course be used partially for purposes of education." (p. 452). Seventh Day Adventist, at 691.

In a like manner, any corporation set up to purchase a single aircraft could claim an exemption regardless of the use made by those renting the aircraft, even if the only renter of the aircraft just happened to be the sole shareholder and director of the corporation. Of course there are a myriad of methods to avail ones self of the benefits of K.S.A. 79-201k under Petitioners' arguments such as placing the aircraft in the name of one's spouse or child, setting that person up in business, and thus permitting the pilot to fly his tax-exempt aircraft on pleasure trips to the ends of the earth. All in the name of business.

The Kansas Legislature did not enact K.S.A. 79-201k to enable every person or corporation purchasing an aircraft to set up a business of leasing or renting the aircraft to others, including themselves, and accordingly have their aircraft become tax-exempt. To accept Petitioners' theory of "exclusive use" under K.S.A. 79-201k would render meaningless the requirement

that only "aircraft actually and regularly used exclusively in the conduct of a business or industry" are exempt, and allow any aircraft leased by a business to the public an exemption. As will be discussed later in this brief, the Legislature would not enact such careful and restrictive language to have it interpreted away by requiring only the corporate business lessor be in "business".

Under Petitioners' theory of K.S.A. 79-201k, any owner would truly have to volunteer to pay property taxes on an aircraft.

Several other Kansas Supreme Court cases have addressed circumstances where the use of property by those other than the owners disallowed the exemptions.

In Vail v. Beach, 10 Kan. 214 (1872), also cited in Seventh Day Adventist, a religious group that provided a house to its bishop as his residence could not claim a tax exemption on the house since its ultimate use was as a personal residence. There being no exemption for parsonages, the rule of taxation prevailed as to Bishop Vail's residence since his use was clearly personal.

Another religious exemption case is Kansas City District Advisory Board, Church of the Nazarene v.

Board of County Commissioners of Johnson County, 5 Kan.App.2d 538, 620 P.2d 344 (1980). In Nazarene, since the camp and the caretaker's residence was not always used for religious purposes, the exemptions were denied. The use was found to be personal and recreational.

The Kansas Supreme Court had the occasion to consider "exclusive use" in the context of educational purposes in Sigma Alpha Epsilon Frat. Ass'n v. Board of Commissioners, 207 Kan. 514, 485 P.2d 1297 (1971). As in this case, the property in question was rented/leased to a group, however, in Sigma it was claimed that since the renters were using the property solely for educational purposes, there would be an educational tax exemption. The Court used the same reasoning that it had in other "religious use" cases. The uses made by both lessor and lessee were considered, and no exemption was permitted since the lessor's use was not educational.

Petitioners claim on page 8 of their trial brief that "(t)he very activity which disqualified the property for exemption under K.S.A. 79-201b is a necessary element for exemption under K.S.A. 79-201k." While some of the use claimed by Petitioners might very well

be for business purposes, there remains unaccounted for the extensive use made by the renters of these aircraft. In the Vail case, the exemption was disallowed because of the personal use by the Bishop. In the Nazarene case, the exemption was disallowed because of the personal and recreational use of the property. Thus, those cases that the Kansas Supreme Court disallowed exemptions were not limited to findings that the improper use was "business" as Petitioners would seem to have us believe. There are uses other than business uses that would disallow Petitioners' exemptions - such as personal, recreational, or even educational.

Perhaps the most insightful Kansas Supreme Court decision in this area is the case of Farmers Co-op v. Kansas Bd. of Tax Appeals, 236 Kan. 632, 694 P.2d 462 (1985).

In Farmers Co-op, the Court reminds us that "(w)hen an owner leases his property to another, he cannot be the one using the property." Id at 637-38. (Emphasis added).

As in Farmers Co-op, the lessees renting Petitioners' aircraft are using these aircraft separately and apart from the use of the owners.

Farmers Co-op is most persuasive in this matter since it is 1) the most recent ruling by the Kansas Supreme Court, 2) a statutory exemption matter, and 3) a matter dealing with "business-type" exemptions.

The long line of cases, commencing with St. Mary's and Vail in 1872 on down to the modern cases such as Farmers Co-op, Johnson, Nazarene, Sigma, and Seventh Day Adventist show that the Kansas Supreme Court has consistently and regularly required all uses be shown by the taxpayer as being within the exemption, including the immediate uses of lessees.

2. Statutory Construction of "Exclusive Use" Requires Examination of Lessees' Use.

Throughout the history of the Kansas Supreme Court's interpretation of the phrase "used exclusively", the Court has carefully examined the ultimate end uses made by lessees, renters, and users of property for which tax exemptions are claimed. Never before has an Appellate Court in Kansas considered the phrase "used exclusively" as it appears in K.S.A. 79-201k.

The strict standards that the Court has required with regard to religious, educational, charitable, farming, and hospital exemptions should be equally applied with regard to the business exemption in K.S.A.

79-201k. Accordingly, each end use made of Petitioners' property must be shown to be for a business purpose. This they have failed to do.

Petitioners' reference to the former farm machinery statute, K.S.A. 79-342 on page 9 of their trial brief, is inappropriate in that the words used in that statute merely required "use" and not "exclusive use". The Legislature has not taken steps to require examination of both lessee and lessor use under religious, educational, charitable, farming, and hospital exemptions, yet the Courts have regularly scrutinized those exemptions under the "dual-use" requirements set forth in Johnson and Farmers Co-op since the Legislature has required "exclusive use" for those exemptions.

Where statutes are similar in form and substance and are intended for substantially the same purpose, decisions construing one are material in determining rights and liabilities under the other. See, Shapiro v. Kansas Public Emp. Retirement System, 211 Kan. 452, 507 P.2d 281 (1973). "Used exclusively" appears in Article 11, Section 1 of the Kansas Constitution and is the basis for the narrow and strict interpretation of the religious, educational, and other similar exemptions found therein. This phrase also regularly

appears in the same statutory exemptions provided by the Legislature.

The Kansas Supreme Court has stated that "identical words or terms used in different statutes on a specific subject are interpreted to have the same meaning in the absence of anything in the context to indicate that a different meaning was intended . . . ." Williams v. Board of Education, 198 Kan. 115, 124, 422 P.2d 874, 882 (1967). Petitioners have shown no reason that this Court should interpret the phrase "used exclusively" in any way other than it has before been interpreted by the Kansas Supreme Court. The Kansas Legislature intentionally chose the words "used" as well as "exclusively" in limiting the exemption under K.S.A. 79-201k.

There is a well known rule of statutory construction that the Legislature does not enact useless or meaningless legislation. See, City of Olathe v. Board of Zoning Appeals, 10 Kan.App.2d 218, 696 P.2d 409 (1985). There is a less well known rule that is more helpful in the construction of the phrase "used exclusively" and that is the rule that a court will not presume that a legislature used a meaningless word in a statute. See, In re Dederick, 91 F.2d 646 (C.C.A. Kan.

C. To examine only the uses made by owners and not lessees would result in violation of the U.S. and Kansas Constitutions.

Respectfully submitted,

DOUGLAS F. MARTIN
Shawnee County Counselor
Shawnee County Courthouse
200 E. 7th, Room 203
Topeka, Kansas 66603
(913) 295-4042
Attorney for Respondent

CERTIFICATE OF SERVICE

The undersigned does hereby certify that five true and correct copies of Respondent's Brief were deposited in the United States Mail, postage prepaid, on this 19th day of February, 1987, addressed to the following:

Alan F. Alderson
Alderson, Alderson & Montgomery
1610 S. W. Topeka Boulevard
Topeka, Kansas 66612

Douglas F. Martin

DOUGLAS F. MARTIN
Shawnee County Counselor

KENNETH GODFREY AVIATION, INC., Appellee,

v.

Gary SMITH, Shawnee County Appraiser, Appellant.

and

William H. SMITH, Appellee,

v.

Gary SMITH, Shawnee County Appraiser, Appellant.

No. 60290.

Court of Appeals of Kansas.

Dec. 17, 1987.

Board of Tax Appeals denied applications of owners of airplanes rented by air service business to general flying public for exemption from ad valorem taxes on airplanes, and airplane owners petitioned for judicial review. After cases were consolidated, the Shawnee District Court, Terry L. Bullock, J., reversed the BOTA's decision and held airplanes exempt from ad valorem taxes on ground they were used exclusively in conduct of business. County appraiser appealed. The Court of Appeals, Briscoe, J., held that for purposes of statute exempting from property taxes aircraft actually and regularly used exclusively in conduct of business or industry, airplanes rented by business to general flying public for use by renter for any purpose, business or personal, were not used exclusively for business, as some renters used airplanes for personal endeavors, although renters' use of airplanes for personal endeavors furthered rental business.

Reversed.

1. Statutes ⇐219(10)

Interpretation of statute is question of law, and although Board of Tax Appeals' interpretation of tax exemption statute at issue should be given consideration and weight, final construction of statute rested with the Court of Appeals.

2. Taxation ⇐201(2)

In questions involving tax exemptions, taxation is the rule and exemption is the exception; all doubts are to be resolved against exemption and in favor of taxation.

3. Taxation ⇐203, 201(2)

Statutory provisions exempting property from taxation are to be strictly construed, and burden of establishing exemption from taxation is on the one claiming it.

4. Statutes ⇐223.1

Where statutes are similar in form and substance and are intended for substantially the same purposes, decisions construing one are material in determining rights and liabilities under the other.

5. Taxation ⇐211

Question under tax exemption statute containing exclusive use language is not whether property is used partly, or even largely, for purposes stated in exemption provisions, but whether property is used exclusively for those purposes; phrase "used exclusively" in tax exemption statutes means that use made of the property sought to be exempted from taxation must be use only, solely, and purely for purposes stated as exempt, without participation in any other use.

6. Taxation ⇐211

In determining whether property is exempt under tax exemption statute containing exclusive use language, Court of Appeals must consider not only use of property being made by the one claiming the exemption, but also all uses being made of the property.

7. Taxation ⇐211

Under statute exempting from property taxes all aircraft actually and regularly used exclusively in conduct of business or industry, airplanes used by air service business that rented and chartered airplanes to general flying public for use by render for any purpose, business or personal, were not tax exempt; renters' use of aircraft for personal endeavors made airplanes ineligible for tax exemption as they were not used exclusively for business, although renters' use of airplanes for personal endeavors furthered aircraft rental business. K.S.A. 79-201k.

Syllabus by the Court

1. In questions involving tax exemptions, taxation is the rule and exemption is the exception. All doubts are to be resolved against exemption and in favor of taxation. Statutory provisions exempting property from taxation are to be strictly construed and the burden of establishing exemption from taxation is on the one claiming it.

2. When statutes are similar in form and substance and are intended for substantially the same purposes, decisions construing one are material in determining the rights and liabilities under the other.

3. The phrase "used exclusively" in tax exemption statutes means that the use made of the property sought to be exempted from taxation must be used only, solely, and purely for the purposes stated, and without participation in any other use.

4. Under the facts of this case, it is held that, although the renters' use of the airplanes for personal endeavors furthers a business and thus the purpose of K.S.A. 79-201k, we are obligated under the "exclusive use" language of the statute to consider the renters' personal use as a disqualifying use under the statute.

Douglas F. Martin, Co. Counselor, Topeka, for appellant.

Alan F. Alderson of Alderson, Alderson & Montgomery, Topeka, for appellees.

Before DAVIS, P.J., and BRISCOE and SIX, JJ.

BRISCOE, Judge:

This is an appeal by the Shawnee County Appraiser from the district court's ruling that the airplanes owned by Kenneth Godfrey Aviation, Inc., and William H. Smith were exempt from ad valorem taxes under K.S.A. 79-201k.

Godfrey Aviation is an air service business with a fleet of eight airplanes. The company rents and charters the airplanes to the general flying public for use by the renter for whatever purpose, be it business or personal.

William H. Smith owns one airplane which he leases to Godfrey Aviation, which it in turn rents to the general public. Godfrey Aviation earns a management fee from Smith and Smith receives a portion of the rental fees as income. Smith, a psychologist, also uses his airplane for business trips but he does not use it for personal trips.

The Board of Tax Appeals (BOTA) denied the applications of Godfrey Aviation and Smith for exemption from ad valorem taxes on their airplanes. Their motions for rehearing were also denied and they timely filed petitions for judicial review in the district court. Prior to the district court's ruling, the cases were consolidated. The district court reversed the BOTA's decision and held the airplanes exempt from ad valorem tax under K.S.A. 79-201k because they were used exclusively in the conduct of business.

The sole issue presented by this appeal is whether the owners' airplanes were used exclusively in the conduct of business, thereby entitling them to exemption from ad valorem tax under K.S.A. 79-201k.

K.S.A. 79-201k provides:

"(a) It is the purpose of this section to promote, stimulate and develop the general welfare, economic development and prosperity of the state of Kansas by fostering the growth of commerce within the state; to encourage the location of new business and industry in this state and the expansion, relocation or retention of existing business and industry when so doing will help maintain or increase the level of commerce within the state; and to promote the economic stability of the state by maintaining and providing employment opportunities, thus promoting the general welfare of the citizens of this state, by exempting aircraft used in business and industry, from imposition of the property tax or other ad valorem tax imposed by this state or its taxing subdivisions. Kansas has long been a leader in the manufacture and use of aircraft

and the use of aircraft in business and industry is vital to the continued economic growth of the state.

"(b) *The following described property, to the extent herein specified, is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:*

"*First.* For all taxable years commencing after December 31, 1982, *all aircraft actually and regularly used exclusively in the conduct of a business or industry.*" Emphasis added.

Godfrey Aviation and Smith used their airplanes exclusively in the conduct of business. The only question is whether the renters' use of the airplanes for non-business purposes is to be considered in determining the exclusive nature of the use. The County claims that, because renters used the airplanes for non-business purposes, the airplanes were not being used exclusively in a business and thus did not qualify for exempt status under K.S.A. 79-201k. Godfrey Aviation and Smith claim their use of the airplanes alone is determinative of the right to an exemption.

[1] In the present case, the facts are not disputed. The only question is one of statutory construction. The interpretation of a statute is a question of law and, although the BOTA's interpretation of the statute in question should be given consideration and weight, the final construction of a statute rests with this court. *In re Tax Appeal of Cessna Employees' Flying Club*, 11 Kan.App.2d 378, 379, 721 P.2d 298 (1986).

[2, 3] In questions involving tax exemptions, several rules of statutory construction are applicable. Taxation is the rule, and exemption is the exception. All doubts are to be resolved against exemption and in favor of taxation. Statutory provisions exempting property from taxation are to be strictly construed and the burden of establishing exemption from taxation is on the one claiming it. *T-Bone Feeders, Inc. v. Martin*, 236 Kan. 641, 645-46, 693 P.2d 1187 (1985); *Cessna*, 11 Kan.App.2d at 380, 721 P.2d 298.

The owners contend that *Cessna* is controlling. We disagree. In that case, Cessna owned nine airplanes which it rented to members for private flying. The BOTA refused to declare such airplanes tax exempt under K.S.A. 79-201k because Cessna had failed to establish that it was an established business. Specifically, the BOTA concluded that, because of Cessna's lack of profit-making motive, Cessna's ownership of the airplanes did not constitute a business. The sole question on appeal was whether Cessna's activities constituted a business which would entitle it to fall within the exemption in 79-201k. The paragraph including the statement of the issue reads as follows:

> "In this case the facts are not disputed. Both sides agree that Cessna owns planes, services and maintains those planes, and rents them to its members on an hourly basis. There is no dispute over what Cessna does—the question is solely whether what Cessna does is a 'business' which would entitle it to fall within the statutory interpretation. [Citation omitted.]" 11 Kan.App. 2d at 379, 721 P.2d 298.

The only issue decided in *Cessna* was whether the lessor's nonprofit organization was a business under K.S.A. 79-201k. Whether a renter's private use of an airplane would prohibit a business from exempting its airplanes from ad valorem taxation was not addressed.

[4, 5] As *Cessna* is not controlling, the issue presented is one of first impression. We are not, however, without any guidance from prior case law concerning this issue. Tax exemption statutes containing language similar to K.S.A. 79-201k have been interpreted by the Kansas courts. Where statutes are similar in form and substance and are intended for substantially the same purposes, decisions construing one are material in determining the rights and liabilities under the other. *Shapiro v. Kansas Public Employees Retirement System*, 211 Kan. 452, 457, 507 P.2d 281 (1973). In interpreting other tax exemption statutes, the Kansas Supreme Court has held ownership is not the controlling factor; "exclusive use" is the test. *In re Board of Johnson County Comm'rs*, 225 Kan. 517, 520, 592 P.2d 875 (1979). Furthermore, the question is not whether property is used partly or even largely for the purposes stated in the exemption provisions, but whether the property is used exclusively for those purposes. *In re Application of Int'l Bhd. of Boilermakers*, 242 Kan. —, — P.2d —— (1987); *T-Bone Feeders*, 236 Kan. at 646, 693 P.2d 1187; *Johnson County Comm'rs*, 225 Kan. at 519, 592 P.2d 875; *Cessna*, 11 Kan.App.2d at 380, 721 P.2d 298.

[6] The phrase "used exclusively" in tax exemption statutes means that the use made of the property sought to be exempted from taxation must be used only, solely, and purely for the purposes stated, and without participation in any other use. *T-Bone Feeders*, 236 Kan. at 646, 693 P.2d 1187; *Johnson County Comm'rs*, 225 Kan. at 519, 592 P.2d 875; *Cessna*, 11 Kan. App.2d at 380, 721 P.2d 298. Contrary to the owners' contention, we must consider not only the use of the property being made by the one claiming the exemption, but also all uses being made of the property.

[7] In *Johnson County Comm'rs*, 225 Kan. 517, 592 P.2d 875, a for-profit corporation leased property to a nonprofit psychiatric hospital. The lessee was obligated to pay all property taxes. The lessee claimed the leased property was exempt from ad valorem taxes under K.S.A. 79-201b, which exempts all property "used exclusively for hospital purposes." The issue was whether the property was "used exclusively for hospital purposes." The court held the property was subject to ad valorem taxes, stating:

> "The renting by the lessor and the physical use by the lessee constitute simultaneous uses of the property and when an owner leases his property to another, the lessee cannot be said to be the only one using the property." *Johnson County Comm'rs*, 225 Kan. at 523, 592 P.2d 875.

Because one of the simultaneous uses of the property (renting for profit) was not an exempt use under the statute, the property was not exempt from ad valorem taxation.

In *Farmers Co-op v. Kansas Bd. of Tax Appeals*, 236 Kan. 632, 694 P.2d 462 (1985), the taxpayers owned farm machinery and equipment which they rented to farmers for use in farming operations. The taxpayers claimed such equipment was exempt from property tax under K.S.A. 1983 Supp. 79-201i and 79-201j, which provided that all farm equipment "used exclusively in farming or ranching operations" was exempt from property and ad valorem taxes. One issue on appeal was whether the leased equipment was used exclusively in farming and ranching. The court held the leased equipment was not used exclusively in farming or ranching operations and was not entitled to tax exemption. The court noted that, when a taxpayer rents its equipment to an individual farmer for use on his own fields, there are simultaneous uses being made of the equipment: "(1) by the farmer fertilizing his fields and (2) by the [taxpayer] collecting a rental fee for the use of the machinery." *Farmers Co-op*, 236 Kan. at 638, 694 P.2d 462. Since one of the uses was not an exempted use, the property was not exempt from taxation.

Furthermore, in reaching its decision, the court in *Farmers Co-op* noted that, although the stated purpose of the statute was broad (to foster the growth and development of agricultural endeavors), the legislature restricted and limited the exemption to property used exclusively in farming and ranching operations. According to the court, the more limited phrase and the legislative purpose outlined in the statutes indicated the emphasis was on farming and ranching, implying an intent by the legislature to limit the exemption strictly to those who farm or ranch. Because of the restrictive language of the exemption statute, the court was unwilling to extend the statute's application to include those who rent farming and ranching equipment to farmers.

In the present case, the owners leased airplanes to individuals, who used the airplanes for non-business purposes. Two simultaneous uses were being made of the aircraft: (1) by the renters for non-business purposes, and (2) by the owners collecting a rental fee for the use of the airplanes, both

of which must be considered in determining the availability of the exemption statute. Since the airplanes are exempt from taxation only if used in a business, the renters' use for non-business purposes makes the property ineligible for tax exemption under K.S.A. 79–201k because the airplanes are not used exclusively for business.

In addition, although the stated legislative purpose of K.S.A. 79–201k is broad, the exemption itself is limited to airplanes used in a business and does not exempt from taxation airplanes in general. The more restrictive language used in the exemption portions of the statute implies an intent by the legislature to limit the exemption strictly to those who use such property in a business. Since the statute restricts application of the exemption to those cases where property is used exclusively in a business, it is not for the courts to expand the statute's application to those cases where the property is used in part for business and in part for non-business activities.

Godfrey Aviation and Smith contend that, because their business profited from the renters' use of the airplanes, the purpose of the statute (the promotion of business) was fulfilled. A similar argument was rejected in *Stahl v. Educational Assoc'n.*, 54 Kan. 542, 38 P. 796 (1895). In that case, an educational association leased a house to a third party as a personal residence. The association used the proceeds from the rental for educational purposes and claimed the house was exempt. The association claimed that, although the house itself was not used solely for education, the rents were applied exclusively for the purpose of education. The court held the property was not exempt from taxation because it was not used exclusively for education and it was being used to earn a profit. Even though the nonexempt use (renting) furthered the exempt use (education) by generating funds for educational use, the court still had to consider both uses of the property. Since renting for profit was not an exempted use, the property was taxable.

In the present case, although the renters' use of the airplanes for personal endeavors furthers a business and thus furthers the purpose of K.S.A. 79–201k, we are obligated under the "exclusive use" language of the statute to consider the renters' personal use as a disqualifying use under the statute. This construction is further bolstered by the statute's requirement that the airplanes must be "*actually* and *regularly* used exclusively in the conduct of a business or industry." The owners' airplanes in this case are not exempt from ad valorem taxation.

Reversed.

IN THE SUPREME COURT OF THE STATE OF KANSAS

Kenneth Godfrey Aviation, Inc., Appellee,
v.
Gary Smith, Shawnee County Appraiser,
Appellant.

v.

William M. Smith, Appellee,
v.
Gary Smith, Shawnee County Appraiser,
Appellant.

No. 86-60290-A

You are hereby notified of the following action taken in the above entitled case:

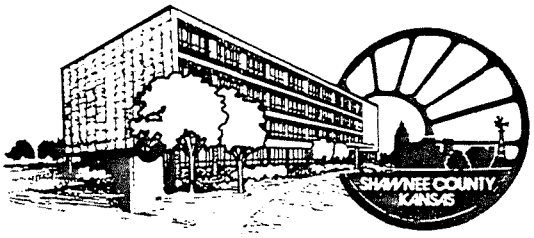
PETITION FOR REVIEW.

DENIED.

Date January 28, 1988

Yours very truly,

LEWIS C. CARTER
Clerk, Supreme Court



Shawnee County
Office of County Counselor

DOUGLAS F. MARTIN
County Counselor
JOSEPH W. ZIMA
First Asst. County Counselor
LINDA P. JEFFREY
Asst. County Counselor

Shawnee County Courthouse
Room 203 • 200 E. 7th
Topeka, Kansas 66603-3922
(913) 291-4042

PROPERTY TAX STATUS OF AIRCRAFT IN SHAWNEE COUNTY, KANSAS ON FEBRUARY 29, 1988

Number of aircraft in Shawnee County, Kansas	-	190
Number of aircraft in Shawnee County that are exempt under 201k	-	100
Appraised value (actual market value) of aircraft in Shawnee Cty	-	$11,673,160
Appraised value (actual market value) of aircraft exempt by 201k	-	$10,431,395

Average appraised value of Aircraft presently exempt in Shawnee County by reason of K.S.A. 79-201k as it presently is written	-	$104,431
Average appraised value of Aircraft presently being taxed in Shawnee County because their use is not exclusively "Business"	-	$13,797

*** Numbers supplied by Shawnee County Appraiser