

Approved: 3-11-99
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson Senator Audrey Langworthy at 11:15 a.m. on March 3, 1999, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Chris McKenzie, League of Kansas Municipalities

Others attending: See attached list.

Continued hearing on **SB 226-Property taxation; requiring certain actions relating to levying.**

Senator Bond distributed copies of balloon amendments which were suggested by Chris McKenzie, League of Kansas Municipalities; Dale Dennis, Kansas State Department of Education; and the Director of the Property Valuation Division (PVD). (Attachment 1) Senator Bond explained that the first three amendments were suggested by Mr. McKenzie. Items numbered one through four as amendments on line 19 were suggested by PVD to define property and how it is to be treated in order to avoid "wars" between cities, counties, and PVD. The last amendment was suggested by Mr. Dennis. It removes K.S.A. references to the 20 mill statewide levy and the repayment of the principal and interest for bonded indebtedness.

Senator Donovan questioned if the amendment regarding bonded indebtedness would include all bonded indebtedness for the city and county, not just for schools. Senator Bond responded the language broadly applies to taxing subdivisions, which means everybody but the state.

Senator Bond moved to amend SB 226 as suggested, seconded by Senator Hardenburger. The motion carried.

Senator Bond moved to recommend SB 226 as favorable for passage as amended, seconded by Senator Hardenburger. The motion carried.

SB 335-Relating to registers of deeds; concerning the recordation of plats.

Chris McKenzie, League of Kansas Municipalities, testified in support of **SB 335**. A synopsis in his written testimony states the following: "A 1981 amendment to K.S.A. 19-1207 is being interpreted in a way that impedes the logical replatting of certain urban properties. **SB 335** would allow the platting and replatting of real estate when payment has been made in full or in two installments as permitted by K.S.A. 79-2004." Mr. McKenzie called attention to a memorandum from the Salina City Manager which explains three types of replatting projects that have been impeded by the interpretation of K.S.A. 19-1207. (Attachment 2)

Mr. McKenzie noted that the amendment on lines 31 and 32 was not part of the bill as requested by the City of Salina but is a clean up amendment suggested by the revisor.

In response to a question from Senator Donovan, Mr. McKenzie clarified that the bill does apply to special assessments. He concurred with Senator Donovan that language needs to be added to clarify that payment of all delinquent taxes is still required, but in the current year, only the payment of the first half is required.

Senator Bond questioned if there is a statutory definition of "towns and villages" as included in the bill. Mr. McKenzie responded that a definition is no longer in existence as the statute was first written in 1871. In fact, there is no such thing as a town or village in Kansas; therefore, that language could be stricken. Senator Bond requested that Mr. McKenzie work with staff to rewrite **SB 335** in order to modernize the language.

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE, Room 519-S Statehouse,
at 11:15 a.m. on March 3, 1999.

Senator Langworthy noted that the letter in support from the City of Salina requests that **SB 335** be enacted as soon as possible. Mr. McKenzie agreed with her suggestion that the bill be amended to change the effective date from "publication in the statute book" to "publication in the Kansas register." With this, the hearing on **SB 335** was closed.

The meeting was adjourned at 11:35 a.m.

The next meeting is scheduled for March 4, 1999.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: March 3, 1999

NAME	REPRESENTING
Janna Johnson	KDOR
Mark Bank	KDOR
Chris McKinn	League of Ks. Municipalities
Randy Allen	Ks. Assoc. of Counties
MIKE Taylor	city of Wichita
Jim Williams	Riley County Comm.
Stacey Farmer	KS ASSOC. of School Boards
Marilyn J. Nichols	Register of Deeds
Jim Langford	DOB
Don Seifert	City of Olathe
Michael Wilkes	City of Olathe
Judy Moler	Ks. Assoc. of Counties
Bob Unsworth	Blue Valley USD 229
Diane Gjerstad	USD 259
Don Schnack	ICSOGA -
Rob May	Swartz
Denise Ager	KCK-USA -
George Peterson	Ks Taxpayers Network
Ron Hammond	CCL Winfield

SENATE BILL No. 226

By Committee on Assessment and Taxation

2-3

9 AN ACT relating to property taxation; requiring certain actions relating
10 to the levying thereof.

11

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

13 Section 1. (a) Without adoption of a resolution so providing, the gov-
14 erning body of any taxing subdivision shall not approve any appropriation
15 or budget, as the case may be, which is to be funded by revenue produced
16 from property taxes, and which provides for funding with such revenue
17 in an amount exceeding that of the next preceding year, except with re-
18 gard to revenue produced and attributable to the taxation of new or new
19 improvements to property.

20 (b) The provisions of this section shall be applicable to all fiscal and
21 budget years commencing on and after the effective date of this act.

22 (c) The provisions of this section shall not apply to community col-
23 leges or unified school districts.

24 Sec. 2. This act shall take effect and be in force from and after its
25 publication in the statute book.

ordinance

requires

may

- (1) New improvements to real property;
- (2) increased personal property valuation, other than increased valuation of oil and gas leaseholds and mobile homes;
- (3) property located within added jurisdictional territory; and
- (4) property which has changed in use

revenue received from property tax levied: (1) Pursuant to the provisions of K.S.A. 1998 Supp. 72-6431, and amendments thereto; and (2) for the sole purpose of repayment of the principal of and interest upon bonded indebtedness

Senate Assessment & Taxation
3-3-99
Attachment 1



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (785) 354-9565 FAX (785) 354-4186

TO: Senate Committee on Assessment and Taxation
FROM: Chris McKenzie, Executive Director
DATE: March 3, 1999
SUBJECT: Support for SB 335

SYNOPSIS: A 1981 amendment to K.S.A. 19-1207 is being interpreted in a way that impedes the logical replatting of certain urban properties. SB 335 would allow the platting and replatting of real estate when payment has been made in full or in two installments as permitted by K.S.A. 79-2004.

I am pleased to appear today on behalf of the league of Kansas Municipalities in support of SB 335. This measure would amend K.S.A. 19-1207, which currently requires in subsection (b) that:

(b) The register of deeds shall not record any plat unless such plat is accompanied by a receipt from the county treasurer for all real estate taxes due and owing on land to be platted.

This subsection was added to K.S.A. 19-1207 in 1981 at the height of problems around our state with delinquent real estate taxes and special assessments on land in the early stages of development. The purpose of the amendment (which as I recall the League requested) was to prevent the continued replatting of such property prior to the payment of past due taxes and special assessments.

In recent years problems have arisen with the interpretation of the underlined language above. The basic question is whether the requirements of this subsection can be met by paying real estate taxes in two installments as authorized by K.S.A. 79-2004 or whether the entire amount is due and payable prior to replatting.

In Attorney General Opinion N. 98-14, the Attorney General concluded that notwithstanding the partial payment options in K.S.A. 79-2004 that the second half real estate taxes are "due and owing" and therefore must be paid prior to replatting of such property. A copy of that opinion is attached.

Attached to my testimony is a memorandum to the Committee in support of SB 335 which explains three types of replatting projects that have been impeded by this interpretation of K.S.A. 19-1207. The League respectfully submits these examples justify the need for the amendment contained in SB 335. It would allow the replatting of such properties to go forward if the amount of real estate taxes required to be paid under K.S.A. 79-2004 have been paid to the county treasurer.

RECOMMENDATION: We recommend the Committee's support for SB 335.

Thank you very much. Please let me know if you have any questions.

Senate Assessment & Taxation
3-3-99
Attachment 2



City-County Building
 306 West Ash Street
 P.O. Box 736
 Salina, KS 67402-0736

MEMORANDUM

TO: The Honorable Senator Audrey Langworthy and
 Members of the Committee on Assessment and Taxation
 Kansas State Senate

FROM: Dennis M. Kissinger, City Manager *Dennis M. Kissinger*
 City of Salina

DATE: March 3, 1999

SUBJECT: S.B. 335; Statement of Support

The City of Salina, Kansas strongly supports S.B. 335. We believe this bill corrects an unintended consequence related to prior legislative action (K.S.A. 79-2004). This bill will allow for more orderly development within any cities or counties. The bill will allow for plats and replats to be properly recorded and made effective in a more timely manner. It will help make government more responsive to the citizens desiring to conduct real estate transactions or otherwise develop their property. At the same time, it will allow our property owners to take advantage of the provisions in state law allowing real estate taxes to be paid in two installments.

Three examples we have experienced in Salina in the past year may help clarify the reasoning behind our city's support of this bill:

Case #1. Airport Industrial Center

The former Schilling Air Force Base is now the Salina Municipal Airport and Airport Industrial Center. In 1998, the entire former military base (over 1,000 acres) was replatted into various lots, with well-planned right-of-way, utility easements, etc. The area includes state facilities, such as Kansas State University-Salina, and major National Guard properties, as well as important Kansas employers such as Tony's Pizza (2,400 employees) and Raytheon Aircraft (600 employees). This replatting was the culmination of several years of work, and would be used in conjunction with a \$4 million secondary street reconstruction project in 1998, and a \$5 million K.D.O.T./City road project for 1999. The plat could not be filed/recorded at any time between December 20 and June 20 unless all private property owners in the industrial center (over 30 different owners) paid their taxes in full. They all would be forced

CITY COMMISSION
 PETER J. BRUNGARDT, MAYOR
 DON HEATH
 ALAN JILKA
 KRISTIN M. SEATON
 MONTE READWICK

CITY MANAGER
 DENNIS M. KISSINGER

TELEPHONE (785) 826-7250
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S.B. 335; Statement of Support
Page 2

to give up their right to pay property taxes in two installments, just to get the plat recorded. That became a real impossibility, and has held up the effective date of the plat, causing problems for owners, developers, utilities and governmental agencies. The plat still can't be recorded until at least this coming June.

Case #2. Small Commercial Development

A hardware store owner platted a tract of land in 1996. He built a retail store and garden center, selling off an "out lot" on which a bank branch was then constructed. In 1998, the landowner replatted the property to add another out lot. All City Planning Commission and Governing Body approvals were received. However, he has not yet been able to have the plat properly recorded, since the bank desires to pay its taxes in two installments. The hardware store owner cannot sell the out lot until the replat is recorded, which would require the bank, which is really not involved in the benefits of the replat, to give up its right to pay its second half property taxes in June.

Case #3. Residential Replat

Property with one home on it was originally platted in the 1980s to contain 8 residential building lots. In 1998, the owner of the lots gained city approval for a replatting which changed lot configurations and added two more buildable lots. That replat remains unrecorded because an elderly woman lives in the original house and desires to pay her second half taxes in June. She is not "delinquent" in her taxes, and she believes it is unreasonable to ask her to voluntarily pay those taxes early so the other owners can proceed with their streets, utilities and lot sales.

The City of Salina appreciates your consideration of this bill and asks for your strong support to get it enacted as soon as possible. We can identify numerous immediate and long-term positive impacts for our citizens, and cannot find any negative consequences to its passage. We will be happy to provide any further information you find helpful.

cc: Senator Ben Vidricksen
Representative Carol Edward Beggs
Representative Deena Horst
Representative Jerry Aday
Salina City Commission



State of Kansas

Office of the Attorney General

301 S.W. 10TH AVENUE, TOPEKA 66612-1597

*Recording of a
Plat;
Payment of all
Taxes Due and
Owing*

CARLA J. STOVALL
ATTORNEY GENERAL

March 4, 1998

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
FAX: 296-6296

ATTORNEY GENERAL OPINION NO. 98- 14

Theresa Marcel Nuckolls
Douglas County Counselor
808 Massachusetts Street
Post Office Box B
Lawrence, Kansas 66044-8996

Re: Counties and County Officers--Register of Deeds--Record of Plats and Index; Tax Receipt Required for Recording; Definition of "Due and Owing"

Taxation--Levy of Taxes--When Tax Due; Definition of "Due and Owing"

Synopsis: K.S.A. 19-1207(b) requires payment of all real estate taxes that are "due and owing" on land to be platted before the plat may be recorded. The term "due and owing" means due but not yet paid. Thus, notwithstanding the option provided in K.S.A. 1997 Supp. 79-2004 to pay half of the taxes on or before December 20 and the other half the following June, real estate taxes that are due and not yet paid must be paid in full at the time a plat of the real estate is filed for recording. Attorney General Opinion No. 85-81 is reaffirmed. Cited herein: K.S.A. 19-1207; 79-1804; 79-2004.

* * *

Dear Ms. Nuckolls:

On behalf of the Douglas County Register of Deeds, you request our reconsideration of Attorney General Opinion No. 85-81. That opinion concluded that notwithstanding the option provided in K.S.A. 79-2004 for payment of real estate taxes in two installments, K.S.A. 19-1207(b) requires that such taxes be paid in full before a plat of the real estate involved may be recorded. You question whether the opinion failed to consider the word

"owing" as used in K.S.A. 19-1207, instead focusing entirely on the term "due." According to the statute, the person filing a plat is required to pay only those taxes that are "owing" at the time of filing. You argue that taxes are not "owing" until the dates set forth in K.S.A. 79-2004 for payment.

You note that the Kansas Supreme Court has determined that "[t]axes are 'owing' when there exists an obligation for their payment." **State of Oklahoma, ex rel. Oklahoma Tax Commission v. H. D. Lee Co.**, 174 Kan. 114, 118 (1953). You state that taxpayers are not obligated to pay their real estate taxes until December 20 and June 20 pursuant to K.S.A. 79-2004(a) and thus no part of the taxes are "owing" until December 20. We disagree with your position that taxpayers are not "obligated" to pay until December 20 and June 20. In our opinion, the obligation to pay arises when the tax becomes due; however, payment will not be considered delinquent until December 20 for the first half and June 20 for the second half of the taxes.

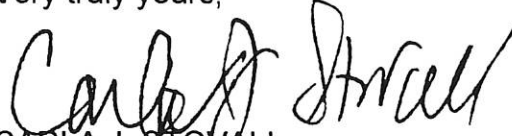
Several cases from other jurisdictions are in accord with this reading. In **U.S. v. Automatic Heating & Equipment Co.**, 181 F. Supp. 924, 928 (D.C.Tenn. 1960), *aff'd* 287 F.2d 885 (6th Cir. 1961), the court discussed the meaning of the terms "due" and "due and owing." The court stated that "[a] debt is often said to be due from a person where he is the party owing it . . . whether the time for payment has or has not arrived," and that a debt is due and owing if it remains unpaid. *Id.* Similarly, and more to the point for our purposes, the court in **Mayor and Council of City of Baltimore v. Perrin**, 12 A.2d 261, 263 (Md. 1940), held that under a statute requiring payment of taxes on motor vehicles "due and owing" as a prerequisite to registration, taxes were due and owing on January 1 (the date they became due), even though they were not considered to be in arrears until July 1. **In re International Match Corp.**, 79 F.2d 203, 205 (C.C.A.N.Y. 1935), concluded that it is the time of accrual of the obligation to pay a tax rather than the time when the tax obligation is to be discharged by payment that determines when the tax is "due and owing." See also **Ahrens-Rich Auto Co. v. Beck & Corbitt Iron Co.**, 103 So. 556, 5567 (Ala. 1925) (term "due and owing" is equivalent to statutory averment "is still unpaid"). We have found no recorded legislative intent that would dictate a conclusion different from that arrived at by these various courts.

In conclusion, K.S.A. 19-1207(b) requires payment of all real estate taxes that are "due and owing" on land to be platted before the plat may be recorded. The term "due and owing" means due but not yet paid. Thus, notwithstanding the option provided in K.S.A. 1997 Supp. 79-2004 to pay half of the taxes on or before December 20 and the other half the following June, real estate taxes that are due and not yet paid must be paid in full at

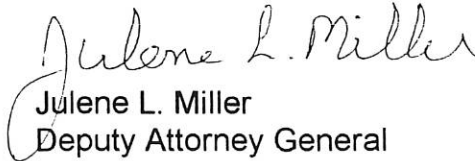
Theresa Nuckolls
Page 3

the time a plat of the real estate is filed for recording. Attorney General Opinion No. 85-81 is reaffirmed.

Very truly yours,



CARLA J. STOVALL
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

CJS:JLM:jm