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ATTORNEY GENERAL OPINION NO. 2026-1

Richard Raleigh
Harper County Attorney
201 N. Jennings Ave., 4th Floor
Anthony, KS 67003

Re: Taxation—Correction of Irregularities—Unlawful Release, Discharge, Remission or Commutation of Taxes; Civil Action Authorized Thereon

Synopsis: Article 11, Section 1 of the Kansas Constitution requires a "uniform and equal basis of valuation and rate of taxation of all property subject to taxation." Taxation is a legislative power and can only be exercised under the authority of a state statute. The Legislature's exclusive power to tax extends to the power to remit portions of an assessed tax. Thus, a county may not implement a tax rebate program unless it is authorized by, and complies with, a state statutory scheme. Harper County instituted the Ad Valorem Rebate Program to offer tax rebates from county ad valorem property taxes to program participants. Because this Office lacks information on whether the Rebate Program was implemented under the authority of a state statute, we cannot determine its validity under state law. But, for the Rebate Program to be valid, it must be based on, and comply with, a state statutory tax rebate scheme. Cited herein: K.S.A. 12-6a26; K.S.A. 12-1740; K.S.A. 12-1781; K.S.A. 12-2908; K.S.A. 12-17,114; K.S.A. 12-17,121; K.S.A. 79-1703.

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Dear Mr. Raleigh:

As County Attorney for Harper County, you ask whether Harper County's Ad Valorem Rebate Program is permissible as currently constituted. If it is permissible, you also ask whether the Rebate Program can require participants to agree not to appeal the valuation of their property or seek a refund of any tax for which rebate payments have been made while the property is a part of the program.

You specifically ask whether the Rebate Program is required to be authorized by a state statutory enactment, such as with the Neighborhood Revitalization Act, K.S.A. 12-17,114, *et seq*., and the Downtown Redevelopment Act, K.S.A. 12-17,121, *et seq*. Taxation is a creature of state law, so any programs providing rebates for ad valorem property taxes must also be authorized by state law. Because this Office has not been provided information on the enactment of the Rebate Program, or the basis for its authorization, we are unable to conclude whether the Rebate Program is properly constituted. In any case, without such statutory authorization and compliance, the Rebate Program is likely not permissible under state law.

Article 11, Section 1 of the Kansas Constitution directs: "Except as otherwise hereinafter specifically provided, the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation."[1] The "uniform and equal basis of valuation" clause requires the Legislature to provide uniformity in the basis of assessment as well as the taxation rate.[2]

Taxation is wholly derived from legislation and cannot exist apart from state statute.[3] "The Legislature is empowered to provide the means and agencies for carrying out its responsibility in matters of taxation."[4] While the power to tax is inherent to the power to govern, "the exercise of that power is dependent upon the existence of legislation designating the kinds of property to be taxed and nothing is taxable unless clearly within the taxing statute."[5]

The Legislature's exclusive power to tax also extends to the power to remit portions of an assessed tax. K.S.A. 79-1703(a) states that, except as provided in subsection (b) or otherwise by law, "no board of county commissioners or other officer of any county shall have power to release, discharge or remit any portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason whatever." Any taxes that are "discharged, released or remitted" can by recovered in a civil action.[6] Subsection (b) permits the county commissioners, with the approval of the state board of tax appeals, if "a person,

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[1] Kan. Const. Art. 11, § 1(a).
[2] *Heartland Apartment Assoc., Inc. v. City of Mission*, 306 Kan. 2, 10, 392 P.3d 98 (2017).
[3] *Joseph v. McNeive*, 215 Kan. 270, 271, 524 P.2d 765 (1974).
[4] *Id.*
[5] *In re the Protest of Strayer*, 239 Kan. 136, 141, 716 P.2d 588 (1986).
[6] K.S.A. 79-1703(a).

partnership or corporation" has failed to pay taxes and is in an United States bankruptcy action to "compromise, assign, transfer or otherwise settle such tax claim in such fashion as the commissioners deem to be in the best interest of the state and all taxing subdivisions affected thereby."[7]

This Office has previously recognized the limitations K.S.A. 79-1703 places on counties,[8] and has explained that the authority to tax is "wholly statutory" and "that a board of county commissioners may not forgive interest and penalties lawfully accrued as a result of unpaid taxes."[9] The collection and distribution of ad valorem tax money is statutorily established.[10] And this Office has not found any statutory authority or case law that shows a public entity was permitted to decline acceptance of tax money otherwise required by a tax statute.[11] Once that money has been accepted, as required by law, the entity may expend it "for any legally permissible purpose within the scope of authority of those public entities" and for no other purpose.[12] Finally, in Attorney General Opinion No. 78-190, this Office explained that, with regard to city or county property tax incentives for energy-efficient uses of property and vehicles, that there was no statutory authority for a city or county to offer a "credit against ad valorem tax liability for generated energy-efficient features installed on real property, or for energy-efficient motor vehicles." That opinion specifically noted that a board of county commissioners had no authority to release, discharge, remit, or commute any portion of a tax except as provided by law, citing K.S.A. 79-1703.[13] The opinion thus concluded that, without a statutory basis for the ad valorem tax abatement, a city or county could not implement a tax-incentive program involving "ad valorem property taxes levied by such city or county."[14]

State law contains several statutory schemes authorizing such programs.[15] Each statutory scheme requires a taxing subdivision, like a county, to comply with specific procedures required by statute to participate in the program.[16] Our

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[7] K.S.A. 79-1703(b).
[8] Att'y Gen. Op. No. 2005-19, at *1 ("If the property is not exempt from taxation, K.S.A. 79-1703 generally prohibits a county commission from releasing, discharging, remitting or commuting any portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason.").
[9] Att'y Gen. Op. No. 1991-6, at *1 (citing *Kucera v. State*, 160 Kan. 624, 626 (1945); *Walkemeyer v. Stevens Cnty. Oil and Gas Co.*, 205 Kan. 486 (1970)).
[10] *Id.* at 2.
[11] *Id.*
[12] *Id.*
[13] Att'y Gen. Op. 78-190, at *2.
[14] *Id.*
[15] *See* K.S.A. 12-6a26, *et seq.* (Community Improvement District Act); K.S.A. 12-1740, *et seq.* (Economic Development Revenue Bonds Act); K.S.A. 12-1781, *et seq.* (Business Improvement District Act); K.S.A. 12-17,114, *et seq.* (Neighborhood Revitalization Act); K.S.A. 12-17,121, *et seq.* (Downtown Redevelopment Act).
[16] *See* K.S.A. 12-6a28; K.S.A. 12-6a29; K.S.A 12-1741; K.S.A. 12-1741b; K.S.A. 12-1783; K.S.A. 12-17,116; K.S.A. 12-17,117; K.S.A. 12-17,123.

Legislature's creation of specific statutory schemes to authorize certain programs to provide tax-relief incentives for taxing subdivisions to encourage their constituents to make improvements provides additional evidence that a county can only offer a tax relief program if specifically authorized by statute.

Accordingly, the Rebate Program implemented by Harper County must be authorized by, and comply with, state statute. In your request, you note the Rebate Program is similar to the Neighborhood Revitalization Act and the Downtown Redevelopment Act. However, there is no indication that the Rebate Program is authorized by either act. With your request, you provided a copy of the Rebate Program and application, as well as an unsigned copy of a contract between the County and several other taxing entities located within Harper County for the signatory parties to timely implement the Rebate Program.[17] The copy of the Rebate Program contains no statutory citation for authorization. The contract mentions K.S.A. 12-2908, allowing municipalities to contract to jointly perform a government service but otherwise contains no authorization for the Rebate Program itself. When this Office sought information on the authorization for the Rebate Program, you provided copies of ordinances enacting the program from the cities of Harper and Anthony, but you informed this Office that you were unable to find any ordinance, resolution, publication, notice, or anything in the county commission's meeting minutes indicating consideration and passage of the Rebate Program, or whether it was authorized under any state statute. As a result, this Office has no evidence that the County ever passed any ordinance or resolution enacting the Rebate Program, or that it even signed the contract with the other taxing subdivisions.

Given the absence of these necessary facts, we are unable at this time to answer with certainty your specific question about whether the Rebate Program is properly constituted. The Rebate Program must be authorized by, and comply with, a state statutory scheme for the County to offer ad valorem rebates under the Rebate Program. If the Rebate Program lacks this statutory authorization, then it would likely violate state law.

We also note that the contract shows the agreement expired on December 31, 2025. You did not provide any information about whether the Rebate Program has been renewed or reenacted past December 31, 2025. Thus, we recognize this question may be moot.

Finally, because we are unable to determine whether the Rebate Program is permissible under state law, we decline to opine on whether the Rebate Program

[17] The contract lists several cities, school districts, and hospital districts as part of the Rebate Program. This opinion does not address the validity of the Rebate Program as adopted by any of these entities at this time, as the authority of those entities to enact the Rebate Program is not a part of the question presented to this Office.

can require participants to waive appeal of the valuation of their property or seek other refunds.

Sincerely,

/s/ Kris W. Kobach

Kris W. Kobach
Attorney General

/s/ Ryan J. Ott

Ryan J. Ott
Assistant Solicitor General