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STATE OF NEBRASKA
OFFICIAL
JAN 8 1992
DEPT. OF JUSTICE

DATE: January 6, 1992

SUBJECT: Acceleration of Collection of Personal Property Taxes under Neb.Rev.Stat. § 77-1214 (Reissue 1990)

REQUESTED BY: Senator Jim D. Cudaback

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion on several questions pertaining to the acceleration of payment of personal property taxes under Neb.Rev.Stat. § 77-1214 (Reissue 1990), and the effect of this provision on proposed legislation for tax year 1992 which you may consider introducing when the legislation convenes in January, 1992. At the outset, we note that you have not provided any specific legislative proposal for our consideration, and, as such, our responses to some of your questions must necessarily be quite general in nature. With this caveat in mind, we will endeavor to respond to your questions.

Initially, you ask "[w]hen does a personal property tax become due a municipal corporation pursuant to Neb.Rev.Stat. § 77-1214?"

Section 77-1214 provides as follows:

> It shall be the duty of any assessor, sheriff, constable, city councilman, and village trustee to at once inform the county treasurer of the making or attempted making of any sale, levy of attachment, or removal of personal property known to him. It shall be the duty of the county treasurer to forthwith proceed with the collection of the tax when such acts become known to him in any

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> manner; Provided, <u>any personal tax shall be due and collectible, including all personal property then assessed upon which the tax shall be computed on the basis of the last preceding levy, and a distress warrant shall be issued when (1) any person attempts to sell all or a substantial part of his personal property, (2) a levy of attachment is made upon personal property, or (3) a person attempts to remove or removes personal property from the county, city, or village</u>. (Emphasis added).

Section 77-1214 provides for accelerated collection of personal property taxes where: (1) a person attempts to sell personal property; (2) a levy of attachment is made upon personal property; or (3) a person attempts to remove or removes personal property. The statute requires the issuance of distress warrants to collect personal taxes under these circumstances. The purpose of this provision is no doubt to provide a means to collect personal property taxes in situations where immediate action is necessary to secure payment of taxes where personal property is sold, subjected to attachment, or removed prior to levy date. Under the plain terms of the statute, such taxes are deemed "due and collectible . . . upon all personal property then assessed upon which the tax shall be computed on the basis of the last preceding levy . . . ."

Your second question is whether "[i]f § 77-1214 is plain on its face, what [e]ffect does it have on any tax proposal enacted by the legislature in 1992, for tax year 1992, prior to the levy date?" In a related question, you ask whether "§ 77-1214 create[s] a situation where legislation occurring prior to the 1992 levy date would create a commutation, release, or discharge of a tax due a municipal corporation in violation of Article VIII, § 4 of the Nebraska Constitution?"

Neb. Const. Art. VIII, § 4, provides in pertinent part:

> Except as to tax and assessment charges against real property remaining delinquent and unpaid for a period of fifteen years or longer, the Legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever. . . . (Emphasis added).

Recently, in <u>Attorney General Opinion No. 91088</u>, November 27, 1991, we addressed at length the effect of the prohibition against the release or commutation of taxes by the Legislature contained in

Article VIII, § 4. In this opinion, we noted the Nebraska Supreme Court's recent decision in Natural Gas Pipeline Co. v. State Bd. of Equal., 237 Neb. 357, 466 N.W.2d 461 (1991) (["Natural"], discussing the meaning of the limitation imposed by Article VIII, § 4). The court stated that the tax year for property tax purposes is "completed on November 1", as both levies and the extension of levies and preparation of tax lists must be accomplished prior to November 1, and that, as to personal property taxes, such are due and become a lien on November 1. Id. at 366-67, 466 N.W.2d at 468. Accordingly, we concluded that legislation extending the date of assessment beyond January 1 would not represent an unlawful commutation of taxes, as the power to tax and exercise of the taxing power is not completed until the date of levy and the extension of the levy in preparation of tax lists.

While the court's decision in Natural did not address the effect, if any, that § 77-1214 may have on the Legislature's ability to alter the process of property taxation during a tax year, we do not believe the accelerated collection provision contained in § 77-1214 necessarily precludes the Legislature from altering statutes governing the assessment or collection of property taxes after January 1 of a given tax year. The court in Natural clearly focused on the date of levy, and the point at which personal property taxes levied become a lien on the property (November 1), as the pivotal time when the taxing process is completed. While your questions do not reflect what type of "tax proposal" or "legislation" you may be considering, we certainly cannot state that any legislation altering the property tax process for tax your 1992, enacted after January 1, 1992, would violate Article VIII, § 4, by virtue of the procedure for accelerated collection of personal property taxes provided under § 77-1214.

Your final question asks us to consider whether various events under a proposed scenario involving legislative action exempting personal property and approval of a constitutional amendment allowing "different treatment of personal and real property" would violate Article VIII, §§ 1 and 4, of the Nebraska Constitution, or the United States Constitution.

Upon review of the issues raised under your proposed scenario, we must respectfully decline to provide an opinion relative to this question. The constitutionality of 1991 Neb. Laws, LB 829, § 7 (codified at Neb.Rev.Stat. § 77-202 (Supp. 1991), exempting all personal property (except motor vehicles) for tax year 1991, is currently at issue in an original action pending in the Nebraska Supreme Court. Jaksha v. State, et al., No. S-33-910019. Your question necessarily requires consideration of the constitutionality of legislative action providing for the exemption of personal property, and whether such contravenes either Article VIII, § 1 or Article VIII, § 4, both of which are questions

which are at issue with regard to LB 829 in Jaksha. We are obligated to defend the constitutionality of LB 829 in this action, and, as such, believe it would be imprudent to express any opinion in response to your final question which may impact the issues raised in this litigation.

Very truly yours,

DON STENBERG
Attorney General

L. Jay Bartel
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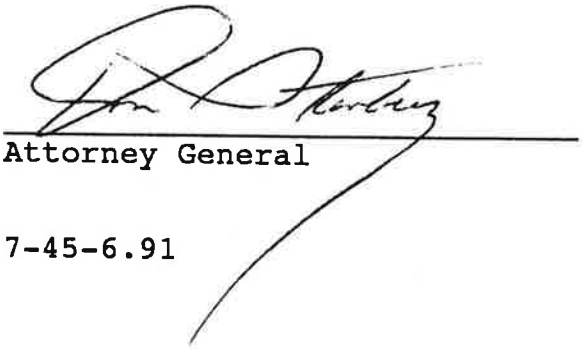
cc: Patrick J. O'Donnell
Clerk of the Legislature

Approved By:



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