



STATE OF KANSAS

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August 12, 1975

ATTORNEY GENERAL OPINION NO. 75-329

Honorable W. Edgar Moore  
Representative District 26  
House of Representatives  
Statehouse  
Topeka, Kansas 66612

Re: Assessment and Taxation--Agricultural Land

Synopsis: Under present Kansas laws, farm land must be valued for ad valorem taxation equally and uniformly at fair market value as defined by K.S.A. 79-503; 79-1439. However, many states now have laws which permit taxpayers owning farm and residential land to contract with or represent to the assessor that such use will continue in future years. Then, the land is valued only for such use. If a change of use later occurs, the taxpayer is assessed "back taxes" for a number of years.

\* \* \*

Dear Representative Moore:

Your letter of April 11, 1975 asks questions about the valuation of farm land, for ad valorem taxation, that "at present can be used only for agricultural purposes, having no water, gas or sewer services available":

You ask if the assessor may consider in his valuation "a potential industrial value that may materialize in the future"; "a potential or speculative value on a farm because the land may be in the future path of development"; "commercial possibilities"; or "situated near express highways"; and then give the farm land a higher than agricultural value, without violating the Kansas Constitutional requirement of equality and uniformity and the Federal "equal protection under the 14th Amendment".

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Annually, as of January 1, the County Assessor shall list, value and assess all real estate. K.S.A. 1974 Supp. 79-1412a. In doing so, he must appraise the land uniformly and equally at its fair market value in money, as defined in K.S.A. 79-503 and then assess at 30% thereof. Fair market value in money of land is mentioned in several tax statutes: K.S.A. 79-411; 79-501; 79-5a04; 79-1001a; 79-1406; and 79-1439.

"Fair market value in money" is defined by K.S.A. 79-503 as:

"The amount of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting, assuming that the parties thereto are acting without undue compulsion and the property has been offered at the market place for a reasonable length of time. Sales in and of themselves shall not be the sole criteria of fair market value but shall be used in connection with cost, income and such other factors as may be appropriate..."

This is the historic and accepted appraisal approach to value that has come all the way from the Romans who invented the words "ad Valorem". All Kansas assessors are bound by law to follow it, under penalty of fine, imprisonment and forfeiture of office. K.S.A. 79-1426.

The answer then, to your four above questions, is "yes", the assessor under Kansas law must consider them in appraising farm land, just the same as he must consider them in appraising urban or suburban residential land, or vacant land which might be converted into commercial or industrial use.

But you have touched upon a very complex problem that has beset assessors and taxpayers everywhere. A great many states today have LAWS by which the taxpayer may contract with or make representation to the assessor that his land will be used only for farm or residential use. The land is then assessed only at a value for such use. But, if a change of use does take place, then the taxpayer must pay "back taxes", the number of years vary, based upon the value of such higher use. Kansas has never passed such a law.

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It is our opinion that, without such a law, the assessor is clothed with much judgment in naming the highest and best use of a taxable property. We believe he should give primary attention to the use to which land is put on January 1 assessment date. He should not speculate with the speculator.

Appraisal for taxation differs from appraisal for sale or condemnation when it comes to the matter of potential future highest and best use. When an owner of land sells, or the land is taken by court order, it is incumbent that every potential value of the land be emphasized. It is the owner's last chance, it is his last day in court.

This is not the case with appraisal for taxation. The appraisal is for only one year. If a change of use takes place during the year, a new valuation is made the following January 1. Every assessor gets notice of building permits, zoning changes, subdivision plats, etc. So, at most, only one year's taxes should be affected.

You ask, "Is it correct to use only comparative sales on land valuation under K.S.A. 79-503". The answer is clearly "no". That statute specifically prohibits this. It directs that all appropriate indicators of value be used in conjunction with each other.

The sales-assessment ratio study is proof that Kansas assessors are faithfully following the mandate of 79-503 and are not determining tax values on the basis of sales alone. They must be giving weight to the income, cost and other indicators.

The Kansas Supreme Court has held that the ratio study, based on sales alone, does not reflect fair market value for tax purposes. Northern Natural Gas Co. v. Williams, 208 Kan. 407, 413, 417, 419, 426, 493 P.2d 568.

We believe, as expressed in a previous opinion, that valuation on the basis of income alone is no more available than valuation on sales alone, for the simple reason that to rely on a single indicator destroys the "fair market value" concept.

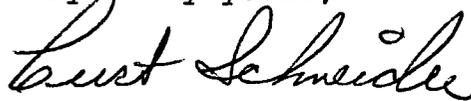
Ad valorem tax valuation of land may not be based on income alone. Miller Investment Co. v. Sedgwick County Comm. 151 Kan. 246, 248, 98 P.2d 109.

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Under K.S.A. 79-422 all property of public utilities, real or personal, must be listed and taxed as provided by law for real estate. A pipeline company was denied recently a request to be valued solely on the basis of rate base income capitalized. The Court held that utilities should be valued at "fair market value" like other Kansas taxpayers. Mobil Pipeline Co. v. Rohmiller, 214 Kan. 905, 926, 927, 522 P.2d 923.

Remedies for a taxpayer feeling aggrieved include appeal to the County Board of Equalization, K.S.A. 1974 Supp. 1602; appeal to the State Board of Tax Appeals, 79-1609, 79-1413a; protested tax 79-2005; appeal to the Courts, 74-2426; and injunction 60-907(a).

Very truly yours,



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