



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

September 19, 1977

ATTORNEY GENERAL OPINION NO. 77- 300

Alan M. Boeh
Doniphan County Attorney
Doniphan County Courthouse
Troy, Kansas 66087

RE: Taxation - Preparation of Tax Rolls - Duties of County Clerk and County Appraiser - Resolution of Conflicts. K.S.A. 1976 Supp. 19-426, 79-306, 79-408, 79-1412a, 79-1602; K.S.A. 79-306b, 79-411, 79-1411a, 79-1411b, 79-1803, 58-2239.

SYNOPSIS: The County Clerk and the County Appraiser must work together in the preparation of the tax rolls, each having their statutory duties and time limits assigned to them. The County Clerk has primary and ultimate responsibility in the preparation of the tax rolls, both real and personal, except that all matters pertaining to the appraisal of property for taxation purposes are placed in the County Appraiser. Because personal property statements are first filed with the County Appraiser, he initiates preparation of personal property tax rolls and then delivers such statements and valuations in his return to the County Clerk. The County is the governmental unit charged with administration of assessment, equalization, and collection of real and personal property tax laws, and the Board of County Commissioners has full authority "to determine the most practical method of providing for listing and assessing" if any conflicts or problems arise.

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Dear Mr. Boeh:

You say your County Clerk and County Appraiser have a dispute as to their respective duties and powers relative to the preparation of the assessment rolls. These questions arise be-

cause K.S.A. 1976 Supp. 79-408 provides: "The County Clerk shall make out all real-estate assessment rolls ...", whereas, by K.S.A. 1976 Supp. 79-1412a (Fifth) County Appraisers shall "prepare the assessment roll and certify such rolls to the County Clerk." You point to K.S.A. 1976 Supp. 19-426 which says that the County Clerk "be divested of his powers and duties relating to assessment" and that he shall turn over to the County Appraiser "all books, maps, assessment rolls, and other records in his possession relating to the listing, assessment and classification of property." You request our opinion resolving these statutes which appear to conflict with each other. You also ask which county officer has control of the transfer record.

The County Clerk is the official keeper of the real estate transfer record. K.S.A. 58-2239. Since the County Clerk has the record ownership of every tract of land or lot in the county, it naturally follows that such officer initially make out the assessment roll for real estate which must be delivered to the County Appraiser no later than December 15. K.S.A. 1976 Supp. 79-408.

The County Assessor has always been an "appraiser", assigned to determine the fair market value in money of property for taxation purposes. K.S.A. 79-411. What K.S.A. 1976 Supp. 19-425 et seq. did was to change the name to County Appraiser, make him appointive with four year tenure instead of elective, and give him the possession of all necessary tools. The County Appraiser has many instructions in the performance of appraisal work. K.S.A. 79-429. The name "Assessor" was in reality a misnomer. The real work was appraisal, and assessed value was a computer run based on that appraisal, as equalized.

Personal property, subject to taxation, must also be listed and valued. Taxation is accomplished by a self-assessment form being filed by the taxpayer prior to March 1. K.S.A. 1976 Supp. 79-306. Oil and gas properties must be returned by April 1. K.S.A. 79-332. Merchants have until April 15 to file inventory returns. K.S.A. 1976 Supp. 79-306 (proviso). But all of these renditions go to the County Appraiser, not the County Clerk. The County Appraiser has the power to change the valuation on any of such personal property renditions, but if he does so he must notify the taxpayer of his action by May 1. K.S.A. 79-306b.

A clear statute, recognizing the County Clerk as the keeper of land records, not the County Appraiser, is K.S.A. 79-410, which provides that whenever the County Appraiser, during assessment, finds the assessment roll with incorrect land description or land which has been subdivided, notice should be given the County Clerk by the County Appraiser so the Clerk can correct the tax rolls.

It is true that the County Appraiser initiates preparation of the personal property assessment roll. This is because taxpayers file annual tax statements of personal property with the County Appraiser. But note K.S.A. 79-1430 requires the County Appraiser, at the time of making his return to the County Clerk, shall deliver to the Clerk all such personal property statements "which statements shall be preserved by the clerk."

Another statute, in this complex fabric of tax laws, is the provision for sessions of the Board of County Commissioners sitting as the County Board of Equalization. K.S.A. 1976 Supp. 79-1602. This law provides for two separate sessions, one on real estate from April 1 to May 15th, and a second on personal property from May 15th to June 15th.

The County Clerk is the secretary of the Board during these sessions, and must have the completed tax rolls, and the materials supporting them available during the hearings. If the Board modifies any assessed value, the Clerk changes the rolls. K.S.A. 19-305. This explains why K.S.A. 1976 Supp. 79-408 requires the Appraiser to certify the real estate rolls to the County Clerk by March 31. They must be before the Board.

But personal property is handled at the second session. K.S.A. 79-306b allows the Appraiser until May 1 to get out all his correction notices. Not all personal property statements are in until April 15. It is true that there is no "dead-line" for certification of the personal property assessment roll by the Appraiser to the Clerk in the statutes, but obviously it has to be done prior to May 15th when the personal property equalization hearings start.

K.S.A. 1976 Supp. 79-1412a(Fifth) uses the "singular" when referring to the "assessment roll" which the Appraiser shall prepare. There is no question but that this is the "personal property" assessment roll. But when the same statute goes on to speak about certification, the "plural" is used. Again, unquestionably, in the second clause both real and personal property assessment rolls are included. We find no conflict in the purpose and intent of these laws.

The County Clerk is still in the process of correcting the rolls, both real and personal, until August 25 when the rolls close. K.S.A. 79-1409. After that date any certification received must be handled as an abatement, refund or added tax. Also, by August 25, the County Clerk has received from all taxing subdivisions in the county the amounts to be levied to satisfy the adopted budgets. K.S.A. 79-1801. Thereafter, the

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Clerk sets down on the tax rolls the amount to be levied against each tract of land and upon personal property of each owner, and certifies ultimately the completed tax rolls to the County Treasurer prior to November 1. K.S.A. 79-1803.

This lengthy history of the preparation of the tax rolls is reviewed mainly to depict how implausible it would be for the County Appraiser to take over the responsibility of preparation of tax rolls. Yet, the Appraiser must work with the County Clerk initially in the preparation of the personal property tax roll, because the legislature has so framed the laws that he must.

The legislature realized that the laws pertaining to the listing, valuation, and assessment of real and personal property were so involved that there must be in each county a central governing authority to resolve conflicts and problems as between officials. So, K.S.A. 79-1411a and 79-1411b were passed. These two acts provide that the county is the governmental unit charged with the administration of the tax laws pertaining to valuation and assessment, and the Board of County Commissioners, after consultation with the county appraiser and the county clerk, "shall determine the most practical method of providing for the listing and assessing of all tangible property ...". See: McManaman v. Bd. of Co. Comm., 205 Kan. 118, 124, 126, 468 P.2d 243 (1970).

So, all else failing, then just submit the matter to the County Commissioners.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw