



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

May 4, 1979

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 79- 78

The Honorable Roy M. Ehrlich
State Representative, 112th District
R.R. 1, P.O. Box 92
Hoisington, Kansas 67544

Re: Taxation--Property Valuation, Equalizing Assessments, Assessors, and Assessment of Property--Powers and Duties of County and District Appraisers

Synopsis: Pursuant to K.S.A. 79-1412a, Seventh, and Article 11, Section 1, of the Kansas Constitution, a county appraiser may not demand a list of specific operating expenses from all oil and gas producers located in a county. However, the county appraiser may investigate and verify actual cost data where the taxpayer's oil and gas assessment rendition does not utilize median operating costs shown in the 1979 Oil and Gas Appraisal Guide, or where the county appraiser has any reason to suspect fraud or misrepresentation.

* * *

Dear Representative Ehrlich:

You request our opinion as to whether the Barton County Appraiser may properly demand a list of specific operating expenses for all oil and gas properties located in said county. You advise that such a demand was made at the time the 1979 Oil and Gas Assessment Renditions were mailed to producers and operators in the county, and that the Appraiser is threatening to utilize "the lowest operating cost in the area" in arriving at the assessed value where such specific cost information is not provided.

The Honorable Roy M. Ehrlich
Page Two
May 4, 1979

There is abundant statutory authority allowing an assessor to investigate and verify inadequate, incomplete or fraudulent statements or lists filed by a taxpayer. K.S.A. 79-306b gives the assessor power to investigate inadequate statements and examine on oath any person having knowledge of taxable property. K.S.A. 79-332 provides that the assessor may list and appraise oil and gas property "from any information obtainable" where a taxpayer refuses or neglects to make and deliver "a full and complete statement relative to said property as required by blank forms prepared by the director of property valuation." K.S.A. 79-333 gives the assessor "the right and power to examine the books and accounts of any person, corporation or association owning oil and gas leases or engaged in operating for oil and gas in order to verify the statement made by such person, corporation or association." (Emphasis added.)

Although the statutes referred to above authorize the investigation and verification of inadequate, incomplete or fraudulent statements filed by oil and gas producers, there is, in our opinion, no authority which would allow an assessor to demand detailed cost and expense data from all oil and gas producers before renditions have been filed. In particular, K.S.A. 79-333 cannot be construed to permit such a demand; said statute is penal in nature and provides for examination of taxpayer records for verification purposes, i.e., to facilitate discovery of criminal violations. Clearly, there is nothing to verify and no criminal violation is possible before renditions have been filed.

The 1979 Oil and Gas Appraisal Guide, published by the Director of Property Valuation pursuant to subsection (b) of K.S.A. 75-5105a, must be interpreted as instructing the appraiser to require full documentation only after renditions have been filed and the taxpayer has deviated from the "prescribed operators cost allowance" set forth in the guide. The pertinent part of said guide provides as follows:

"The appraiser will likely encounter costs both above and below the median. In this case it is imperative that the appraiser analyze and document costs of comparable properties to determine what costs will be encountered during the five year producing period. In order for the appraiser to make a proper market value determination, any change in operating costs shown in the guide shall be fully documented. However, where the results of the appraiser's analysis indicate that the operator's costs are consistently higher or lower than the median costs shown in the guide, these costs shall be properly considered and should be utilized." (Emphasis added.), Id., part VIII, p. 4.

The Honorable Roy M. Ehrlich
Page Three
May 4, 1979

In our judgment, the appraiser's demand for specific cost and expense data contradicts the provisions of the 1979 Oil and Gas Appraisal Guide and violates K.S.A. 79-1412a, Seventh. Said statute provides as follows: "The county appraiser or district appraiser in setting values for various types of personal property, shall conform to the values for such property as shown in the personal property assessment guides devised and/or prescribed by the director of property valuation." If these statutory provisions are to have any effect or meaning whatsoever, they must be construed as preventing a county appraiser from summarily discarding the cost allowance schedule contained in the 1979 Oil and Gas Appraisal Guide prescribed by the Director of Property Valuation. See Cities Service Oil Co. v. Murphy, 202 Kan. 282, 293 (1968); Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 12 (1969).

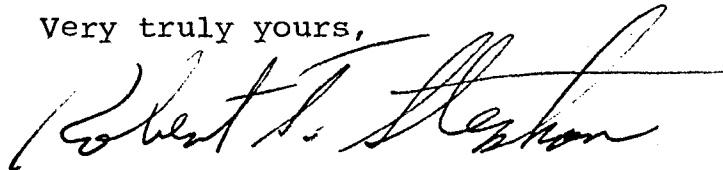
Under the applicable statutes [K.S.A. 79-306b, 79-332, 79-333 and 79-1412a(Seventh)], a taxpayer must be given the opportunity to file his rendition utilizing the prescribed cost allowance schedule before specific cost data can be demanded. Then, if the taxpayer departs from the costs allowed by the schedule, or if the appraiser has any reason to suspect fraud or misrepresentation, there is ample statutory authority allowing the appraiser to investigate and verify actual cost data.

There is another reason why an appraiser may not value all oil and gas leases based on actual cost data, thereby disregarding the cost allowance schedules prescribed by the Director of Property Valuation: such a course of action would result in a non-uniform valuation of oil and gas leases throughout the state, in violation of Article 11, Section 1, of the Kansas Constitution. Such non-uniformity in valuation is obvious where the appraisal of all leases in one county is based on actual cost data, whereas other counties in the state follow the 1979 Oil and Gas Appraisal Guide in permitting valuation based on scheduled median cost figures. Article 11, Section 1, of the Kansas Constitution requires uniformity in the assessment as well as in the rate of taxation. State, ex rel., v. Dwyer, 204 Kan. 3, 11 (1969). The term "assessment" includes listing and valuation. Wheeler v. Weightman, 96 Kan. 50, 53 (1915). It is clear that the constitutional rule of equality and uniformity will not permit the course of action which is being followed by the Barton County Appraiser.

The Honorable Roy M. Ehrlich
Page Four
May 4, 1979

In reaching the above conclusions, we recognize that an appraiser is not required to adhere to an assessment schedule where it is manifestly unlawful or fails to give consideration to a statutory element of value. Garvey Grain, Inc., v. MacDonald, 203 Kan. 1, 12 (1969); Angle v. Board of County Commissioners, 214 Kan. 708, 713 (1974). However, in the above-cited cases, the taxpayer-plaintiffs contended, and the Court found, that application of the prescribed assessment schedules (promulgated by the Director of Property Valuation) resulted in unlawful valuations of certain property. Here, we are unaware of any defect in the cost allowance schedule contained in the 1979 Oil and Gas Appraisal Guide which would result in an unlawful valuation of oil and gas properties, and the Director of Property Valuation has distributed said guide for use throughout the state. Under these circumstances, the Garvey and Angle cases do not support the contention that the appraiser may ignore or discard the cost allowance schedule, and such a course of action is not permissible under K.S.A. 79-1412a, Seventh, or under Article 11, Section 1, of the Kansas Constitution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:gk