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July 26, 1979

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ATTORNEY GENERAL OPINION NO. 79-159

The Honorable Homer E. Jarchow
State Representative, 95th District
2121 West Douglas
Wichita, Kansas 67213

The Honorable Timothy P. O'Sullivan
State Representative, 104th District
412 First National Center
Hutchinson, Kansas 67501

Re: Kansas Constitution--Finance and Taxation--Uniform
and Equal Rate of Assessment and Taxation

Synopsis: The provisions of K.S.A. 1978 Supp. 79-342, as
amended by Section 1 of 1979 Senate Bill No. 261
(L. 1979, ch. 311, §1) violate the provisions of
Article 11, Section 1 of the Kansas Constitution,
which requires that the legislature provide for a
uniform and equal rate of assessment and taxation.

* * *

Dear Representatives Jarchow and O'Sullivan:

You request our opinion as to whether K.S.A. 1978 Supp. 79-342,
as amended by L. 1979, ch. 311, §1, violates the provisions of
Article 11, Section 1 of the Kansas Constitution. Said statute,
as amended, provides in part:

"For the purpose of determining the fair
market value of farm machinery and equip-
ment for the year 1979, the county appraiser
shall utilize the estimated average values
of such property as indicated by the 1979
Kansas appraisal guide for farm machinery and

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equipment as devised or prescribed by the director of property valuation and shall subtract from such values an amount equal to twenty percent (20%) thereof." (Emphasis added.)

This method of valuation must be scrutinized in light of numerous cases construing the provisions of Article 11, Section 1 of the Kansas Constitution, requiring the legislature to provide for a "uniform and equal rate of assessment and taxation."

It is well settled that this provision of the Kansas Constitution requires uniformity in the assessment as well as in the rate of taxation. Wheeler v. Weightman, 96 Kan. 50, 53 (1915); Addington v. Board of County Commissioners, 191 Kan. 528, 531 (1963); State, ex rel., v. Dwyer, 204 Kan. 3, 11 (1969). In Addington, supra, the rule is stated thusly: "Uniformity in taxing implies equality in the burden of taxation, and this equality cannot exist without uniformity in the basis of assessment as well as in the rate of taxation." (Emphasis added.) Id. at 528, Syl. para. 3 (1963). Accord, Beardmore v. Ling, 203 Kan. 802 (1969), overruled on other grounds in Gordon v. Hiatt, 214 Kan. 690 (1974).

Moreover, the term "assessment" means the process of listing and valuing property for taxation. Hines et al. v. Leavenworth et al., 3 Kan. 186 (1865) and Wheeler v. Weightman, supra. Thus, Article 11, Section 1 of the Kansas Constitution requires that the legislature provide for uniformity and equality in the valuation of property for taxation.

In order to comply with its constitutional duty to provide such uniformity and equality in valuation, the legislature enacted K.S.A. 79-1439. Garvey Grain, Inc., v. MacDonald, 203 Kan. 1, 9 (1969). Said statute provides, in part, that "all real and tangible personal property which is subject to general property taxes shall be appraised uniformly and equally at its fair market value in money, as defined in K.S.A. 79-503." (Emphasis added.)

In K.S.A. 79-503, the legislature has defined the term "fair market value in money" thusly:

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"Fair market value in money shall mean 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 that 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"

Thus, a strict, literal construction of K.S.A. 79-1439 requires all property, real or personal, to be valued according to what "a well informed buyer is justified in paying and a well informed seller is justified in accepting." However, notwithstanding this repeated command, such is not, and cannot, as a practical matter, be done. Some items or classes of property cannot be valued according to the literal requirement of 79-1439, due to their intrinsic use, operation or nature. This has been recognized by the Court in regard to railroad property generally, the use and operation by railroads of leased train cars, and interstate natural gas pipeline operating property. See Missouri River, F.S. & G.R. Co. v. Morris, 7 Kan. 210, 222 (1871), Associated Rly. Equipment Owners v. Wilson, 167 Kan. 608, 618 (1949), and Northern Natural Gas Co. v. Dwyer, 208 Kan. 337, 348, 349 (1971). This fact forms the basis for the rule: "Of necessity the legislature has adopted several different methods for the assessment of property of different classes and used in different kinds of business." (Emphasis added.) Hunt v. Allen County, 82 Kan. 824, 828 (1910).

Hunt is cited with approval in Bank v. Geary County, 102 Kan. 334, 348 (1918), where the rule is otherwise stated: "The provision of the state constitution, requiring a uniform and equal rate of assessment and taxation . . . does not forbid the employment of different methods of assessment . . . for different classes of property." (Emphasis added.) Id. at 347.

These various statements by the Court, in our judgment, establish the rule that in applying the mandate of K.S.A. 79-1439, classification of property for purposes of valuation is allowed, but only when, due to the intrinsic use, operation or nature of the property, its value cannot be determined by using the justified

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sales-justified purchase price standard established by considering the relevant factors in 79-1439 which are applicable to the particular property sought to be valued. The vast majority of property, both real and personal, can be valued according to 79-1439; however, for those items or classes of property that cannot be so valued, the Court has recognized that the legislature can segregate particular kinds of property and value them by a different method than that used to value most property, where the intrinsic use, operation or nature of the property being classified establishes a rational basis for doing so. For example, the Court recognizes in Associated Rly. Equipment Co. v. Wilson, supra, that if the property therein involved could not be assessed according to the method developed by the legislature, it could not be taxed at all. Id. at Syl. para. 1(5). In Northern Natural Gas Co., supra, the Court acknowledges that the market data approach was not applicable to Northern's property because "[g]igantic public utilities of this nature are not sold in the open market." 208 Kan. at 349. In these cases there is established a necessity to treat some property differently from other property. Thus, it is only out of necessity that the legislature can devise a method of valuation which deviates from the prescribed method utilized in valuing the vast majority of property.

Briefly stated, subsection (a)(1) of K.S.A. 1978 Supp. 79-342, as amended by 1979 Senate Bill No. 261 (L. 1979, ch. 311, §1), requires that farm machinery and equipment be appraised at 20% below the "estimated average value" of such property, as set forth in the 1979 appraisal guide prescribed by the Director of Property Valuation. However, the appraisal guides prescribed by the Director of Property Valuation are required to show the fair market value of personal property (subsection (b) of K.S.A. 75-5105a). Thus, as the values set forth in the appraisal guide are not "the estimated average values" of such property, but rather, by statute, are required to be the fair market value in money of such property, it is apparent that 79-342 is an attempt by the legislature to segregate farm machinery and equipment from all other forms of personal property, and create for it a basis of assessment different from that of most other items of personal property. That is, 1979 Senate Bill No. 261 requires that farm machinery and equipment be valued at 20% below the fair market value established by the appraisal guide, while other property which is to be appraised in accordance with appraisal guides prescribed by the director, are valued at 100% of the value shown in said guides. For the reasons stated herein, it is our opinion that such an enactment violates Article 11, Section 1 of the Kansas Constitution.

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In reaching this conclusion, we are aware that subsection (a)(2) of K.S.A. 1978 Supp. 79-342 provides that the appraiser shall deviate from the appraisal at 20% below fair market value "when he or she determines that the value assigned to such property in accordance with part (1) of this subsection does not reflect the fair market value of the particular property involved as provided for by part (1) of this subsection." In our judgment, this subsection directly contradicts subsection (a)(1) of the same statute, in that it directs that farm machinery and equipment be valued at fair market value rather than 20% below fair market value. While it may be possible to harmonize the act with Article 11, Section 1, of the Constitution by giving subsection (a)(2) controlling force over the conflicting provisions of subsection (a)(1), such a construction would represent no change from existing statutory law (see K.S.A. 79-1439 and comments above relating thereto) and would require a finding that the legislature did a useless and senseless thing in enacting K.S.A. 1978 Supp. 79-342 and 1979 Senate Bill No. 261. Such a finding is not permissible under established rules of statutory construction. Herd v. Chambers, 158 Kan. 614, 628 (1944). Moreover, the validity of an act must be measured by what may be done under it, Central National Bank v. McFarland, 20 F.2d 416 (1927); and the valuation of farm machinery and equipment at 20% below fair market value is clearly permissible under K.S.A. 1978 Supp. 79-342 and 1979 Senate Bill No. 261. However, such is not permissible under Article 11, Section 1 of our constitution.

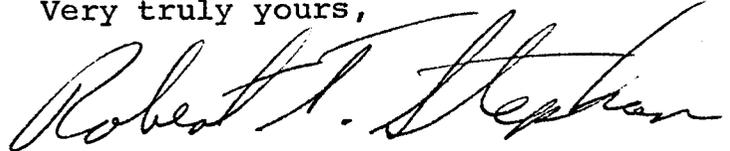
To uphold the validity of the scheme set forth in 1979 Senate Bill No. 261 requires a finding of legal necessity to deviate from the statutory requirements that property be assessed at its fair market value in money. As previously noted, such necessity exists only where the property in question cannot be taxed pursuant to the method prescribed by the legislature as the rule generally applicable to all property. In our judgment, no such showing can be made with respect to farm machinery and equipment, and we are unaware of any reason preventing the assessment of farm machinery and equipment at its fair market value in money.

While we recognize the legislature's motive in enacting 79-342, and we sympathize with their efforts to relieve the farmers' economic distress, "economic distress is no justification for ignoring the constitution itself." (Emphasis added.) State, ex rel., v. Atherton, 139 Kan. 197, 210 (1934), citing Home Building and Loan Ass'n v. Blaisdell, 290 U.S. 398, 425, 54 S.Ct. 231, 78 L.Ed. 413 (1933).

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Based upon the foregoing, we are constrained to conclude that 1979 Senate Bill No. 261 (L. 1979, ch. 311, §1) violates the provisions of Article 11, Section 1 of the Kansas Constitution.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:gk