ATTORNEY GENERAL OPINION NO. 82–7

Mr. Larry J. Clark
Crawford County Appraiser
P.O. Box 282
Girard, Kansas 66743

Re: Taxation--Rules for Valuing Property--Duty to View and Inspect Real Property

Synopsis: The requirement of K.S.A. 79-501, that the appraisal of real property be based upon an actual view and inspection of the property, carries with it the implied authority for the appraiser to enter upon real property to perform these functions, without such action constituting a trespass. Due to such implied authority, the prior permission of the taxpayer to enter upon the real property, for the limited purposes of viewing and inspecting the same, is not required.

If, however, the appraiser's entry upon real property is opposed by a taxpayer, the appraiser's paramount duty is to preserve the public peace. In such situations, the appraiser may proceed, through legal channels, to assure fulfillment of the legal duty to appraise the real property by an actual view and inspection thereof. Cited herein: K.S.A. 79-501.

* * *

Dear Mr. Clark:

In requesting our opinion, you explain that the provisions of K.S.A. 79-501 require each parcel of real property to be appraised at its fair market value in money, "the value thereof
to be determined by actual view and inspection of the property." (Emphasis added.) You further explain that, in many instances, the occupant of real property is not at home when the appraiser or the appraiser's staff arrives at the property to view and inspect the property, as required by K.S.A. 79-501. Under these circumstances, you inquire whether it is permissible for the appraiser or the staff to enter upon the property, for the purpose of viewing and inspecting the property and improvements. Additionally, you indicate that, in a few instances, the occupant of the real property refuses to allow the appraiser or the appraiser's staff to enter upon the property to inspect it, and you have asked our opinion as to the action to be taken by the appraiser or his or her staff when this occurs.

The requirement that the value of real property be based upon an "actual view and inspection of the property" has been prescribed by law since 1876. However, we find no Kansas appellate court decision discussing the power of the appraiser to enter upon the property of a taxpayer to fulfill this statutory duty. However, in 87 C.J.S. Trespass, §54, it is stated:

"A rule of general recognition is that one acting under authority from the government may justify acts which otherwise would be trespass, but it must appear that the authority in fact existed, and that it was valid, and that it justified the method employed to carry out the authority, the particular act done, and the doing of it by the defendant." (Footnotes omitted.)

Also, the commentator in 75 Am.Jur.2d Trespass, §43, states:

"Conduct otherwise a trespass is often justifiable by reason of authority vested in the person who does the act, as, for example, an officer of the law acting in the performance of his duty. In other cases than that of officers of the law, acts may be justified by reason of authority vested in the actor, as, for instance . . . firemen entering a premises to investigate reports of a fire or to actually fight a fire, [or] surveyors acting under authority in making alterations in a highway . . . ." (Footnotes omitted.)
We believe the duty enjoined upon the appraiser to value real
property from an actual view and inspection of the property
carries with it the implied authority for the appraiser to enter
upon real property to perform this duty, without such action
constituting a trespass. However, we also believe that all
persons, perhaps especially governmental officers, owe a duty
to preserve the public peace. Therefore, it is our opinion
that for the limited purpose of appraising a taxpayer's real
property and the improvements made thereon, by actual view and
inspection, an appraiser may enter upon such property, at a
reasonable time, without the prior permission of the taxpayer.
If, however, the appraiser's entry upon real property is opposed
by a taxpayer, we believe the appraiser should inform the tax-
payer of the appraiser's duty to appraise the property, from
an actual view and inspection thereof, and seek the taxpayer's
permission to fulfill this duty. If the taxpayer persists
in objectsing to the appraiser's view and inspection of the
property, we are of the opinion the appraiser should discontinue
such efforts to view and inspect the property in order to avoid
a confrontation with the taxpayer which might lead to a breach
of the peace. If this occurs, we believe the appraiser should
inform the county attorney of the facts, and request the county
attorney to seek an order from the court compelling the taxpayer
to allow the appraiser to enter upon the real property to view
and inspect the property and the exterior of improvements made
thereon.

From the foregoing, we believe the paramount duty of public
officials is to preserve the peace. However, we also believe
that public officials can fulfill their statutory duties through
legal process, if that is necessary. By following the procedures
outlined herein, the public peace is preserved, and the performance
of public duties is accomplished. Both, in our judgment, are
necessary.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm