



STATE OF KANSAS

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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.

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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

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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:

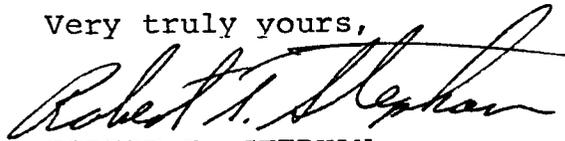
"Conduct otherwise a trespass is often justifiable by reason of authority vested in the person who does the act, as, for example, an officer of the law acting in the performance of his duty. In other cases than that of officers of the law, acts may be justified by reason of authority vested in the actor, 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.)

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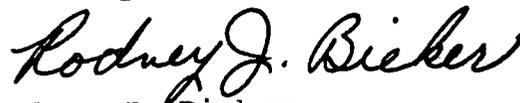
We believe the duty enjoined upon the appraiser to value real property from an actual view and inspection of the property carries with it the implied authority for the appraiser to enter upon real property to perform this duty, without such action constituting a trespass. However, we also believe that 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 taxpayer 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 objecting 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