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May 2, 1990

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ATTORNEY GENERAL OPINION NO. 90- 53

The Honorable Dale M. Sprague  
State Representative, Seventy-Third District  
State Capitol, Room 330-N  
Topeka, Kansas 66612

The Honorable B. D. Kanan  
State Senator, Fifth District  
State Capitol, Room 462-E  
Topeka, Kansas 66612

Re: Taxation--Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property--Notification of Taxpayer of Change in Classification or Appraised Valuation of Property; Physical Inspection Required in Tax Year 1990; Drive-by Inspections

Synopsis: The term "physical inspection" as used in 1990 Senate Bill No. 332 connotes something more than a mere perfunctory glance at the property before an appraiser may increase its valuation in 1990. Exactly what is required may depend on the circumstances, but generally we believe the appraiser must review the records compiled in 1989 for that property, compare those records to what the appraiser sees during the visit and determine whether the value assigned to the property appears to reflect the actual value of the property. In some cases the appraiser may be able to do this by merely viewing the property. In other circumstances the appraiser may need to take measurements, etc. A "drive-by" inspection, if it does not involve the above-mentioned procedures, would not, in our opinion, be sufficient to

constitute a "physical inspection" as required in section five of 1990 Senate Bill No. 332. Cited herein: K.S.A. 77-201; 1990 Senate Bill No. 332; 1990 Senate Bill No. 467.

\* \* \*

Dear Representative Sprague and Senator Kanan:

You request our opinion regarding the meaning attributable to section five of 1990 Senate Bill No. 332. The provision in question states as follows:

"[F]or tax year 1990 . . . the valuation for all real property shall not be increased and notices need not be sent unless such notice is requested by the taxpayer or an increase in the appraised valuation of the real property occurs due to a specific review thereof including a physical inspection of such property by the county or district appraiser provided that no such inspection shall be required to change the valuation of land devoted to agricultural use." (Emphasis added.)

Specifically you question what constitutes a "physical inspection" as that term is used in Senate Bill No. 332, and whether a "drive-by" inspection would be sufficient to meet the requirement of that bill.

1990 Senate Bill No. 332 does not contain a definition for the term physical inspection. The provision was amended into the bill by the house committee on taxation. The committee minutes do not reflect any discussion of what was intended by the term. See Minutes of the House Committee on Taxation, March 6, 7, 1990. However, the bill from which the language was taken also, at one point, provided for contact with the owner of the property on which the valuation was being increased. 1990 Senate Bill No. 467, as amended by the Senate Committee on Assessment and Taxation. This requirement was omitted from the final version. It would thus appear that such contact, and therefore an internal inspection of any building, is not required to constitute a sufficient physical inspection under 1990 Senate Bill No. 332. Just what is required, however, is more difficult to answer.

Since there is not a statutory definition for the term physical inspection, and it is subject to various interpretations, we turn to the rules of statutory construction for guidance. K.S.A. 77-201 provides in part as follows:

"In the construction of the statutes of this state the following rules shall be observed, unless the construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the statute:

. . . .

"Second. Words and phrases shall be construed according to the context and the approved usage of the language, but technical words and phrases, and other words and phrases that have acquired a peculiar and appropriate meaning in law, shall be construed according to their peculiar and appropriate meanings."

See also J.A. Tobin Const. Co., Inc. v. Kemp, 239 Kan. 430, 436 (1986) (words and phrases in statutes are construed according to the context and approved usage of the language, with words in common usage given their natural and ordinary meaning); Flour Mills of America v. Burrus Mills, Inc., 174 Kan. 709, 716, 717 (1953) (if statute is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business, or transaction knows and understands to have a particular meaning, then words are to be construed as having that particular meaning, though it may differ from common or ordinary meaning of the words). We have been advised by the division of property valuation, department of revenue, that the term physical inspection is not a technical term in the field of appraisal and thus does not have a peculiar meaning. We therefore look to the ordinary meaning of the words.

Dictionary definitions of the term physical are not particularly helpful. We believe, however, that what was meant was that the appraiser or his representative must actually visit the property in question rather than merely reviewing the computer or other records on the property's valuation. The term inspect is defined as "to examine

carefully and critically," The American Heritage Dictionary 680 (new college ed. 1976); "to examine; scrutinize; investigate; look into; check over; or view for the purpose of ascertaining the quality, authenticity or conditions of an item, product, document, residence, business, etc." Black's Law Dictionary 716 (5th ed 1979). The term inspection has been defined by various courts in various contexts as meaning a critical examination or investigation. Horton v. Ft. Worth Packing and Provision Co., 76 S.W. 211, 212 (Tex. 1903); Peters v. City and County of San Francisco, 260 P.2d 55, 61 (Cal. 1953); State ex rel. State Farm Mutual Auto Ins. Co. v. Rickhoff, 509 S.W.2d 485, 486 (Mo. 1974); Martin v. Reynolds Metals Corp., 297 F.2d 49, 57 (C.A. Or. 1961). "'Inspection' has a broader meaning than just viewing. It has been defined to include 'examine carefully or critically, investigate and test officially, especially a critical investigation or scrutiny.'" Central Nat. Bank in Chicago v. Fleetwood Realty Corp., 441 N.E.2d 1244, 1249 (Ill. 1982) (citations omitted). These court decisions indicate that a perfunctory glance at the property is probably not sufficient under 1990 Senate Bill No. 332.

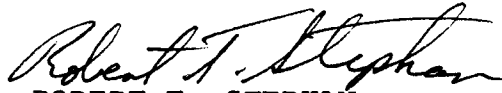
Having said this, we should clarify our belief that what is sufficient will many times depend upon the circumstances. The statute does not require a full-blown appraisal in every instance. This is the position taken by the director of property valuation. See Memorandum from Director Luttjohann to all counties dated March 22, 1990, Re: Appraisal Moratorium. The interpretation placed on a statute by the administrative agency charged with its enforcement is entitled to great weight. See Kansas Bd. of Regents v. Pittsburg State Univ. Chapter of K-NEA, 233 Kan. 801, 809 (1983).

Taking all of the above into consideration, it is our opinion that at the very least the appraiser must review the records compiled in 1989 for that property, compare those records to what he sees during his visit and determine whether the value assigned to the property appears to reflect the actual value of the property. In some cases the appraiser may be able to do this by merely viewing the property. In other circumstances the appraiser may need to take measurements, etc. A "drive-by" inspection, if it does not involve the above-mentioned procedures, would not, in our opinion, be

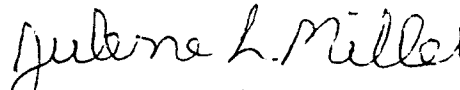
Representative Dale M. Sprague  
Senator B. D. Kanan  
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sufficient to constitute a "physical inspection" as required  
in section five of 1990 Senate Bill No. 332.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm