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ATTORNEY GENERAL OPINION NO. 91- 134

The Honorable Clyde D. Graeber  
State Representative, Forty-First District  
2400 Kingman  
Leavenworth, Kansas 66048-4230

Re: Taxation--Property Valuation, Equalizing  
Assessments, Appraisers and Assessment of  
Property--Powers and Duties of Director of Property  
Valuation; Force and Effect of Directives

Synopsis: The July 2, 1990 directive issued by the director  
of property valuation that requires county  
appraisers to consider the final results of the  
hearing and appeals processes for tax years 1989  
and 1990 in estimating fair market value and use  
value for tax year 1991 is binding on all county  
appraisers. The "final result" is the value  
reached at the last step taken in the processes.  
In order to alter the value of property, the value  
of which was set in the 1989 or 1990 hearing and  
appeal process, the county appraiser must have  
documented substantial and compelling reasons to  
prove the altered value reflects current fair  
market or use value. Cited herein: K.S.A.  
79-1401; 79-1404, as amended by L. 1991, ch. 278,  
§ 1; K.S.A. 79-1456; K.S.A. 1990 Supp. 79-1476.

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Dear Representative Graeber:

By letter dated July 17, 1991, this office brought to your  
attention the existence of a directive issued by the director

of property valuation to all county boards of equalization and all county appraisers. The directive, dated July 2, 1990, directs local officials to take into consideration the values reached through the previous years' appeals processes when estimating fair market value or use value for tax year 1991. You ask that we address this directive in a formal opinion, and that we respond to the following questions:

"1. Does the July 2, 1990, PVD Directive requiring 'due deference' to the final results of the 1989/1990 hearing and appeals process except where substantial and compelling reasons to deviate therefrom are demonstrated, apply not only to those values determined by the Board of Tax Appeals, but also to those values established at both the informal hearing and board of equalization levels of appeal?

"2. Absent substantial and compelling reasons to deviate therefrom, may a county increase the valuation when that property's value for the prior year had been determined at either the informal or the county board of equalization hearing levels?

"3. How is the phrase 'substantial and compelling reasons' defined and applied in the context of determining whether due deference shall be given to the final results of the hearing and appeals process in regard to the fair market value of property?"

The July 2, 1990 directive states in part:

"Except for land devoted to agricultural use and a few other exceptions, real property in Kansas is required to be valued at its 'fair market value,' which is defined in K.S.A. 79-503a as 'the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming the parties are acting without undue compulsion.' K.S.A. 79-503a further provides that sales shall not be used as the sole criteria of 'fair market value,' but that other factors shall be considered in finding 'fair market value.' Therefore, in my opinion, due deference should be given to the final results of the 1989/1990 hearing

and appeals process in finding 'fair market value' or 'use value.' The presumption is that these final results represent the 'fair market value' or 'use value' of the property. . . .

"County appraisers are directed to carefully analyze the final results of the hearing and appeals processes for both tax years 1989 and 1990 in estimating 'fair market value' and 'use value' for tax year 1991. Only when substantial and compelling reasons to deviate from such 1989 and 1990 final values have been documented should such value be increased for tax year 1991."

The directive does not distinguish between results of a hearing before the board of tax appeals and results of an informal hearing with the county appraiser, or of an appeal at any other stage. The results at any stage will be considered "final" if not timely appealed further. Also, it is the goal at each stage to achieve fair market value (or use value for land devoted to an agricultural use), so the presumption is that at any of the stages the result, if final, represents fair market value or use value.

By your second question, you essentially ask whether county appraisers may ignore the directive or if it is binding on them. Several statutes give the director of property valuation the power to direct county and district appraisers. K.S.A. 79-1401 provides that "[t]he director of property valuation shall have general supervision and direction of the county assessor's in the performance of their duties and shall regulate and supervise the due performance thereof." (Emphasis added.) The director has the power and authority to exercise general supervision over county and district appraisers to the end of uniform assessments at fair market value; "to require all county and district appraisers . . . under penalty of forfeiture and removal from office" to assess at fair market value; "[t]o confer with, advise and direct county and district appraisers . . . as to their duties under the statutes of the state"; and "to make any order or direction to . . . any county or district appraiser as to the valuation of any property. . . ." K.S.A. 79-1404, as amended by L. 1991, ch. 278, § 1 (emphasis added). K.S.A. 79-1456 requires county appraisers to "follow the policies, procedures and guidelines of the director of property

valuation in the performance of the duties of the office of county appraiser." K.S.A. 79-1458 and 79-1404 First as amended, require county and district appraisers to maintain all data relating to appraisal of property as may be required by the director. In Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 12 (1969), the Kansas Supreme Court stated:

"The director of property valuation is an administrative official and his decisions in all matters within the scope of his supervisory power, involving administrative judgment and discretion, are conclusive upon subordinate taxing officials. In the exercise of his powers, the director must of necessity interpret the tax laws and such interpretations are prima facie binding."

See also McManaman v. Board of County Commissioners, 205 Kan. 118, 126, 127 (1970).

Based on the above-cited authorities, it is our opinion that county and district appraisers are bound to follow a directive of the director of property valuation when the directive is issued to assist the appraisers in determining fair market or use value or performing any of their other duties. The July 2, 1990 directive in question specifically addresses determination of fair market or use value for properties which have gone through the hearing and/or appeals processes in 1989 or 1990. Further the directive mandates the maintenance of data by appraisers in that it requires them to document adjustments. Since these are areas within the director's scope of authority, we believe the directive in question is binding on county and district appraisers.

Finally, you seek our interpretation of the phrase "substantial and compelling reasons" in the context of determining whether the final results of a previous year's hearing and appeals process may be altered by the county appraiser. We believe the intent of this language was to place on the county appraiser the burden of documenting and proving that the value assigned a piece of property through a prior year's hearing or appeals process is not its current fair market or use value. This interpretation takes into account the county appraiser's duty to update appraisals on an annual basis (K.S.A. 1990 Supp. 79-1476), but at the same time requires the appraiser to account for any change in value. The reasons given for altering the value from that reached in

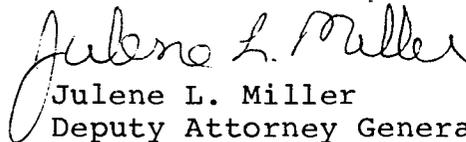
the appeals process must be compelling; the presumption is that the values finally arrived at in the hearing and appeals processes were the fair market or use values in that those were the values agreed to be such by the taxpayer and the government officials charged with the responsibility of setting such values. However, if the appraiser can in specific instances prove by demonstrative evidence that fair market value was not achieved through the processes or that changes have occurred in the property or the market, the value can be altered. Such analysis and documentation must occur prior to issuance of a change of value notice, the point being that the appraiser should not be changing the value of such property without having demonstrable reasons for doing so.

In conclusion, the July 2, 1990 directive issued by the director of property valuation that requires county appraisers to consider the final results of the hearing and appeals processes for tax years 1989 and 1990 in estimating fair market value and use value for tax year 1991 is binding on all county appraisers. The "final result" is the value reached at the last step taken in those processes. In order to alter the value of property, the value of which was set in the 1989 or 1990 hearing and appeal process, the county appraiser must have documented substantial and compelling reasons to prove the altered value reflects current fair market or use value.

Very truly yours,



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