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ATTORNEY GENERAL OPINION NO. 91-145

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

Re: Taxation--Property Valuation, Equalizing  
Assessments, Appraisers and Assessment of  
Property--Installation and Maintenance of Records  
and Data; Open to Public Inspection

Synopsis: All records of the county appraiser and county board of equalization relating to identification and appraisal of real and personal property are required to be made available for public inspection unless closure of a particular record is specifically authorized by law. Except as provided in the 1991 amendments to K.S.A. 1990 Supp. 79-1448, records need only be provided upon request or as necessary to defend the system of valuation in the appeals process. Failure or refusal to provide access to records required to be open may be prosecuted under the Kansas open records act or various provisions in the tax statutes. Cited herein: K.S.A. 1990 Supp. 19-431; K.S.A. 19-2609; K.S.A. 1990 Supp. 45-221, as amended by L. 1991, ch. 149, § 12; 45-222; K.S.A. 79-1404, as amended by L. 1991, ch. 278, § 1; 79-1412a; K.S.A. 1990 Supp. 79-1448, as amended by L. 1991, ch. 279, § 4; K.S.A. 79-1458; K.S.A. 1990 Supp. 79-1460, as amended by L. 1991, ch. 279, § 1; K.S.A. 79-1472; 79-1473; 79-1480; K.S.A. 1990 Supp. 79-1602; 79-1606; K.S.A. 79-2919.

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Dear Representative Graeber:

You request our opinion regarding the availability of valuation information to taxpayers. Specifically you ask:

"1. Taking into consideration, but not by way of limitation, the relevant language in above mentioned course manual number 3-100-4 as well as that contained in K.S.A. 79-1458, precisely what tax information and records are counties required to make available to taxpayers both before and at the informal and county board of equalization hearings for the purpose of enabling taxpayers to more effectively prosecute said appeals?

"2. In the event a county fails to provide any required information, what, if any, penalties and sanctions may be levied against such county?

"3. Who is responsible for investigating a county's alleged failure to provide any required information?

"4. Who is responsible for enforcing any applicable penalties and sanctions for proven non-compliance?"

K.S.A. 79-1458 provides:

"The county appraiser shall install and maintain such records and data relating to the identification and appraisal of all property in the county, taxable and exempt, required by the director of property valuation.

"Except as specifically provided by law, all records of the county appraiser, the county board of equalization and the director of property valuation relating to the identification and appraisal of real and personal property shall be open at all reasonable times to public inspection."

Course Manual No. 3-100-4, prescribed by the director of property valuation, states that the "county appraiser's office is expected to provide an ICS printout and Residential Comp Sales or C&I Valuation Report at the informal conference for each property discussed," p. 43, and that the appraiser "will probably want to have the following documents included in the hearing folder prior to meeting with the taxpayer: 1. The Date Collection Card for the parcel. 2.

The returned Door Hanger Questionnaire, if applicable. 3. Original Comparable Sales Sheets, with notes, used during final review. 4. Other documents used to arrive at final value estimates (i.e., final review ICS sheets, valuation override documentation, etc.)," p. 44. The manual makes it clear that the burden is on the taxpayer at the informal hearing to prove the appraiser's valuation is in error. See Course Manual No. 3-100-4 at 2, 28, 34, 35, 45. (The July 2, 1989 directive issued by the director of property valuation shifts this burden in instances where the property was the subject of an appeal in 1989 or 1990. See Attorney General Opinion No. 91-134. K.S.A. 1990 Supp. 79-1448, as amended by L. 1991. ch. 279, § 4 shifts this burden in all other instances beginning in tax year 1992). However, the manual also specifies that the appraiser should have these and other (see Manual, at 45) documents and information available to be able to defend values as part of a mass appraisal program. In other words, the appraiser should be prepared to explain the valuation process to the taxpayer and how values generally are reached. Course Manual No. 3-100-4 at 28, 33, 49.

In addition to K.S.A. 79-1458, various other statutes require counties to make specific records available to the public: K.S.A. 79-1457 ("all necessary blank forms . . . which are required to be completed and returned by the public to the county appraiser"); K.S.A. 79-1480 (listings of the assessed valuations of each parcel of real property located within the county); K.S.A. 1990 Supp. 79-1460, as amended by L. 1991, ch. 279, § 1 (beginning July 1, 1991, requires appraisers to keep a record of inspections which result in increased valuations and to make such records available to the affected taxpayers). K.S.A. 79-1412a Third and 79-1472 require the county and district appraisers to attend meetings of the county board of equalization (BOE) and hearing officers or panels of the county BOE, respectively, "making all records available" to such entities. K.S.A. 1990 Supp. 79-1602 authorizes the director of property valuation to prescribe guidelines governing the duties of hearing panels, and K.S.A. 1990 Supp. 79-1606 requires the hearing officers or panels or the county BOE to adopt, use and maintain the appeal form, hearing docket and record of cases prescribed by the director, to record the order rendered by the hearing officer, panel or BOE and make such recorded orders open to public inspection.


While these statutes and the manual require and/or recommend maintenance of information, and that specific records be made available to the public or to the hearing officer, panel or BOE, there is no enforceable requirement that specific

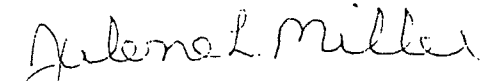
information or documentation be presented to each taxpayer at or prior to the informal hearing or formal appeals absent a request for these records from the taxpayer. (Compare K.S.A. 1990 Supp. 79-1448, as amended by L. 1991, ch. 279, § 4 - beginning in tax year 1992 the county appraiser shall initiate production of evidence at the informal meeting to substantiate valuation of the property.) If such a request is made, access may be denied only if there is a specific statute authorizing closure of the records in question. See K.S.A. 79-1458; K.S.A. 1990 Supp. 45-221, as amended by L. 1991, ch. 149, § 12.

If a county official violates the Kansas open records act, an action may be brought by the county or district attorney, attorney general or private citizen to force access to records required to be open to the public. There is no penalty associated with such proceedings, but the court may award attorneys' fees and costs. K.S.A. 1990 Supp. 45-222. Additionally, if a county appraiser fails to comply with the mandates of K.S.A. 79-1412a Third, 79-1472, 79-1458 or 79-1457, there are several avenues available to the director of property valuation and prosecutors to initiate proceedings for non-compliance. See Attorney General Opinion No. 91-136; 19-431; K.S.A. 79-1404 Third, as amended by L. 1991, ch. 278, § 1; 79-1473; 79-2919; 19-2609. Other county officials may also be subject to sanctions pursuant to K.S.A. 79-2919.

In conclusion, counties are required to make available for public inspection all records of the county appraiser and county board of equalization relating to identification and appraisal of real and personal property unless closure of a particular record is specifically authorized by law. Except as provided in the 1991 amendments to K.S.A. 1990 Supp. 79-1448, records need only be provided upon request of the taxpayer or as necessary to defend values in the appeals process. Failure or refusal to provide access to records required to be open may be prosecuted under the Kansas open records act or various provision in the tax statutes.

Very truly yours,

  
ROBERT T. STEPHAN  
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