



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

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MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 91-148

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

Synopsis: The April 1 deadline for giving taxpayers notice of a change in the valuation of their real property is directory rather than mandatory. Failure to meet this deadline does not invalidate the changed valuations. If notices are mailed late and the hearing/appeal deadlines are not extended, taxpayers who are unable to request or attend a hearing/appeal procedure for this reason are deemed to have had their request for relief denied, and a final determination or order to that effect must be issued so that they may proceed to the next step in the process. Constitutional due process requirements are met if the taxpayer has been given a meaningful notice and opportunity to be heard at some stage in the proceedings. Cited herein: K.S.A. 1990 Supp. 79-1460, as amended by L. 1991, ch. 279, § 1; K.S.A. 1990 Supp. 79-1476; 79-2005, as amended by L. 1991, ch. 279, § 5; L. 1991, ch. 278, § 1; L. 1990, ch. 90, § 5; L. 1971, ch. 293, § 5.

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Dear Representative Graeber:

You request our opinion regarding the effect, in light of due process, of a county appraiser's failure to timely conduct physical inspections of taxable property and send change in valuation notices to taxpayers. Specifically your questions are as follows:

"1. Is the statutorily imposed April 1st deadline for county appraisers to physically inspect property and send taxpayers change in valuation notices mandatory, requiring strict observance thereof by county appraisers?

"2. Is a county appraiser's change in the valuation of property nullified and otherwise rendered invalid by said appraiser's failure to physically inspect and/or notify the taxpayer of said change in valuation on or before April 1st of the applicable year?

"3. How does a county appraiser's failure to adhere to the above mentioned April 1st deadline impact the applicable taxpayer's right to appeal the appraiser's valuation of said property?"

K.S.A. 1990 Supp. 79-1460, as amended by L. 1991, ch. 279, § 1 provides in pertinent part:

"The county appraiser shall notify each taxpayer in the county annually on or before April 1 for real property and May 1 for personal property, by mail directed to the taxpayer's last known address, of any change in the classification or appraised valuation of the taxpayer's property, except that, for tax year ~~1990~~, such notices shall be mailed on or before April ~~16~~ for real property, and 1992, and each year thereafter, 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 unless: (a) A specific review thereof is conducted, including an individual physical inspection of such property by the county or district appraiser or such appraiser's designee

provided that no such inspection shall be required to change the valuation of land devoted to agricultural use; . . .

"Failure to receive such notice shall in no way invalidate the classification or appraised valuation as changed."

Note that this statute was amended in 1990 (L. 1990, ch. 90, § 5) to place a temporary moratorium on the increase of non-agricultural real property valuations for tax year 1990 unless a physical inspection was conducted (see Attorney General Opinion No. 90-82); the 1991 amendment prohibits an increase in the valuation of such property absent a physical inspection beginning in tax year 1992. Thus, for tax year 1991 county appraisers were not required to physically inspect all non-agricultural real property before increasing valuations. See K.S.A. 1990 Supp. 79-1476.

The issue of whether the deadline for notifying taxpayers of the values placed on their property is mandatory was addressed by the Kansas Supreme Court in Spalding v. Price, 210 Kan. 337 (1972). At that time, the requirement was codified at K.S.A. 79-1412a Third and the deadline was May 1 rather than April 1, but otherwise the provision was substantially the same as the provision we have quoted above. The court stated:

"Certain statutory duties are placed upon the county assessor. Mailing notice of changes in valuation is one of his duties. K.S.A. 79-1412a, Third provides:

"'County assessors shall perform the following duties:

"'Third. Notify each taxpayer on or before May first by mail directed to his last known address as to the assessed value placed on each parcel of his real property: Provided, That after 1956 such notice shall be sent only when the assessed value of any parcel has been changed from the assessment shown for the preceding year. Failure to receive such notice shall in nowise invalidate the assessment.'

"The last sentence of this provision is noteworthy. The legislature in directing the assessor to mail notices provided that a failure to receive a notice of change in valuation should 'in nowise invalidate the assessment.' In interpreting the meaning and effect of this statute it would not be reasonable for this court to hold the assessment is invalid because the notice was received two weeks late, when the legislature has said failure to receive the notice shall in nowise invalidate the assessment. This latter statement appears another way for the legislature to say the provision for mailing notice is directory, not mandatory.

"In City of Hutchinson v. Ryan, 154 Kan. 751, 121 P.2d 179, the rule of construction, as to directory or mandatory provisions in statutes, is stated as follows:

"'In determining whether statutory provisions are mandatory or directory, it is a general rule that where strict compliance with the provision is essential to the preservation of the rights of parties affected and to the validity of the proceedings, the provision is mandatory, but where the provision fixes a mode of proceeding and a time within which an official act is to be done, and is intended to secure order, system and dispatch of the public business, the provision is directory.' (Syl. ¶1.)

"Under this rule we hold the notice provision, K.S.A. 79-1412a, Third, is directory rather than mandatory. See also Board of Education v. Barrett, 101 Kan. 568, 167 Pac. 1068; School District v. Clark County Comm'rs, 155 Kan. 636, 127 P.2d 418; and Shriver v. Board of County Commissioner, 189 Kan. 548, 370 P.2d 124. Having concluded the notice statute is directory, a delay of two weeks in mailing the notice

of change in valuation would not result in an invalid assessment."

Thus, the court has held that the language in question, requiring change of value notices be sent by April 1 (May 1 at the time the case was decided), is directory, not mandatory. Failure to notify the taxpayer by April 1 does not invalidate the changed valuation. However, failure to physically inspect the property in tax year 1990 or tax year 1992 and each year thereafter would. K.S.A. 1990 Supp. 79-1460, as amended by L. 1991, ch. 279, § 1; Attorney General Opinions No. 90-51, 90-53. It is not the timing that is essential, but the fact that a physical inspection was not conducted.


You also question how a county appraiser's failure to meet the April 1 deadline impacts the taxpayer's right to appeal the valuation. As of April 18, 1991, the director of property valuation has statutory authority "to extend all statutory deadlines prescribed for the mailing of valuation notices . . . and the completion of valuation and classification hearings" as "necessary to secure the orderly operation of the system of property taxation." L. 1991, ch. 278, § 1 Seventeenth. An exception to this authority is made for the deadlines prescribed by K.S.A. 79-2005 and amendments. Thus, if a county appraiser is unable to complete physical inspections or mail valuation notices by April 1, the director may grant an extension of that deadline as well as of the deadlines for informal hearings and appeals.

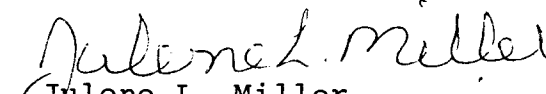
Assuming such extensions are not or cannot be granted, the question becomes whether shortening the length of time a taxpayer has to request the informal hearing, or eliminating that hearing entirely violates the taxpayer's due process rights. In our opinion, if a taxpayer is unable to timely request or attend an informal hearing due solely to the fact that valuation notices were mailed late and the hearing deadlines were not extended, that taxpayer must be treated as though he did timely request and attend a hearing and relief was denied. A final determination or order to that effect must be issued. In this way the taxpayer may continue on to the next level in the process, thus preserving his right to appeal. As noted in State, ex rel. v. Swyer, 208 Kan. 437, 442, 443 (1972) and Shields Oil Producers, Inc. v. Russell County, 229 Kan. 579, 582 (1981), the constitutional requirements of due process are satisfied if, at some stage of the assessment proceedings, the taxpayer has an opportunity to appear and contest the assessment. Due process does not entitle an individual to a specific procedure, as long as he

has meaningful notice and a meaningful opportunity to be heard. Unified School Dist. No. 461, Wilson County v. Dice, 228 Kan. 40 (1980). [We note that a similar situation existed in Spalding v. Price, *supra*. There the notice of value was mailed after the last date on which appeals could be made to the county board of equalization (BOE). See L. 1971, ch. 293, § 5. The court simply noted that the date of final adjournment for the BOE was after the notice was mailed.] There may be some circumstances in which repeated and lengthy delays result in the opportunity to be heard being unmeaningful, but we cannot say as a matter of law that failure to meet the April 1 deadline in and of itself results in a violation of the taxpayers' due process rights.

In conclusion, the April 1 deadline for giving taxpayers notice of a change in the valuation of their real property is directory rather than mandatory. Failure to meet this deadline does not invalidate the changed valuations. If notices are mailed late and the hearing/appeal deadlines are not extended, taxpayers who are unable to request or attend a hearing/appeal procedure for this reason are deemed to have had their request for relief denied so that they may proceed to the next step in the process. Constitutional due process requirements are met if the taxpayer has been given a meaningful notice and opportunity to be heard at some stage in the proceedings.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General

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