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ATTORNEY GENERAL OPINION NO. 92-13

The Honorable Clyde D. Graeber
State Representative, Forty-First District
State Capitol, Room 502-S
Topeka, Kansas 66612

Re: Taxation--Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property--Notification of Taxpayer of Change in Appraised Valuation of Property; Effect of Appraiser's Failure to Conduct Final Review

Synopsis: The final field review required by reappraisal maintenance specifications issued by the division of property valuation are mandatory in the sense that the director of the division, prosecutors and the board of tax appeals may pursue actions to penalize an appraiser for failure to conduct such a review. Moreover, upon finding that any county has not performed a final review, the director of property valuation must file a complaint with the board of tax appeals seeking reappraisal of that county. Finally, L. 1990, ch. 90, § 5 and K.S.A. 1991 Supp. 79-1460 require a specific review, including a physical inspection, of property the value of which is to be increased in tax years 1990 or 1992 and subsequent years. If this review is not performed, the value of the property (excluding agricultural land) may not be increased. Cited herein: K.S.A. 79-401; 79-411; K.S.A. 1991 Supp. 79-1413a; 79-1460; 79-1479; L. 1990, ch. 90, § 5.

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Dear Representative Graeber:

You request our opinion regarding the effect of a county or district appraiser's failure to perform a final field review. Specifically, your questions are as follows:

"1. Is the final review process mandatory, as stated and directed by the property valuation division and required for each individual county, as part of the state wide program to insure uniform and equal taxation across the 105 counties?

"2. If a county appraiser has failed or refused to perform the mandatory final review process as set forth in the reappraisal maintenance specifications and final review checklist, are the purported change of value notices sent to property owners, invalid as a matter of law?

"3. What penalties and sanctions are available to insure enforcement of the reappraisal maintenance specifications and final review checklist, and who is charged with the responsibility of enforcing the state wide reappraisal maintenance specifications?"

L. 1990, ch. 90, § 5 and K.S.A. 1991 Supp. 79-1460 require a specific review, including a physical inspection, of property the value of which is to be increased in tax years 1990 or 1992 and subsequent years. See Attorney General Opinion No. 91-148. If this review is not performed, the value of the property (excluding land devoted to agricultural use) may not be increased.

The "final field review" procedures which you reference are administratively required, although there are also statutory requirements for actual physical inspections of taxable real property. See K.S.A. 1991 Supp. 79-1460 (discussed above), K.S.A. 79-401 and 79-411. Further, the final field review is a part of the reappraisal maintenance specifications issued by the division of property valuation, and as such is required to be followed by county and district appraisers pursuant to K.S.A. 79-1456. Paragraph 16 of the 1992 specifications provides as follows:

"16. FINAL FIELD REVIEW:

"16.1 Prior to finalization of the appraisal estimates and printing of change of value notices, a field inspection and critical examination of the preliminary indicators of value shall be made for

each parcel of property in the county. The following phase work shall be completed before final review documents are printed:

- "a) All changes resulting from the twenty-five percent (25%) reinspection, and sales verification data entry shall be complete in the map being reviewed and free of input errors.
 - "b) All quality control reinspections shall be completed in the maps selected for reinspection. The documentation used to determine that minimum quality specifications have been met shall be available for inspection.
 - "c) All residential market modeling and comparable sales selection criteria shall be complete, tested and evaluated. A copy of the KSCAMA 430 Residual Error Report shall be carefully reviewed for the purpose of identifying outliers which will require a comprehensive investigation.
 - "d) All commercial/industrial income and expense data collection and analysis shall be complete. Neighborhood models constructed in the KSCAMA system shall be completed, pretested on benchmark parcels; and ready for printing of valuation reports.
 - "e) All local construction index and cost model component adjustments, depreciation tables and schedule changes shall be complete, verified and updated in the KSCAMA system. Full file residential, commercial, and sales history cost runs shall be executed.
- "16.2 The final field review shall be conducted by a qualified member of the appraisal staff to develop a final opinion of market value for each parcel of property by correlating the estimates derived through the KSCAMA models and considerations of all other relevant data. The review process shall be used to:

- "a) Determine that the value estimates assigned to improvements and land appears to truly reflect the actual market value of the property.
- "b) Identify and correct any data entry or transcription errors, or changes to physical characteristics which may influence market value.
- "c) Ensure that schedules for computing land value estimates reflect current market value and individual properties have been adjusted to reflect changes in influence factors.
- "d) Verify consistent and accurate construction quality grading of buildings and improvements.
- "e) Check and adjust for locational obsolescence factors to better reflect market trends within neighborhoods.
- "f) Correlate the indicated value from the approaches used to estimate value.
- "g) Ensure that each property has been valued equitably in relation to other like properties.

"16.3 The appraisers assigned to conduct this phase of the project shall have KSCAMA valuation expertise and knowledge of the valuation techniques employed in the County as well as complete familiarity with the neighborhoods in the County. Appraisers assigned to this phase shall have a minimum of 30 days of appraisal related work experience in the county prior to the start of final review.

"16.4 The review appraiser shall sign approval of all the parcel estimates of value. If the review appraiser does not accept a value estimate, the necessary adjustments shall be made to the parcel data or valuation models to bring the property value in line with market indicators. The review appraiser shall select the sales comparison, cost or income approach, whichever is most representative of the true property value.

- "16.5 Field 463 of the appraisal process section shall be updated on the CAMA data base to indicate the inspection date, time, appraiser ID, and process code of 9 for each parcel which received a final value review.
- "16.6 The review appraiser shall have the ability to exercise informed judgment in arriving at a final estimate of market value. When an override of a model based value is required in the appraiser's judgment, documentation shall be provided in the form of a proper override code which shall be supplemented with a more detailed explanation in the note section of the data review document. Overrides shall not be made for parcels which are found to have data errors. Parcels with data errors shall be corrected and remodeled before any override is considered to an estimate of value.
- "16.7 A report of all parcels on which a value override has been made along with the appropriate reason code and supporting documentation shall be prepared and submitted to the Division of Property Valuation for inspection." Reappraisal Maintenance Specifications for the Reappraisal of Real Property at 22-24 (1992). (The pertinent language is located in paragraph 17, pp. 28-30 of the specifications for contracted appraisals.) See also Course 3-100-4, Year End Processing and Reappraisal Hearings at 123 (1/91).

These specifications require a final field review for all property before printing change of value notices. The specifications are directed at the goal of achieving fair market value and uniform valuations. The director of property valuation has stressed the importance of the final field review in recent communications with the chairman of the governor's task force on classification. In discussing lack of uniformity in values for residential and commercial property, the director states:

"The non-uniformity is due in large part to the counties' failure to do a final value review. In a final value review, the county appraiser physically views the property to determine if the initial

computer generated value estimate is reasonable. If the appraiser is simply reviewing computer print-outs to make these final value judgments, it is not possible to pick up obvious mistakes and verify that the subject property is uniformly valued with other similar properties in the area. In those counties where final value reviews have been done, the appraiser is experiencing fewer appeals and in all likelihood, a closer approximation to market value."

Memorandum to Lionel Alford, Chairman,
Task Force on Classification, from David
C. Cunningham, Director, Division of
Property Valuation, October 8, 1991.

As discussed in Attorney General Opinion No. 91-136, these specifications "are mandatory in the sense that the director, prosecutors and the board of tax appeals may take actions . . . to penalize an appraiser for failure or refusal to comply with or follow such [directions]." The penalties and sanctions available to insure compliance with the requirement to perform a final review are also discussed in Attorney General Opinion No. 91-136.

We do not believe, however, that failure to conduct a final review (other than that required by L.1990, ch. 90, § 5 and K.S.A. 1991 Supp. 79-1460) automatically invalidates the change of value notices sent to taxpayers. In our opinion, the conduct of the final review set forth in the specifications is not necessarily "essential to the preservation of the rights of parties affected and to the validity of the proceedings." See City of Hutchinson v. Ryan, 154 Kan. 751, Syl. ¶ 1 (1942); Griffin v. Rogers, 232 Kan. 168 (1988). However, failure to conduct a final review necessarily results in the county being in substantial non-compliance with the law and director guidelines. If such a determination is made, the director must file a complaint with the board of tax appeals seeking reappraisal of that county. K.S.A. 1991 Supp. 79-1479. If the director does not make that determination, the board of tax appeals may still order reappraisal pursuant to K.S.A. 1991 Supp. 79-1413a and individual taxpayers may argue in the appeals process that fair market value for their property on a

uniform and equal basis was not achieved as a result of the appraiser's failure to conduct a final review.

Very truly yours,



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Julene L. Miller
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