



STATE OF KANSAS

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March 23, 1992

ATTORNEY GENERAL OPINION NO. 92- 38

Wade Dixon
Greeley County Attorney
P.O. Box 160
Tribune, Kansas 67879

Re: Taxation -- Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property -- Real Estate Sales Validation Questionnaires; Access to and Copies of; Licensed or Certified Appraisers

Public Records, Documents and Information -- Records Open to Public -- Inspection of Records; Abstracts or Copies of; Certain Records Not Required to be Open; Real Estate Sales Validation Questionnaires; Certified or Licensed Appraisers

Synopsis: K.S.A. 1991 Supp. 79-1437f provides that the contents of real estate sales validation questionnaires filed in accordance with that act, while closed to most individuals, shall be made available to appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq. Such questionnaires meet the definition of a public record set forth at K.S.A. 45-217(f), and thus, copies of and access to such records must be provided to licensed or certified appraisers in accordance with the applicable provisions of K.S.A. 45-215 et seq. A custodian of such a public record may not refuse to make copies of such records for persons entitled to access to the contents of a questionnaire filed under K.S.A. 1991

Supp. 79-1437f nor may a custodian delay access or copying until the information in the questionnaire is verified or refuted. Cited herein: K.S.A. 45-215; 45-217; K.S.A. 1991 Supp. 45-221; 58-4101; 79-1437c; 79-1437f.

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Dear Mr. Dixon:

You request our opinion on two issues involving K.S.A. 1991 Supp. 79-1437f and specifically ask that we address the following questions:

"1) Does K.S.A. 79-1437f (1991 Supp.) authorize the Register of Deeds and/or the County Appraiser to provide photocopies of the real estate sales validation questionnaire to appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq., or only to make them available for on site inspection?

"2) May the Register of Deeds refuse to make available the content of a real estate sales validation questionnaire to an appraiser licensed or certified pursuant to K.S.A. 58-4101 et seq., until after the contents have been verified by the county appraiser?"

You indicate that you have concluded that, if access is permitted an individual, photocopies must be provided upon request. Moreover, it is your opinion that K.S.A. 1991 Supp. 79-1437f requires that, to the extent access is permitted, appraisers must be provided with copies of the questionnaire as filed rather than waiting until verification by the county appraiser. You base your conclusions in part upon the Kansas open records act (KORA), K.S.A. 45-215 et seq. We concur with your opinion.

K.S.A. 45-215 et seq. generally require that all public records, as defined by K.S.A. 45-217, be open unless some law either requires or permits the specific public record to be closed. The K.S.A. 45-217(f) definition of public record appears applicable to real estate sales validation questionnaires once such records are possessed by the register of deeds or the county appraiser, pursuant to K.S.A. 1991 Supp. 79-1437c et seq. The provisions of the KORA therefore apply to this questionnaire once it has been filed in accordance with that act. K.S.A. 45-218, 45-219 and 45-220 speak to the correct procedures surrounding access to or

copies of public records. K.S.A. 45-219(a) provides that "any person may make abstracts or obtain copies of any public record to which such person has access under this act." (Emphasis added). K.S.A. 1991 Supp. 79-1437f gives some individuals access to the contents of questionnaires filed pursuant to that act. Thus, if a law gives an individual access to a specific public record, that person must be provided with copies of such a record upon request and in accordance with the provisions of the KORA.

The next issue is whether K.S.A. 1991 Supp. 79-1437f provides access to licensed or certified appraisers, and if so, if such access or copies may be delayed until the accuracy of the real estate sales validation questionnaire is determined.

K.S.A. 1991 Supp. 45-221(a)(1) authorizes closure of a public record if a specific statute restricts disclosure of the specific record. K.S.A. 1991 Supp. 79-1437f represents such mandatory closure authority, however, it also sets forth the specific individuals who must be given access to the questionnaires:

"The contents of the real estate sales validation questionnaire shall be made available to the county clerk for the purpose of preparing the report to the director of property valuation as provided for in K.S.A. 79-1436 and amendments thereto, any property owner who has appealed and for the sole purpose of prosecuting such appeal of the valuation of property pursuant to K.S.A. 79-1448, 79-1606, 79-1609, and 79-2005, and amendments thereto, or such owner's representative as evidenced by such owner's affidavit, and only to the extent of the contents of those certificates concerning the same constitutionally prescribed subclass of property as that of the property being appealed, the county appraiser and appraisers employed by the county for appraisal of property located within the county, appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq., and amendments thereto, and the board of county commissioners, but such contents shall not be otherwise disclosed

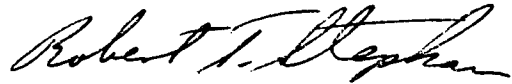
by any party having access to anyone other than the director of property valuation, the county appraiser or the appraiser's designee, hearing officers or panels appointed pursuant to K.S.A. 79-1602, and amendments thereto, or to the board of tax appeals or county board of equalization in the event of proceedings before such boards, except that appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq., and amendments thereto, may consider and include such contents in an appraisal report." (Emphasis added).

Thus, pursuant to this statute, the contents of the questionnaire must be made available to appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq. We note that any party having access to the content of these questionnaires is nevertheless prohibited from further disclosure to anyone other than the individuals and entities set forth in the statute. However, we find no authority which permits the register of deeds or county appraiser to delay provision of the contents of the real estate sales validation questionnaire until the information contained therein is verified or reviewed by the county appraiser. Rather, despite potential errors in the questionnaire, the dictates of the statute require that appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq. be provided with access to the contents of such questionnaires. As no exception to the KORA precludes applicability of that act to real estate sales validation questionnaires which, by law, must be made available to certain individuals, it is our opinion that provision of the contents of the questionnaire, when required by K.S.A. 1991 Supp. 79-1437f, should comply with the KORA.

In conclusion, K.S.A. 1991 Supp. 79-1437f provides that the contents of real estate sales validation questionnaires filed in accordance with that act, while closed to most individuals, shall be made available to appraisers licensed or certified pursuant to K.S.A. 58-4101 et seq. Such questionnaires meet the definition of a public record set forth at K.S.A. 45-217(f), and thus, copies of and access to such records must be provided to licensed or certified appraisers in accordance with the applicable provisions of K.S.A. 45-215 et seq. A custodian of such a public record may not refuse to make copies of such records for persons entitled to access to the contents of a questionnaire filed under K.S.A. 1991 Supp. 79-1437f nor may a custodian delay such access or copying

until the information in the questionnaire is verified or refuted.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Theresa Marcel Nuckolls
Assistant Attorney General

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