

FILE

Subject

*State Provisions
Legislature 1974*

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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

Opinion No. 74- 34

January 31, 1974

The Honorable Dan Thiessen
House of Representatives
State Capitol Building
Topeka, Kansas 66612

Re: Opinion Request:
House Bill No. 1450

Dear Representative Thiessen:

K.S.A. 79-503 provides a definition for the term "fair market value" as it applies to the appraisal of real and tangible personal property (K.S.A. 79-501). The definition in pertinent part reads as follows:

(1) "Fair market value in money shall mean the amount of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting, assuming that the property has been offered at the market place for a reasonable length of time"

There follows a qualification of this explanation which delineates a number of extraneous factors that must be given account in addition to sales which, as the above will indicate, is the pivotal criterion. This statute further instructs appraisers and assessors to categorize or classify all real properties under two headings: urban and rural. Thereupon said officer in arriving at fair market value in money "may use different factors in determining the classifications best suited to arrive at fair market value in money as defined in this section." The specific purpose of these classifications is to approach as nearly as possible complete uniformity in assessment.

The question, which precipitates this opinion, thus presents itself: what effect will the proposed amendments in House Bill No. 1450 have upon K.S.A. 79-503.

House Bill No. 1450 in essence proposes the addition to K.S.A. 79-503 of a second definition for fair market value which is provided as follows:

(2)". . . [T]he [fair market] value of lands in

agricultural investment property, as defined in this section, and excluding the improvements thereon, shall be determined by the earnings of such lands during a reasonable period of time, capitalized at commonly accepted rates as determined by the director of property valuation as required in this section."

It should be noted that this provision is applicable only to the single category of agricultural investment property, and that it totally exempts such land from other factors deemed relevant to accurate assessment, i.e., K.S.A. 79-503 (a) through (j). What is created therefore is a special class of real property to be assessed by a special method relying on a single factor for value determination. Consequently the issue becomes one of determining whether the new classification violates the provisions of Article 11, Section 1 of the Constitution of the State of Kansas which in pertinent part provides:

"The legislature shall provide for a uniform and equal rate of assessment and taxation, except that mineral products, money, mortgages, notes and other evidence of debt may be classified and taxed uniformly as to class as the legislature shall provide"

The simple import of this requirement is that property must be assessed and taxed equally and, as the courts have said many times such equality cannot exist without uniformity in the basis of assessment as well as in the rate of taxation. Addington v. Board of County Commissioners, 191 Kan. 528, 382 P.2d 315; Beardmore v. Ling, 203 Kan. 802, 457 P. 2d. 117.

The unique mode of assessment provided by the proposed value definition destroys the uniformity and equality formulated in the definition of fair market value found in K.S.A. 79-503. Without question the legislature may classify property for the purposes of taxation. Yet, it may do so only so long as it does not contravene the mandates of the constitution. By exempting agricultural investment lands from being evaluated by the many factors deemed essential to accurate assessment, other landowners who must have their lands valued through the application of these value factors are discriminated against. Therefore it is the opinion of this office that where the proposed mode of assessment eliminates the application of value factors for one category of rural property, while other rural lands are valued by those same factors the resulting inequality and lack of uniformity renders the proposal unconstitutional.

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Yet, another defect appears in the proposed additional amendment. K.S.A. 79-501 specifically provides:

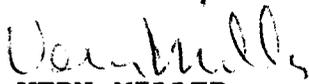
"Each parcel of real property shall be appraised at its fair market value in money, the value thereof to be determined by the assessor from actual view and inspection of the property; . . ." (Emphasis added).

This directs how fair market value in money shall be determined. Patently contradicting is the proposed definition of said value for agricultural investment lands. Visual inspection and viewing of such property has no effect on the proposed formula whatsoever; it being totally a mathematical calculation. The resulting conflict between K.S.A. 79-501 and the proposed amendment to K.S.A. 79-503 appears to be serious and irreconcilable. (See also a similar conflict with K.S.A. 79-411)

Further it should be noted that within the presently existing provisions of K.S.A. 79-503 the basic formula suggested by the proposed amendment is already included as one of the several factors which may or may not be relevant to fair market value. (K.S.A. 79-503(g): "earnings capacity as indicated by lease price by capitalization of net income.") So, it appears that the machinery necessary to further and accurately identify fair market value of agricultural investment lands is already present within the statute itself.

Therefore it is the opinion of this office that for the above stated reasons the proposed amendments to K.S.A. 79-503 are unconstitutional as violating the provisions of Section 11, Article 1, of the Kansas Constitution.

Very truly yours,


VERN MILLER
Attorney General

VM:JPS:jdj