



STATE OF KANSAS

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March 14, 1977

ATTORNEY GENERAL OPINION NO. 77- 94

The Honorable Alva Lee Powell
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Assessment and Taxation--Adoption by Reference--Capitalization Rate

Synopsis: An enactment which adopted by reference the average interest rate on all new Federal Land Bank loans over the most recent five calendar years as the capitalization rate for implementation of the use-value constitutional amendment respecting agricultural land does not constitute an impermissible delegation of legislative power.

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Dear Representative Powell:

You advise that the House Select Committee on Use Value Appraisal is developing proposed legislation to implement the constitutional amendment approved by the voters at the general election last November concerning the assessment of agricultural land.

You write concerning the capitalization rate which is to be applied to net earnings from agricultural land to compute its use value. For federal estate tax purposes, you indicate, the Tax Reform Act of 1976 provides for use of the average annual effective interest rate for all new Federal Land Bank loans, based on the five most recent calendar years. You request my opinion whether the legislature could provide for a capitalization rate based on a comparable reference, i.e., a moving average of Federal Land Bank loan interest rates, or whether this would constitute an unlawful delegation of legislative power.

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Obviously, the legislature might, in any given year, adopt the average interest rate on new Federal Land Bank loans, based on the five past calendar years, as the capitalization rate for that given current year. I see no reason why the legislature may not adopt that same average rate of interest on a continuing year-to-year basis, i.e., by an enactment which defines the capitalization rate by a reference to that average rate of interest as described above, the average rate to change as the years change on which it is based. Indeed, I see no delegation of legislative power whatever in the adoption by reference of that interest rate, averaged as above, as the capitalization rate to be applied in administering a use-value law. Adoption by reference does result in an impermissible delegation of legislative power when the adoption operates prospectively to include, by operation of law, future changes in the referenced standard. However, the adoption by reference of a known referent does not constitute a delegation of legislative power in any fashion, and the adoption by reference of that standard or measure on a continuing basis does not in my judgment alter the fundamental fact that the referenced standard or measure which is thus adopted is always a standard, even though the adoption by reference be made on a continuing basis.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj