



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 18, 1978

ATTORNEY GENERAL OPINION NO. 78- 169

Mr. Gary L. Flory
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The Home State Bank & Trust Bldg.
McPherson, Kansas 67460

RE: Taxation - Oil and Gas Properties - Valuation -
Effect of Increased Production Post-January 1.
K.S.A. 79-301, 79-306b, 79-312, 79-329 through
79-334, 79-503, 79-1439, 79-1602, 79-1701 and
79-1701a.

SYNOPSIS: Oil and gas properties are valued and taxed as personal property as of January 1 of each year. The valuation is based on what a well informed buyer is justified in paying for the property that date, and the County Appraiser may use any fact known to him which affects value, even facts occurring post-January 1. That valuation must be made prior to May 1, and can be changed thereafter only to correct clerical errors or to produce equalization of taxation, except that an incomplete or false return may be reopened and corrected at any time prior to payment of the taxes. But there is no provision for a hind-sight reappraisal upon discovery of additional evidences of value after certification of assessed values.

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Dear Mr. Flory:

You state that the Oil and Gas Manual, prescribed by the Director of Valuation, provides for the lowering of a valuation based on "post" January 1 production, such as in the cases of new leases which have produced less than an entire year, and

Mr. Gary L. Flory
May 18, 1978
Page Two

an "obvious abnormal sharp decline". But there appears no provision in the manual for increasing the valuation where, post-January 1, an increased production is discovered. You ask if the county appraiser may consider such post-January 1 increased production in setting his opinion of value?

Our opinion is yes, the appraiser can consider post-January 1 increased production if it comes to his attention prior to his final certification of values.

Oil and gas properties are by law declared to be personal property for ad valorem tax purposes. K.S.A. 79-329. Returns must be filed prior to April 1. K.S.A. 79-332. The County Appraiser has but one month in which to form his appraisal judgment so as to be able to certify and give notice of it by May 1. K.S.A. 79-306b. The appraisal must be based on what a well informed buyer is justified in paying for the property. K.S.A. 79-503, 79-1439. Thereafter, the County Board of Equalization sits from May 15th to June 15th, K.S.A. 79-1602, with authority to raise or lower assessed valuation of personal property where necessary for equalization purposes. After this, no change can be made in the assessment tax rolls except to correct clerical errors. K.S.A. 79-1701, 79-1701a. But, where a false or incomplete return is filed it may be re-appraised any time prior to tax payment. K.S.A. 79-1432.

There is an inexorable grinding of the tax calendar wheel. Each year on July 1 the books are closed on the tax base. By that date, the County Clerk has certified to the taxing districts even the amount of state-assessed valuations. K.S.A. 79-5a07. During July and early August, budgets are determined and hearings held. On August 25 all budgets and levies are certified to the County Clerk. K.S.A. 79-1801. It would disrupt all this orderly process, if after certification of assessed values, the County Appraiser could undertake to make a reappraisal. There is no provision for this, except for false and incomplete returns.

But, if prior to such certification, the appraiser receives knowledge of an "obvious abnormal sharp" increase of production, post-January 1, he is entitled to use such knowledge in making his appraisal, just as the manual allows him to deviate from the usual prior-year production in the case of an "obvious abnormal sharp decline" of production.

Mr. Gary L. Flory
May 18, 1978
Page Three

Manuals prescribed by the Director of Property Valuation for the valuation of personal property must be followed by County Appraisers, as a general rule, in order that there may be equal and uniform assessment in all counties of the state of similar items of personal property. K.S.A. 75-5105a(b), 79-1412(seventh). These manuals are of necessity general in nature and apply to the average, not the exceptional, situation. The oil and gas manual applies to "normal" production, not "abnormal".

Although the Weinaug formula, upon which the Oil and Gas Manual is based, does use "production", it does not tax production as such. What is being valued for taxation is the oil and gas lease, which includes the reservoir. The history of production, and its decline curve, indicates "the life of the well", a statutory criteria in appraising oil properties. K.S.A. 79-331.

Where there is an established history of production "occurred and occurring" in a specific oil reservoir, which is abnormal, the Appraiser must recognize it, the manual notwithstanding:

"What is assessed is the lease, not the oil produced. Production is merely one gauge by which the value of the reservoir, and in turn the lease, is measured. It is apparent that a reservoir which has been largely drained as of a particular January 1, has less value than one which has not. The trial court answered this argument in its letter opinion:

' . . . The plaintiff possibly produced the wells too rapidly, but this practice, if unsound, is to be corrected by an agency, (probably KCC), which is set up for that purpose and not by the (county) Commissioners. The assessment is made 'as of January 1.' It is of personal property. When it is excessive and known to be by the assessor, it is wrong to use the excessive value and excuse its excessive assessment use by saying that it will be too

low next year. Dr. Weinaug's schedule is a careful and well-considered one; but it does not allow for unusual operators, such as Mr. Angle, and it really can't, as it would be too involved if it did. The taxing authorities must accept Mr. Angle and his oil properties as they really are 'as of January 1.' Anything else would be arbitrary and wrong'"

Angle v. Board of County Commissioners,
214 Kan. 708, 713-714, 522 P.2d 347
(1974).

From this case, it can be seen that an "obvious abnormal sharp increase" in production, depending upon the history of the particular reservoir production occurred and occurring, could mean a sharper decline in the life of the well than that called for in the manual, which is based upon normal production. In turn, this could mean a reduction in the assessed value of the lease. Production is just one gauge of the value of the reservoir.

Another type of manual prescribed by the Director of Property Valuation is the one for motor vehicles. K.S.A. 79-306c(b) provides:

"(b) It shall be the duty of the county assessor to value each vehicle and place it on the tax roll for taxation purposes. In making such valuation the county assessor shall use the valuation schedules furnished by the director of property valuation except that he or she may deviate from such valuation schedules if the vehicle being valued should be assessed at a lower amount than that shown in the schedule because it has been damaged."

Where an unusual situation exists, and a car has been in a fire, flood, wreck, etc. the "average manual" value does not apply, and the appraiser must make an individual judgment valuation. If this were not the case, then all that would be needed would be a computer, not an appraiser.

Mr. Gary L. Flory
May 18, 1978
Page Five

Our answer to your question is that the manuals do not preempt the appraiser from use of judgment in abnormal cases. K.S.A. 79-331, in providing that the assessor shall take into consideration the quantity of oil and gas produced, and then adds: "and such other facts as may be known by the assessor to affect the value of the property.", is giving the assessor in April authority to use any facts affecting value known at that time.

The assessor has full authority to increase or diminish valuations where justified, but it must be when the return is filed. K.S.A. 79-312.

In deviating from the oil and gas manual for an abnormal situation, we would suggest that the appraiser study carefully the Weinaug formula and its proper application. It could be an error, like in ANGLE supra, to adjust on the factor of production only, without adjusting all the other factors also.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw