STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

March 31, 1980

ATTORNEY GENERAL OPINION NO. 80- 82

Mr. Clayton Dey
Chairman
Board of County Commissioners
Harvey County Courthouse
Newton, Kansas 67114

Re: Taxation--Rules for Valuing Property--Factors for Determining Fair Market Value in Money

Synopsis: Pursuant to K.S.A. 79-503, depreciation is merely one of the factors to be taken into consideration in appraising property for purposes of property taxation. In appraising any and all property for purposes of property taxation, for which property no other specific method of appraisal has been prescribed by the legislature, all those factors listed in K.S.A. 79-503 must be taken into consideration, in order to achieve the ultimate goal of appraising all property at the amount of money a willing buyer is justified in paying to a willing seller. Statutes cited herein: K.S.A. 79-501, 79-503, 79-1406 and 79-1439.

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Dear Mr. Dey:

You request our opinion as to whether it is "legal" for the Harvey county apprasier to use "depreciated values" in appraising "business" property.

In response to your inquiry, please be advised that the Supreme Court, in the very recent case of State, ex rel., Stephan v. Martin, _____ Kan. _____, Case No. 51,844, opinion filed March 14, 1980, quotes K.S.A. 79-501, 79-1406 and 79-1439, each of which requires that all tangible personal property subject to general property taxation be valued at its "fair market value in money" as defined in K.S.A. 79-503.

In defining the foregoing term, that statute, in pertinent part, provides:

> "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 parties thereto are acting without undue compulsion and that the property has been offered at the market place for a reasonable length of time."

Immediately following this definition, the statute goes on to prescribe that sales, in and of themselves, shall not be sole criteria of fair market value but shall be used in connection with cost, income and such other factors as may be appropriate including, inter alia, depreciation, including physical deterioration or functional, economic or social obsolence. The statute lists many factors that must be considered in determining the fair market value in money of all property.

From the provisions of K.S.A. 79-501, 79-1406 and 79-1439, it is clear that the ultimate goal of valuing property for purposes of taxation is to determine the property's fair market value in money, i.e., the amount of money a willing buyer is justified in paying to a willing seller. K.S.A. 79-503.

The factors listed in 79-503, including the factor of depreciation, are merely the means to be used by the appraiser in arriving at the ultimate goal of fair market value in money for each item of property valued for purposes of taxation. However, the means should not be allowed to blur or replace the ultimate goal. In addition, the appraiser, in the first instance, must consider all the factors listed in K.S.A. 79-503; then apply only those factors which are pertinent in determining the fair market value in money for the particular item of property being appraised. The Supreme Court states the foregoing proposition in the following language:

> "Compliance with the provisions of the statute [K.S.A. 79-503] is mandatory upon assessing officials in assessing real [and personal] property, but the factors or combinations thereof to be considered in determining justifiable [now fair market] value may not all be pertinent to a specific property. What factors apply depends on the individual type of property, after consideration has been given to all of the factors." (Emphasis added.) Northern Natural Gas Co. v. Dwyer, 208 Kan. 337, 356 (1971).

Depreciation is but one of the many factors to be considered in determining the fair market value in money of real or personal property. That factor may, or may not, be pertinent to a specific item of property. If, for example, the true fair market value in money of an item of property is increasing, it is not permissible to intentionally use a depreciation factor which will result in the appraised value of that item of property being at an amount which is less than that amount which a willing buyer is justified in paying to a willing seller.

It is for that reason we stated in Attorney General Opinion No. 79-50 that original price less straight-line depreciation very frequently will yield a significantly different valuation than that based on "fair market value." We again indicate that straight-line depreciation does not take into account many of the factors implicit in "fair market value," as defined in K.S.A. 79-503. We also want to emphasize that the factor of depreciation may not be pertinent to certain property. We cannot stress too strongly the guidance provided by the above-quoted statement of the Court in Northern Natural Gas Co. v. Dwyer, supra.

Thus, in response to your specific inquiry, it is our opinion that while, in valuing all property for purposes of taxation, the appraiser may, and in fact must, take into consideration the factor of "depreciation, including physical deterioration or functional, economic or social obsolescence," and apply the same when appropriate, the appraiser must also take into consideration, and apply, when appropriate, all the other factors listed in K.S.A. 79-503. Thus, if the "depreciated value" to which you refer is merely the value reported for federal income tax purposes, then it is "illegal" for the appraiser to use that value, if the other factors listed in 79-503 are pertinent, but are nonetheless intentionally or grossly disregarded in appraising the property. Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, Syl. para. 2, (1969). In appraising any and all property for purposes of property taxation, for which property no other specific method of appraisal has been prescribed by the legislature, all those factors listed in K.S.A. 79-503 must be taken into consideration. The goal of appraisal is to determine the amount of money that a willing buyer is justified in paying to a willing seller.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Rodney J. Bieker

Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm