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

April 7, 1980

ATTORNEY GENERAL OPINION NO. 80-83

The Honorable Homer E. Jarchow
State Representative, 95th District
Room 273-W, State Capitol
Topeka, Kansas

Re: Taxation--Public Utilities--Valuation of Real and Personal Property

Synopsis: While the provisions of K.S.A. 79-5a04 prescribe several factors that must be considered by the director of property valuation in determining the fair market value in money of public utility property, said statute prescribes but a single method of appraisal. As a matter of law, therefore, the method of appraisal prescribed in K.S.A. 79-5a04 is not violative of the requirements of Article 11, Section 1 of the Kansas Constitution.

While the unit valuation of public utility property may not be fixed through the process of negotiation and agreement between the Director of Property Valuation and the public utilities, K.S.A. 79-5a04 does not prohibit the director from meeting with representatives of said public utilities for the purpose of obtaining information and evidence relevant to the fair market value in money of the property owned by such utilities. Cited herein: K.S.A. 79-503 and 79-5a04 and Article 11, Section 1 of the Kansas Constitution.

*　　　　*　　　　*

Dear Representative Jarchow:

You have requested our opinion

> "relative to whether the numerous appraisal methods allowed in KSA 79-5a04 for State Assessed Properties are constitutional for assessment purposes while other properties are specifically limited to specific methods in establishing assessment values. It would appear that State Assessed Properties have been given a separate classification without benefit of Constitutional change."

You also indicate concern because you

> "have been advised that some of the unit valuation is the result of agreement between PVD and the property owners. I question the use of any negotiation or arbitrary values in establishing fair market value for taxation purposes."

Based upon this latter concern, you also seek an opinion "relative to the constitutionality of selecting an assessment unit value on the basis of negotiation or agreement."

In the very recent decision of State, ex rel., Stephan v. Martin, _____ Kan. _____, Case No. 51,844, opinion filed March 14, 1980, the Court stated many basic principles of property taxation within the State of Kansas. The Court stated:

> "Article 11, §1 of the Kansas Constitution is the fundamental law against which the validity of property tax statutes must be tested.
>
> . . . .
>
> "Article 11, §1 of the Kansas Constitution requires the legislature to provide for uniformity in the basis of assessment as well as in the rate of taxation. Uniformity in taxing implies equality in the burden of taxation.
>
> . . . .

> "The legislature, in responding to the mandate of art. 11, §1 of the Kansas Constitution that it provide for a uniform and equal rate of assessment and taxation, has provided that all property subject to taxation be valued on an equal basis. The equal basis currently provided for by the legislature is 'fair market value in money.'
>
> "'Fair market value' has a well defined meaning in our free economy and in case law. The legislature defined 'fair market value' in K.S.A. 79-503 in substantially the same language as this Court has defined it, and as it is generally understood and accepted." Id. at Syl. para. 1, 3, 5 and 6.

Based upon the foregoing judicial declarations, it is abundantly clear that the constitutional validity of 79-5a04 depends upon whether the provisions thereof are consistent with the requirements of the fundamental law. K.S.A. 79-5a04 provides:

> "The director of property valuation shall annually determine the fair market value of the utility property, both real and personal, tangible and intangible, of all public utilities as defined in K.S.A. 79-5a01.
>
> "The division of property valuation in determining the fair market value shall, where practicable, determine the unit valuation, allocated to Kansas, and in doing so shall use generally accepted appraisal procedures developed through the appraisal process and may consider, including but not by way of exclusion, the following factors:
>
> "(1) Original cost.
>
> "(2) Original cost less depreciation and/or reproduction cost less depreciation, or replacement cost new less depreciation, provided that where either method is used proper allowance and deduction shall be made for functional or economic obsolescence and for operation of nonprofitable facilities which necessitate regulatory body approval to eliminate.

> "(3) The market or actual value of all outstanding capital stock and debt.
>
> "(4) The utility operating income, capitalized in the manner and at such rate or rates as shall be just and reasonable.
>
> "(5) Such other information or evidence as to value as may be obtained that will enable the property valuation department to determine the fair market value of the property of such companies.
>
> "The fair market value of affiliated properties separately assessed, and/or the nonoperating properties of such companies shall be ascertained and determined as nearly as possible and deducted from the total unit value. Insofar as it is practicable to do so, the same method of evaluating the properties of the companies separately assessed and/or nonoperating properties shall be used as was used in determining the unit value of such companies." (Emphasis added.)

The foregoing statute, in clear, simple and unambiguous language, requires the director of property valuation "to annually determine the fair market value of the utility property . . . of all public utilities as defined in K.S.A. 79-5a01." (Emphasis added.) In equally clear, simple and unambiguous language, the statute then prescribes the method to be utilized by the director "in determining the fair market value."

It is to be noted that the provisions of this statute, while listing several "factors" the director "may consider" in determining unit valuation and ultimately the fair market value of public utility property, the statute prescribes only a single method of appraisal; not "numerous appraisal methods." In this regard, 79-5a04 is identical to 79-503. Each of these statutes, while prescribing but a single method of appraisal, lists several factors to be utilized in determining fair market value. It must be noted, however, that each factor listed in either 79-5a04 or 79-503 is not, in and of itself, a method of appraisal. In this regard, the Court has stated:

> "This court has held where the legislature has detailed the factors or combinations

> thereof to be considered by taxing officials in assessing property, those officials may not ignore any of such factors pertinent to the evaluation of specific property. To do so is arbitrary action amounting to constructive fraud regardless of the good faith of the assessor. (Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 453 P.2d 59; and Angle v. Board of County Commissioners, 214 Kan. 708, 522 P.2d 347.)" Mobil Pipeline Co. v. Rohmiller, 214 Kan. 905, 917 (1974).

Thus, it is established that all the factors listed in 79-5a04, which are pertinent to the evaluation of specific property, must be considered by the director in determining the fair market value of said property.

Having clarified the fact that K.S.A. 79-5a04 establishes but a single method of appraisal, we turn to your apparent concern that the factors listed in 79-5a04, which are required to be utilized by the director in determining the fair market value in money of utility property, are not the same as those factors listed in 79-503. Such fact, by itself, does not indicate a violation of the requirements of Article 11, Section 1 of the Kansas Constitution. The Court has specifically held

> "the constitutional requirement of an equal and uniform rate (emphasis by the Court) of assessment, does not compel the use of but a single mode or method of assessment. Different kinds of property may be assessed in different modes, and by different officers, provided only that the rate at which the different officers are required to make their assessments is uniform and the same for all." (Emphasis added.) Francis, Treas. v. A.T. & S.F. Rld. Co., 19 Kan. 303, 307 (2d ed.) (1877).

Moreover, in Hunt v. Allen County, 82 Kan. 824 (1910), the Court said:

> "Of necessity the legislature has adopted several different methods for the assessment of property of different classes and used in different kinds of business." (Emphasis added.) Id. at 307.

See, also, Bank v. Geary County, 102 Kan. 334 (1918.

These judicial statements make it abundantly clear that Article 11, Section 1 of the Kansas Constitution does not prohibit the legislature from prescribing different methods of appraisal for different classes of property. However, we hasten to add that the Court's decision in State, ex rel., Stephan v. Martin, supra, makes it equally clear that any method of appraisal, to be constitutionally valid, must be designed to result in a determination of the property's fair market value in money. In other words, any method of appraisal prescribed by the legislature must be designed to result in the achievement of "the ultimate goal of valuing all property upon an equal basis. . . . Article 11, §1 of the Kansas Constitution prohibits favoritism, and requires uniformity in valuing property for assessment purposes so that the burden of taxation will be equal." State, ex rel., Stephan v. Martin, supra, at Syl. para. 7 and 10.

Based upon the foregoing judicial pronouncements, it is our opinion that, in the absence of some compelling reason, such as restraints imposed by the federal constitution on the states' power of taxation, no method of appraisal will fulfill the requirements of Article 11, Section 1 of the Kansas Constitution, unless the same prescribes factors or standards which, when considered and, when pertinent, applied, will result in a legitimate estimate of the fair market value in money of the property being appraised for purposes of taxation. We are further of the opinion that the legislature, in fulfilling its constitutional duty "to provide for a uniform and equal rate of assessment" (emphasis added; Kan. Const., Art. 11, §1), is expressly charged with the duty of prescribing factors or standards when formulating any method of assessment so that all property subject to taxation will be valued on an equal basis. Where factors or standards are not provided for by the legislature, the valuation of property for purposes of taxation devolves to the level of mere arbitrary and capricious speculation.

In K.S.A. 79-5a04, as in 79-503, the legislature has, in our judgment, clearly complied with its constitutional duty "to provide for a uniform and equal rate of assessment and taxation." In both K.S.A. 79-5a04 and 79-503, the legislature has prescribed factors or standards which the appraiser, be it the county appraiser or the director of property valuation, must follow in determining the valuation of property for purposes of taxation upon an equal basis. In addition, while 79-5a04 lists factors different than those enumerated in 79-503, it must be noted that the goal expressly sought and required by the legislature in both statutes is the determination of the property's "fair market value in money," which is the equal basis of property appraisal currently provided for by the legislature. See State, ex rel., Stephan v. Martin, supra, at Syl. para. 5.

Based upon the foregoing considerations, we cannot conclude as a matter of law that the method of appraisal prescribed in K.S.A. 79-5a04 is violative of the requirements of Article 11, Section 1 of the Kansas Constitution.

Your second concern relates to "the constitutionality of selecting an assessment unit value on the basis of negotiation or agreement" between the Property Valuation Division of the Kansas Department of Revenue and the owners of public utility property.

The duty of the Director of Property Valuation relative to the appraisal of public utility property is fixed by statute; not by the constitution. The Court states that duty as follows:

> "In the assessment of the state assessed property for ad valorem tax purposes, the Kansas Director of Property Valuation is required by K.S.A. 79-5a04 to determine the fair market value of the property, both real and personal, tangible and intangible of all public utilities as defined in K.S.A. 79-5a01 (L. 1969, ch. 434, §1) in accordance with directions in K.S.A. 79-5a04, to ascertain and determine as nearly as it can and consider the various factors enumerated." Mobil Pipeline Co. v. Rohmiller, supra, at Syl. para. 1.

In light of this statement, the Court has made it abundantly clear that the appraisal of public utility property must be in accordance with the directions contained in K.S.A. 79-5a04, which specifically include the following:

> "The division of property valuation in determining the fair market value shall, where practicable, determine the unit valuation, allocated to Kansas, and in doing so shall use generally accepted appraisal procedures developed through the appraisal process and may consider, including but not by way of exclusion, the following factors:
>
> . . . .

> "(5) Such other information or evidence as to value as may be obtained that will enable the property valuation department to determine the fair market value of the property of such companies."

Clearly, that statute does not provide for a determination of unit valuation "based upon negotiation or agreement." However, we are of the opinion that the director may obtain, from the owners of property,; information and evidence relating to the value of their property. We do not believe the legislative intent, in prescribing the above-quoted statutory factor, was to preclude the director from meeting with and obtaining information and evidence from representatives of public utility companies relative to the value of property owned by such companies.

Thus, in response to your second inquiry, we are of the opinion that while the unit valuation of public utility property may not be arrived at by negotiation and agreement between the division of property valuation and property owners, the director is not prohibited from conferring with such owners in order to obtain information and evidence relevant to the determination of the unit valuation and the fair market value in money of public utility property.

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