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January 16, 1987

ATTORNEY GENERAL OPINION NO. 87- 8

The Honorable Phil Martin  
State Senator, Thirteenth District  
Room 564-N, State Capitol  
Topeka, Kansas 66612

Re: Constitution of the State of Kansas--Constitutional  
Amendment and Revision--Proposals by Legislature;  
Approval by Electors; Reclassification  
  
Taxation--Property Valuation, Equalizing  
Assessments, Appraisers and Assessment of  
Property--Statewide Reappraisal of Real Property

Synopsis: Pursuant to Article 14, Section 1 of the Kansas  
Constitution, the legislature submitted a  
constitutional amendment to a vote of the electors  
of Kansas by means of a concurrent resolution  
passed by both houses. The constitutional  
amendment passed and requires that classification  
be implemented on January 1, 1989. Regardless of  
the interrelationship between the ongoing  
reappraisal process and the implementation date of  
the classification scheme, there is no legal basis  
to delay the classification amendment date. Cited  
herein: K.S.A. 1986 Supp. 79-1476; L. 1985, ch.  
364; Kansas Constitution, Art. 14, §1.

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Dear Senator Martin:

You have requested our opinion concerning the interdependence of the completion date of the ongoing reappraisal process (K.S.A. 1986 Supp. 79-1476) and the implementation date of the property classification for taxation purposes amendment (1985 House Concurrent Resolution No. 5018, L. 1985, ch. 364) to the Kansas Constitution. Specifically, you inquire whether the classification scheme, to be implemented on January 1, 1989, will be delayed if the reappraisal process is not completed by the statutorily required date of January 1, 1989.

Though under differing circumstances, this subject has been addressed in Attorney General Opinion No. 85-110. In that opinion a member of the Kearney County Board of Commissioners was concerned that the resources of the counties might not be up to the task of completing reappraisal by the statutorily required date of January 1, 1989, which in turn would create problems with implementing the new system of classification to become effective January 1, 1989. The request therefore inquired whether the 1986 Legislature could amend 1985 House Concurrent Resolution No. 5018, dealing with classification, to eliminate the specific deadline and replace it with wording designed to implement classification only upon completion of reappraisal. Our office concluded that the legislature could, by two-thirds affirmative vote, alter the terms of the proposed classification amendment contained in Chapter 364 of the 1985 Session Laws, in accordance with the procedure in Article 14, Section 1 of the Kansas Constitution.

However, the legislature did not address any changes to be made to the proposed classification amendment during the 1986 legislative session. Senate and House Action Report, 1986. Thus, the proposed classification amendment was submitted to and passed by voters with the effective date of January 1, 1989. The result of the legislature's action, or the lack thereof, indicates that the legislature's intent was to make classification effective January 1, 1989 upon voter approval of the constitutional amendment.

The legislature is but a conduit to changing the constitution, since it is the voters who make the ultimate decision. Prohibitory Amendment Cases, 24 Kan. \*700, \*712 (1881). The role of the legislature in placing a constitutional question before the voters was discussed in the Prohibitory Amendment Cases:

"Again, in constitutional changes the popular voice is the paramount act. While to guard against undue haste and temporary excitement, to prevent unnecessary and frequent appeals for constitutional amendments, the assent of two-thirds of the legislature is prescribed as a condition precedent, yet after all, that which determines constitutional changes is the popular will. This is a government by the people, and whenever the clear voice of the people is heard, legislatures and courts must obey." 24 Kan. at \*711.  
See also Moore v. Shanahan, 207 Kan. 645, 651 (1971).

Alternatively, the people cannot alter, change, or modify a proposed amendment as agreed to by the legislature and submitted to the popular vote. The people must accept or reject the amendment as submitted. 16 C.J.S. Constitutional Law §14 (1984). See Kan. Const., Art. 14, §1; State ex rel. v. Sessions, 87 Kan. 497, 501 (1912) ("The right [of the legislature] to determine what form a proposed amendment on a particular subject shall take implies the right to reject a proposal submitted at a former session, and this implies the right to control absolutely the matter of amendment to be submitted at the ensuing election.") The combined action of the legislature and the electorate resulted in an amendment to the Kansas Constitution. Such an amendment can be changed only by the constitutionally prescribed procedure for amending the Constitution. Kansas Const., Art. 14, §1.

An examination of the legislative history closely ties classification to reappraisal. Report on the Kansas Legislative Interim Studies to the 1979 Legislature pp. 72-73; Report on the Kansas Legislative Interim Studies to the 1980 Legislature, Special Committee, pp. 31-32; Report on the Kansas Legislative Interim Studies to the 1982 Legislature, Special Committee, p. 46; Report on the Kansas Legislative Interim Studies to the 1986 Legislature, p. 41. However, in adopting an effective date for classification the legislature clearly intended that the voters determine when classification would come into effect. We cannot conclude from the inclusion of a specific date that the action of the legislature in presenting the issue in this fashion is somehow unconstitutional, or that the voters cannot approve it in this format.

The state constitution is the paramount and fundamental law of Kansas and limits the powers of the people's government, rather than conferring such powers. Kansas Bill of rights, §§2, 20; Lemons v. Noller, 144 Kan. 813, 816-17 (1936); Atkinson v. Woodmansee, 68 Kan. 71 (1904); Prohibitory Amendment Cases, 24 Kan. \*700, \*711-12 (1881). Accordingly, while a statute may be found to be inconsistent with the grant of power made by the people to the legislature, a constitutional amendment cannot be unconstitutional, unless the procedures used in adopting it themselves contravene those set forth in the constitution for such amendments [Kansas Constitution, Article 14, Section 1; Moore v. Shanahan, 207 Kan. 645, 651-55 (1971)], or the amendment is in conflict with the United States Constitution or the Federal Bill of Rights. Van Sickle v. Shanahan, 212 Kan. 426, 449-51 (1973). In such cases, the proposition submitting the amendment to the people is void, and the election is of no effect. Moore, supra. Although you did not inquire about the propriety of the procedures used to adopt the concurrent resolution, we know of no defect along these lines which would nullify it and so vitiate the results of the election.

The Supreme Court of Kansas has addressed the question of the inclusion of a time or mode of proceeding included in a constitutional provision in State, ex rel. v. Sessions, 87 Kan. 497 (1912). The case dealt with a question of whether a resolution adopted by the legislature in 1904 and not submitted to the voters at the next election could be submitted at a later date. The court held it could not. In discussing the issue of whether a constitutional provision could be held directory rather than mandatory the court, quoting from Cooley's Const. Lim., 7th ed., states:

"But the courts tread upon very dangerous ground when they venture to apply the rules which distinguish directory and mandatory statutes to the provisions of a constitution. Constitutions do not usually undertake to prescribe mere rules of proceeding, except when such rules are looked upon as essential to the thing to be done; and they must then be regarded in the light of limitations upon the power to be exercised. It is the province of an instrument of this solemn and permanent character to establish those fundamental maxims, and fix those unvarying rules by

which all departments of the government must at all times shape their conduct; and if it descends to prescribing mere rules of order in unessential matters, it is lowering the proper dignity of such an instrument, and usurping[sic] the proper province of ordinary legislation. We are not therefore to expect to find in a constitution provisions which the people, in adopting it, have not regarded as of high importance, and worthy to be embraced in an instrument which, for a time at least is to control alike the government and the governed, and to form a standard by which is to be measured the power which can be exercised as well by the delegate as by the sovereign people themselves. If directions are given respecting the time or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only; and we impute to the people a want of due appreciation of the purpose and proper province of such an instrument, when we infer that such directions are given to any other end. Especially when, as has been already said, it is but fair to presume that the people in their constitution have expressed themselves in careful and measured terms, corresponding with the immense importance of the powers delegated, and with a view to leave as little as possible to implication.

(Cooley's Const. Lim., 7th ed., p. 114.)" 87 Kan. at 498-499.

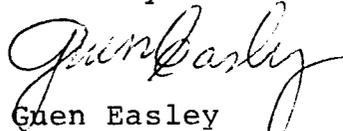
Accordingly, it is our opinion that, regardless of the interrelationship between the ongoing reappraisal process and the implementation date of the classification scheme, there is no legal basis to allow delay of the classification amendment date. It is a well established rule of law that it is not the province of the courts to determine the wisdom of legislation touching the public interest as that is a legislative function with which courts cannot interfere. State ex rel, Schneider v. Kennedy, 225 Kan. 13, 21 (1978); In re

Estate of Diebolt, 187 Kan. 2, 17 (1960); State, ex  
rel. v. Fadely, 180 Kan. 652, 659 (1957), Hunt v. Eddy,  
150 Kan. 1, 4 (1939).

Very truly yours,



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