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ATTORNEY GENERAL OPINION NO. 89- 144

Curtis E. Campbell
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Re: Taxation--Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property; Statewide Reappraisal--Statewide Reappraisal of Real Property; Methods of Establishing Values; CRP Land

Synopsis: The provision of K.S.A. 1988 Supp. 79-1476 which requires land subject to the federal conservation reserve program to be valued on the basis of the agricultural income or productivity attributable to the inherent capabilities of the land in its usage immediately prior to being subject to the program is not in violation of the uniformity in assessment requirement of article 11, section 1 of the Kansas Constitution. Cited herein: K.S.A. 1988 Supp. 79-1476; Kan. Const., Art. 11, §§ 1, 12; U.S. Const., Amend. 14th.

* * *

Dear Mr. Campbell:

You request our opinion regarding the constitutionality of K.S.A. 1988 Supp. 79-1476 as it applies to agricultural land subject to the federal conservation reserve program (CRP). You advise that CRP land which was irrigated prior to becoming subject to the program is being assessed differently than CRP land which was not irrigated prior to becoming

subject to the program despite the fact that CRP rental income is the same for both. You question whether assessing this property based on potential productivity rather than actual income constitutes nonuniform or unequal treatment in violation of article 11, section 1 of the Constitution of the State of Kansas.

Article 11, section 1 provides in pertinent part:

"Except as otherwise hereinafter specifically provided, the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation. . . . Property shall be classified into the following classes for the purpose of assessment and assessed at the percentage of value prescribed therefore:

"Class 1 shall consist of real property. Real property shall be further classified into four subclasses. Such property shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass at the following percentages of value:

. . . .

"(B) Land devoted to agricultural use which shall be valued upon the basis of its agricultural income or agricultural productivity pursuant to section 12 of article 11 of the constitution . . . 30%." (Emphasis added).

Article 11, section 12 of the Constitution provides in part:

"Land devoted to agricultural use may be defined by law and and valued for ad valorem tax purpose upon the basis of its agricultural income or agricultural productivity, actual or potential, and when so valued such land shall be assessed at the same percent of value and taxed at the same rate as real property subject to the provisions of section 1 of this article. . . ." (Emphasis added).

Because this section is not self-executing [see Attorney General Opinion No. 85-135; Nelson, Differential Assessment of Agricultural Land in Kansas, 25 U. Kan. L. Rev. 215, 218 (1977)], K.S.A. 79-1476 was enacted to implement its provisions. The portion of K.S.A. 1988 Supp. 79-1476 with which you are concerned states:

"[V]aluations shall be established for each parcel of land devoted to agricultural use upon the basis of the agricultural income or productivity attributable to the inherent capabilities of such land in its current usage or, in the case of such land which is subject to the federal conservation reserve program, in its usage immediately prior to being subject to such program, under a degree of management reflecting median production levels in the manner hereinafter provided." See Attorney General Opinion No. 89-63 for a discussion of the procedures involved.

By means of this statute, the legislature has implemented the constitutional provision authorizing agricultural land to be assessed based on use value rather than fair market value. According to one authority, the method chosen by the legislature, supra, the capitalization of income method, is common. Nelson, supra at 219, 220. However, even though, pursuant to article 11, section 1(b)(1)(B) and section 12, land devoted to an agricultural use may be valued differently than other subclasses of real property, the subclass of land devoted to an agricultural use must itself be assessed uniformly.

In discussing the requirement of uniformity in assessment, the Kansas Supreme Court has consistently quoted the following statement:

"[E]ach man in city, county, and state is interested in maintaining the state and local governments. The protection which they afford and the duty to maintain them are reciprocal. The burden of supporting them should be borne equally by all, and this equality consists in each one contributing in proportion to the amount of his property." Wheeler v.

Weightman, 96 Kan. 50, 58 (1915)
(emphasis added).

See Kansas City Southern Rly. Co. v. Board of County Commissioners, 183 Kan. 675, 682 (1958); Addington v. Board of County Commissioners, 191 Kan. 528, 532 (1963); Topeka Cemetery Association v. Schnellbacher, 218 Kan. 39, 43 (1975); State ex rel. Stephan v. Martin, 227 Kan. 456, 461 (1980). The court has further stated:

"Unlike the income tax, the property tax is based on the value of the property itself, not on the income or economic condition of the property's owner." State v. Martin, supra at 466 (emphasis in original).

If CRP property were to be assessed based on its actual income of rental payments from the federal government rather than its potential income as is other agricultural land, in our opinion the result would be nonuniform. CRP rental payments are not based on the value of the property, so the basis of valuing CRP property would differ from that used for valuing other agricultural property and, though the actual value of the property would be the same as similar property not subject to the program, owners of CRP land would pay less tax.

"Uniformity in taxation implies equality in the burden of taxation, and this equality cannot exist without uniformity in the basis of valuation. Uniformity in taxation does not permit a systematic, arbitrary, or intentional higher valuation than that placed on other similar property within the same taxing district." Board of Johnson County Commissioners v. Greenhaw, 241 Kan. 119, 127 (1987).

On the other hand, to value CRP property based on its usage immediately prior to being subject to the program rather than its current usage causes CRP land currently used as grassland (see Attorney General Opinion No. 88-144) to be valued instead as irrigated land or dry cropland or whatever it was used as prior to entering the program. This too creates a difference in the basis of valuation. [If the property owner elects for any other reason to use the land as grassland it will be valued as grassland even though

irrigation or other cultivation is possible. See Kansas Department of Revenue, Division of Property Valuation, Procedures for Identification and Classification of Agricultural Land 13 (Feb. 15, 1988).]

In determining the constitutionality of tax statutes under the Equal Protection clause of the United States Constitution, U.S. Const., 14th Amend., the Kansas Supreme Court has consistently held that "the equal protection clause of the federal constitution and the state constitutional provisions pertaining to equality and uniformity of taxation are substantially similar and that, in general, what violates one will contravene the other and vice versa." Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. 39, 43 (1975). See also Associated Rly. Equipment Owners v. Wilson, 167 Kan. 608 (1949); State ex rel. Tomasic v. City of Kansas City, 237 Kan. 572, 584 (1985). Thus it appears the test for determining the constitutionality of a statute under article 11, section 1 of the Kansas Constitution would be the same as that used for determining the constitutionality of a statute under the Equal Protection clause.

"The Supreme Court of the United States has addressed the issue of the states' powers to levy taxes and grant exemptions as well as the parameters within which they must operate to avoid impinging on equal protection limitations. The principles are set out at some length in Allied Stores of Ohio v. Bowers, 358 U.S. 522, 3 L.Ed.2d 480, 79 S.Ct. 437 (1959). In that case, an Ohio statute exempted from ad valorem taxation merchandise warehoused by nonresidents if it were held in a storage warehouse for storage only. Plaintiff, a resident who operated several department stores and maintained warehouses for his merchandise, claimed denial of equal protection. In rejecting the challenge, the Supreme Court noted the states are subject to the Equal Protection Clause in the exercise of their taxing power but enjoy wide discretion nonetheless. The court observed the Equal Protection Clause 'imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation.' 358 U.S. at

526. The state taxation scheme must have a rational basis with classifications based on differences having a fair and substantial relation to the object of the legislation. In Allied Stores of Ohio the court found 'a statute which encourages the location within the State of needed and useful industries by exempting them, though not also others, from its taxes is not arbitrary and does not violate the Equal Protection Clause of the Fourteenth Amendment.' 358 U.S. at 528. Other cases also affirm the power of the states to establish classification schemes and grant exemptions. See, e.g., Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 35 L.Ed.2d 351, 93 S.Ct. 1001 (1973); Carmichael v. Southern Coal Co., 301 U.S. 495, 81 L.Ed. 1245, 57 S.Ct. 868 (1937). " State ex rel. Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, 425, 426 (1981).

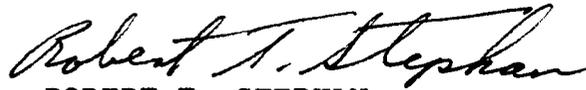
We have been advised that the purpose of the provision of K.S.A. 1988 Supp. 79-1467 which requires CRP property to be valued based on its usage immediately prior to entering the program rather than its current usage was to prevent counties which have large volumes of CRP property from losing a large part of their tax base. For instance, a county with 50 per cent of its land subject to the CRP, using current usage as a basis, would probably value that land as grassland which would lower its valuation, and thus its taxes. Other agricultural properties and residential and commercial properties would then shoulder the burden of the shift of the taxes from the CRP land. Evidently the legislature determined that this too would be unequitable and thus passed the provision in question. We believe this is a rational basis for creating the distinction in question and the result of the distinction achieves the purpose of the legislation.

We are also mindful of the court established rules of construction that "the constitutionality of a statute is presumed; that all doubts must be resolved in favor of its validity, and before a statute may be stricken, it must clearly appear that the statute violates the Constitution." State ex rel. Stephan v. Martin, 230 Kan. 759, 760

(1982). In our judgment, the statutory provision cannot be said to clearly violate the Constitution.

In conclusion, the provision of K.S.A. 1988 Supp. 79-1476 which requires land subject to the federal conservation reserve program to be valued on the basis of the agricultural income or productivity attributable to the inherent capabilities of the land in its usage immediately prior to being subject to the program is not in violation of the uniformity in assessment requirement of article 11, section 1 of the Kansas Constitution.

Very truly yours,



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Julene L. Miller
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