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ATTORNEY GENERAL OPINION NO. 90- 31

The Honorable Clyde D. Graeber
State Representative, Forty-First District
State Capitol, Room 175-W
Topeka, Kansas 66612

Re: Taxation--Property Valuation, Equalizing
Assessments, Appraisers and Assessment of
Property--Utilization of Valuations Established in
County-Wide Reappraisals

Synopsis: K.S.A. 79-1451 does not prevent use of valuations
established by statewide reappraisal even though
the board of tax appeals has ordered a second
reappraisal in one or more counties. That statute
was enacted to correct a situation in existence at
the time of its enactment, 1978, and has been
effectively superseded by the provisions of K.S.A.
79-1476. An order of the board of tax appeals to
reappraise in one or more counties does not effect
the school district equalization act formula.
Cited herein: K.S.A. 1989 Supp. 72-7040; 72-7042;
K.S.A. 79-1413a; 79-1451; 79-1476.

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Dear Representative Graeber:

You request our opinion regarding the effect of a board of tax
appeals' order to reappraise certain property in Cherokee
county. Specifically you question whether certification by
the director of property valuation under K.S.A. 79-1451 is
invalidated by the board's order, thereby prohibiting all

counties from using property valuations established pursuant to statewide reappraisal.

On July 21, 1989 the board of tax appeals issued an order pursuant to K.S.A. 79-1413a finding that "the public would be benefited by a reappraisal of Cherokee County" and that "the specifications previously drawn by PVD regarding statewide reappraisal shall be applied in the reappraisal ordered here." In the Matter of the Complaint of the Cherokee County Appraiser, Docket No. 89-2212-RAP (Kansas Board of Tax Appeals, July 21, 1989), reh. den., September 25, 1989. See attachment A. The director appealed only the portion of the board's order which imposed discovery sanctions against PVD. This portion of the board's order was reversed by the district court. In the Matter of the Appeal of the Cherokee County Appraiser Pursuant to K.S.A. 79-1413a, Case No. 89-C-117, (dist. ct. of Cherokee county, 11th jud. dist., Jan. 23, 1990).

K.S.A. 79-1451 provides that all counties must be certified by the director of property valuation as having completed reappraisal before the reappraisal valuations may be used by any county. The statute states in full:

"Inasmuch as the complex structure of the ad valorem taxation system is a subject matter to which the legislature should devote comprehensive study prior to enacting any change in the law relating thereto, and inasmuch as the legislature has only recently enacted changes in state law to upgrade the local appraisal process and sufficient time has not transpired to monitor the results of such change, and inasmuch as isolated cases of counties conducting countywide reappraisals without a coordinated approach by all counties may tend to frustrate rather than effectuate the intent of section 1 of article 11 of the state constitution requiring a uniform and equal rate of assessment and taxation of property, and inasmuch as it is the desire of the legislature to make a comprehensive study of the entire structure of the ad valorem taxation system and a countywide reappraisal of all of the tangible property within any county in the near

future prior to such study would be of questionable merit, no county shall apply valuations established for property by countywide reappraisals of real property within the county carried out by any private reappraisal firm or officers or employees of the county as a basis for the levy of taxes thereon prior to the certification by the director of property valuation that the countywide reappraisal of property in all counties of the state have been completed and are ready for utilization as a basis for the levy of such taxes. Nothing in this act shall be construed to conflict with any other provision of law relating to the appraisal of tangible property for taxation purposes including the equalization processes of the county and state boards of equalization."

This statute was originally enacted in 1978 (L. 1978, ch. 396, § 1) and has not since been amended. As evidenced by its introductory language, it was intended to correct a specific problem existing at the time of its enactment. It was to prevent individual counties from using valuations established by county directed reappraisal before other counties had the opportunity to reappraise and before the legislature had directed reappraisal and set forth the guidelines counties were to follow. The statute discusses countywide reappraisals, not the statewide reappraisal ordered by L. 1985, ch. 314.

L. 1985, ch. 314, § 1 (codified at K.S.A. 79-1476) provides for notification to the governor by the director of PVD upon determining that reappraisal of all real property within each county is complete. The statute further requires that reappraisal be completed not later than January 1, 1989, and states:

"The valuations established for tangible property under the program of statewide reappraisal shall not be applied by any county as a basis for the levy of taxes until January 1, 1989." K.S.A. 79-1476.

Thus, the statute which specifically applies to statewide reappraisal authorizes use of valuations as of a specific date

and not upon certification by the director that all counties have completed reappraisal. Pursuant to statutory construction rules which dictate that statutes must be construed in light of their context [Mahone v. Mahone, 213 Kan. 346, 350 (1973)], and that where two statutes ostensibly conflict the most recent enactment is controlling [Szoboszlay v. Glessner, 233 Kan. 475, 479 (1983)], it is our opinion that K.S.A. 79-1451 does not operate to prevent all 105 counties from using valuations established by statewide reappraisal simply because the board of tax appeals has ordered reappraisal in one county at the county's request.

You further question whether the board's order creates problems for the legislature with the division of state moneys under the school district equalization act for the 1991 fiscal year. Cherokee county is currently using the valuations established by the statewide reappraisal which was concluded in December of 1988. The county brought its appeal to the board of tax appeals pursuant to K.S.A. 79-1413a which provides that the valuations established during the course of the board ordered reappraisal may not be used until the year after the year in which the reappraisal and all hearings on appraisals are completed by November 1. Thus, the board did not, and could not under K.S.A. 79-1413a, "throw out" the valuations established for Cherokee county in the statewide reappraisal. Pursuant to the the school district equalization act, K.S.A. 72-7030 et seq., state aid to individual school districts is calculated by subtracting from the district's general fund budget the quotient arrived at by multiplying the district's wealth by its local effort rate. For the 1989-1990 and 1990-1991 school years, "district wealth" is defined as "the average (mean) of the sum of the taxable income within a district for the most recent two years . . . and an amount equal to the amount of the formulated valuation of the district and the assessed valuation of the district for the 1989 tax year." K.S.A. 1989 Supp. 72-7042(b). "Formulated valuation of a district" is defined as:

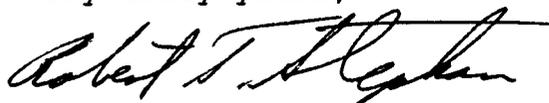
"[T]he adjusted valuation of the district for the 1988 tax year as determined for computation of the district wealth of the district for the 1988-89 school year less an amount equal to 50% of the assessed valuation in the 1988 tax year of merchants inventory, manufacturers inventory, livestock, and business machinery and equipment within the district." K.S.A. 1989 Supp. 79-7040(c).

Thus, for both the 1990 and 1991 fiscal/school years the statutes require both 1988 pre-statewide reappraisal valuations and 1989 post-statewide reappraisal valuations to be used in determining state aid to school districts under the school district equalization act. Your concern is that Cherokee county is using valuations which have been found by the board to be sufficiently "defective" to warrant a reappraisal.

In our opinion, the use of the valuations established through the statewide reappraisal in Cherokee county does not invalidate or substantially taint the equalization formula. As stated previously, the board of tax appeals did not void the valuations in controversy. Its order was based on a finding that a reappraisal would be in the best interests of the public to correct specified defects. Had the valuations been voided, Cherokee county would have only pre-statewide reappraisal valuations at its disposal to compute taxes and its share of state aid. This would indeed have been inequitable and is not authorized by the statutes setting out the equalization formula. The other alternative would be to use pre-statewide reappraisal valuations across the board for all counties to determine state aid. This also has not been provided for by the legislature and we do not believe the order of the board alone could have this effect.

In conclusion, K.S.A. 79-1451 does not prevent use of valuations established by reappraisal even though the board of tax appeals has ordered reappraisal in one or more counties. That statute was enacted to correct a situation in existence at the time of its enactment, 1978, and has been effectively superseded by the provisions of K.S.A. 79-1476. An order of the board of tax appeals to reappraise in one or more counties does not effect the school district equalization act formula.

Very truly yours,



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