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July 13, 1990

ATTORNEY GENERAL OPINION NO. 90- 82

Mr. Leigh Hood
Ford County Attorney
Ford County Courthouse
P.O. Box 1057
Dodge City, Kansas 67801

Re: Taxation--Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property--Change in Appraised Valuation, 1990 Senate Bill No. 332

Synopsis: The one year partial moratorium on increasing property valuations under 1990 Senate Bill No. 332 does not violate the uniform and equal provisions of article 11, section 1 of the Kansas constitution. Cited herein: K.S.A. 79-1476; 1990 Senate Bill No. 332, § 5; Kan. Const., art. 11, § 1.

* * *

Dear Mr. Hood:

On behalf of the board of county commissioners of Ford county, you request our opinion regarding the constitutionality of placing a temporary and partial moratorium on increasing property valuations for tax purposes. Specifically, you question whether the moratorium provision of section 5 of 1990 Senate Bill No. 332 violates the uniform and equal requirement of article 11, section 1(b) of the Kansas constitution.

Prior to enactment of 1990 Senate Bill No. 332, county appraisers were required to reappraise all real property in

their respective counties annually (beginning in 1989), and to actually view and inspect each parcel once every four years (beginning in 1990). K.S.A. 79-1476. 1990 Senate Bill No. 332 suspended for tax year 1990 the requirement to reappraise non-agricultural real property if its value according to data had increased and if it had not been physically inspected by the appraiser. See Attorney General Opinion No. 90-51. Pursuant to Senate Bill No. 332, property that increased in value between 1989 and 1990 will receive a higher valuation for taxation purposes if it has been inspected; property that, according to data alone, increased in value between 1989 and 1990 will not receive a higher valuation if not physically inspected.

With the adoption of the 1986 amendments to article 11, section 1 of our constitution, Kansas no longer has a strictly "uniform and equal" taxing requirement, but rather is under a classification scheme. The constitutional provision, however, retains uniform and equal language by requiring the legislature to provide for a "uniform and equal basis of valuation and rate of taxation of all property subject to taxation" except as otherwise specifically provided in the constitution, and mandating that property be "assessed uniformly as to subclass" at specified percentages of value.

Although the Kansas Supreme Court has yet to rule on a property tax case subsequent to the adoption of the classification amendment, it has interpreted the uniform and equal language of pre-classification provisions on numerous occasions. When called upon to determine the constitutionality of statutory tax exemptions, the court has stated that the state constitutional provisions pertaining to equality and uniformity of taxation and the equal protection clause of the federal constitution are substantially similar and that, in general, what violates one will contravene the other. State ex rel. Tomasic v. Kansas City, Kansas Port Authority, 230 Kan. 404, 426 (1981); State ex rel. Tomasic v. City of Kansas City, 237 Kan. 572, 584 (1985). See also Northern Natural Gas Co. v. Williams, 208 Kan. 407, 412 (1972) (analyzes disparity in assessment rates). In another line of cases, when considering the constitutionality of disparate valuations reached by local appraisers, the court has struck down such disparate valuations only where it has found fraud or constructive fraud on the part of the taxing officials.

> "It has been held from an early date that matters of assessment and taxation are

> administrative in character and not judicial. In Simms v. Graves (1902), 65 Kan. 628, 70 Pac. 591, it was said:
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> "'. . . Matters of assessment and taxation are administrative in their character and not judicial, and an interference by judges who are not elected for that purpose with the discharge of their duties by those officers who are invested with the sole authority to make and estimate value is unwarranted by the law. . . .' (p. 636.)
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> "In the same decision the only grounds upon which there may be judicial interference were recognized as follows:
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> "'But fraud, corruption and conduct so oppressive, arbitrary or capricious as to amount to fraud, will vitiate any official act, and courts have power to relieve against all consequential injuries. . . .' (p. 636)." Mobile Oil Corp. v. McHenry, 200 Kan. 211, 227 (1968).

See also Addington v. Board of County Comm'rs, 191 Kan. 528, 532 1963). ("Mere excessiveness of an assessment or errors in judgment or mistakes in making unequal assessments will not invalidate an assessment, but the inequality or lack of uniformity, if knowingly high or intentionally or fraudulently made, will entitle the taxpayer to relief"); Kansas City Southern Rly. Co. v. Board of County Comm'rs, 183 Kan. 675, 679, 680 (1958); Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 12, 13 (1969); McManaman v. Board of County Commissioners, 205 Kan. 118, 122, 123 (1970). The court has on occasion found constructive fraud even when the local taxing official acted in good faith reliance on state prescribed taxing schedules. Garvey Grain, 203 Kan. at 12, 13.

In our opinion, 1990 Senate Bill No. 332, section 5 would pass constitutional muster under either of the above tests. Under an equal protection analysis, since there is no suspect class or fundamental right involved, the state need only have a rational basis for any disparate treatment. The United States Supreme Court has given states great flexibility and latitude under the equal protection clause to determine taxation

schemes. Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526, 3 L.Ed.2d 480, 484, 79 S.Ct. 437 (1959); Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359, 35 L.Ed.2d 351, 354, 355, 93 S.Ct. 1001 (1973). More recently the court has stated:

> "The Equal Protection Clause 'applies only to taxation which in fact bears unequally on persons or property of the same class.' Charleston Fed. Savings & Loan Assn. v. Alderson, 324 U.S. 182, 190, 89 L.Ed. 857, 65 S.Ct. 624 (1945) (collecting cases). The use of a general adjustment as a transitional substitute for an individual reappraisal violates no constitutional command. As long as general adjustments are accurate enough over a short period of time to equalize the differences in proportion between the assessments of a class of property holders, the Equal Protection Clause is satisfied. Just as that Clause tolerates occasional errors of state law or mistakes in judgment when valuing property for tax purposes. . . [i]t does not require immediate general adjustment on the basis of the latest market developments. In each case, the constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners. Allegheny Pitt. v. Webster County, 488 U.S. ____, 102 L.Ed.2d 688, 697, 109 S.Ct. ____ (1989) (citations omitted, emphasis added).

The moratorium of 1990 Senate Bill No. 332 is to last only one year and it merely prevents increases in valuations which are based on market data alone. The basis for the moratorium was to require appraisers to assure themselves, by inspecting the property, that the value of the property was actually what the data indicated before increasing the valuation for tax purposes. Because any discrepancy caused by this bill will be short term and we believe it has a rational basis, in our opinion the provision does not violate the equal protection clause and thus would not violate the uniform and equal provision under this analysis. Further, we do not believe any discrepancy the bill might cause would necessarily constitute

fraud or constructive fraud. There may be situations in which the valuation of a particular parcel is so far off that the court would find constructive fraud, but we do not believe the statute itself would be found unconstitutional. In so finding, we rely on the rule 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. It is the court's duty to uphold the statute under attack, if possible, rather than defeat it. If there is any reasonable way a statute may be construed constitutionally permissible, that should be done." State ex rel. Stephan v. Martin, 230 Kan. 759, 760 (1982). See also Van Sickle v. Shanahan, 212 Kan. 426, 432, 433 (1973); Von Ruden v. Miller, 231 Kan. 1, 3 (1982).

In conclusion, the one year partial moratorium on increasing property valuations under 1990 Senate Bill No. 332 does not violate the uniform and equal provisions of article 11, section 1 of the Kansas constitution.

Very truly yours,

Robert T. Stephan

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RTS:JLM:jm