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ATTORNEY GENERAL OPINION NO. 91- 136

The Honorable Clyde D. Graeber
State Representative, Forty-First District
2400 Kingman
Leavenworth, Kansas 66048

Re: Taxation--Property Valuation, Equalizing Assessments, Appraisers and Assessment of Property--Powers and Duties of Director of Property Valuation; Ability to Require Use of Assessment Tools by County and District Appraisers

Synopsis: Directives, guidelines, manuals and course instruction materials promulgated by the director of property valuation to assist county and district appraisers in determining fair market or use value of property and designed to achieve uniformity in appraisal are mandatory in the sense that the director, prosecutors and the board of tax appeals may take actions enumerated herein to penalize an appraiser for failure or refusal to comply with or follow such materials. Cited herein: K.S.A. 1990 Supp. 19-431; K.S.A. 19-2609; 60-1206; 79-1401; 79-1404, as amended by L. 1991, ch. 278, § 1; K.S.A. 79-1412a; 79-1413a, as amended by L. 1991, ch. 162, § 1; K.S.A. 79-1456; 79-1473; K.S.A. 1990 Supp. 79-1476; K.S.A. 79-1479, as amended by L. 1991, ch. 162, § 2; K.S.A. 79-2912.

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Dear Representative Graeber:

You request our opinion regarding the power and authority of the director of property valuation "in relationship to the duty of county appraisers to appraise all property within their respective counties at its fair market value." (For the purposes of this opinion, the terms "county appraiser" and "appraiser" include county and district appraisers.) Specifically you ask that we address the following questions:

"1. What weight and legal authority are to be accorded those directives, guidelines, manuals, policies and course instruction materials promulgated by the Director of Property Valuation?

"2. Are Kansas county appraisers legally required to follow and comply with the directives, guidelines, manuals, policies, and course instruction materials issued by the Director of Property Valuation?

"3. What, if any, penalties and/or sanctions may be levied against Kansas county appraisers for demonstrated non-compliance with Property Valuation directives, guidelines, manuals, policies, and course instruction materials?

"4. Who is responsible for investigating a county appraiser's alleged non-compliance with said directives, guidelines, manuals, policies, and course instruction materials?

"5. Who is responsible for enforcing any applicable penalties and sanctions for proven non-compliance?"

You direct our attention to several statutes which address the general powers, duties and authority of the director and county appraisers. K.S.A. 79-1401 gives the director of property valuation general supervision and direction of the county appraisers in the performance of their duties, and allows the director to regulate the performance of such duties. K.S.A. 79-1404, as amended by L. 1991, ch. 278, § 1 provides in part:

"It shall be the duty of the director of property valuation, and the director shall have the power and authority:

"First. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over

the county and district appraisers . . .
to the end that all assessments of
property . . . be made relatively just and
uniform and at its true and full cash
market value; to require all county and
district appraisers . . . under penalty of
forfeiture and removal from office . . .
to assess all property of every kind at
its actual and full cash market value.

. . . .

"Third. To direct proceedings, actions
and prosecutions to be instituted to
enforce the laws relating to the
penalties, liabilities and punishment of
public officers . . . for failure or
neglect to comply with orders of the
director of property valuation . . .; and
to cause complaints to be made against
county and district appraisers . . . for
their removal from office for official
misconduct or neglect of duty.

"Fourth. To require the attorney
general, or county attorneys in their
respective counties, to assist in the
commencement and prosecution of actions
and proceedings for penalties,
forfeitures, removals and punishments for
violations of the laws of the state in
respect to the assessment and taxation of
property.

. . . .

"Ninth. To investigate the work and
methods of county and district appraisers
. . . in the assessment . . . of all kinds
of property. . . .

"Tenth. To carefully examine into all
cases where evasion or violation of the
laws of assessment and taxation of
property is alleged, complained of, or
discovered.

. . . .

"Sixteenth. . . . and generally to do and perform any act or to make any order or direction to any . . . county or district appraiser as to the valuation of any property . . . to the end that all property shall be valued and assessed in the same manner and to the same extent as any and all other property, real or personal, required to be listed for taxation. . . ."

K.S.A. 79-1412a lists the duties to be performed by county appraisers, including appraisal of real property and conformance to the values shown in the personal property appraisal guides prescribed by the director when setting values for personal property. K.S.A. 79-1456 requires county appraisers to "follow the policies, procedures and guidelines of the director of property valuation in the performance of the duties of the office of county appraiser."

In addition to the statutes you have cited, K.S.A. 1990 Supp. 79-1476 directs county appraisers to reappraise all of the real property in their respective counties "pursuant to guidelines and timetables prescribed by the director of property valuation;" K.S.A. 79-1413a, as amended by L. 1991, ch. 162, § 1 authorizes the board of tax appeals to order a reappraisal of any county found "not in substantial compliance with law and the guidelines and timetables prescribed by the director of property valuation;" K.S.A. 79-1479, as amended by L. 1991, ch. 162, § 2 directs the director of property valuation to file a complaint with the board of tax appeals whenever the director determines that any county has failed to appraise property "in substantial compliance with the provisions of law and the guidelines and timetables prescribed by the director." Further, the Kansas Supreme Court has specifically addressed the powers and duties of the director with regard to oversight of county appraisers in two cases. Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 11, 12 (1969); McManaman v. Board of County Commissioners, 205 Kan. 118, 126, 127 (1970). See also Attorney General Opinion No. 91-134.

Clearly directives, guidelines, manuals, policies and course instruction materials promulgated by the director of property valuation and provided to county appraisers in an effort to assist or direct them with regard to the performance of their duties (notably the appraisal of property at fair market or use value) are binding on those county appraisers. Not only

does the director have an interest in seeing that property is appraised at fair market or use value, but also that methods of appraisal are uniform across the state. To these ends, the director has many means available to see that his directives, guidelines, manuals, policies and course instruction materials are followed, including the ability to terminate or suspend an appraiser who refuses to comply (K.S.A. 1990 Supp. 19-431), to cause complaints to be made against appraisers for their removal from office for official misconduct or neglect of duty (K.S.A. 79-1404 Third, as amended) and to direct proceedings, actions and prosecutions to be instituted for failure or neglect to comply with the director's orders (K.S.A. 79-1404 Third, as amended).

If failure or refusal of an appraiser to follow directives, guidelines, manuals, policies and other materials results in failure to achieve fair market or use value of property in the county, or uniformity, county and district attorneys or the attorney general may initiate prosecution under K.S.A. 79-1473 (misdemeanor and up to \$500 fine) or K.S.A. 79-2919 (\$50 to \$500 fine), or ouster proceedings pursuant to K.S.A. 19-2609 and K.S.A. 60-1206 et seq. Alternatively, or in addition thereto, the board of tax appeals may order a reappraisal of any or all property in a county found not in substantial compliance "with law and the guidelines and timetables prescribed by the director" of property valuation. K.S.A. 79-1413a, as amended; K.S.A. 79-1479, as amended. Generally, it is the director's responsibility to investigate an appraiser's noncompliance as the director is the official with the resources and expertise to make a determination as to compliance. K.S.A. 79-1404 Ninth and Tenth, as amended. See also K.S.A. 79-1404 Third, Fourth, as amended; K.S.A. 79-2919; K.S.A. 79-1479(a), as amended; K.S.A. 1990 Supp.19-431(b). In some instances, however, the county commissioners [K.S.A. 19-431(a)], board of tax appeals [K.S.A. 79-1413a, as amended], or prosecutors [K.S.A. 79-1473; 19-2609] may initiate actions without the director's prior request.

In conclusion, directives, guidelines, manuals and course instruction materials promulgated by the director of property valuation to assist county and district appraisers in determining fair market or use value of property and designed to achieve uniformity in appraisal are mandatory in the sense that the director, prosecutors and the board of tax appeals

may take actions enumerated herein to penalize an appraiser
for failure or refusal to comply with or follow such materials.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
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