

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATIONThe meeting was called to order by Representative Jim Braden at
Chairperson12:00 ^{noon} ~~am/pm~~ on April 5, 1984 in room 527S of the Capitol.All members were present ~~except~~ .

Committee staff present:

Tom Severn, Legislative Research Department
Wayne Morris, Legislative Research Department
Don Hayward, Revisor of Statutes' Office
Nancy Wolff, Secretary to the Committee

Conferees appearing before the committee:

Fred Weaver, Board of Tax Appeals
Representative Dale Sprague
Senator Joe Harder
Jack Hobbs, Superintendent of Schools, McPherson
John Magnusen, County Commissioner, McPherson County
Gene Buinger, Superintendent of Schools, Arkansas City
Craig Grant, Kansas National Education Association
Bob O'Connor, Hershberger, Patterson & Jones, Getty Oil
Phil Martin, Director of Property Valuation
Val Wachtel, N.C.R.A., McPherson
Stan Rinney, Derby Oil
Jeff Bednar, Total Petroleum
Gerry Ray, Johnson County, Kansas
Kim Dewey, Sedgwick County, Kansas

The Chairman announced the meeting would begin with hearings on Senate Bill 869 which would amend several statutes relating to the State Board of Tax Appeals. Section 1 would amend K.S.A. 12-1744a to delete the requirement to file ordinances or resolutions, proposed leases, guaranty agreements or preliminary offering documents as part of the required filing with the Board prior to issuance of industrial revenue bonds (IRB's). Section 2 would amend K.S.A. 12-1744c to require a notice of the actual issuance of the IRB's to be filed with the Board within 15 days of the date of the issuance. Section 3 would amend K.S.A. 1983 Supp. 74-2426 to clarify when an appeal could be taken from an order of the Board of Tax Appeals and the issues which might be reviewed, and Section 4 would amend K.S.A. 1983 Supp. 79-213, as amended by Section 3 of 1983 S.B. 293, to require an initial exemption request to provide the appraised value of property for which an exemption is sought before the Board.

Fred Weaver, Chairman of the Board of Tax Appeals, testified in support of Senate Bill 869. He also presented a proposed amendment to Senate Bill 869 by inserting two new sections to provide for the appraised value of property. (Exhibit I)

Representative Leach made a motion that Senate Bill 869 be amended by reinserting the stricken language in line 63 of the bill which reads, "(11) any other information deemed necessary by the board." Representative Jarchow seconded the motion. The motion carried.

Representative Rolfs made a motion that the amendment (Exhibit I) be adopted and Representative Crowell seconded the motion. The motion carried.

Representative Wunsch made a motion that Senate Bill 869 be amended by inserting the contents of Senate Bill 762, which was stricken from the calendar in error, into the body of Senate Bill 869. He stated that Senate Bill 762 was merely some clean-up language to clarify current procedures for appeals from an order of the Board of Tax Appeals. (Exhibit II) Representative Schmidt seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATION

room 527S, Statehouse, at 12:00 ~~xxxxxx~~ ^{noon} on April 5, 1984

Representative Rolfs made a motion that Senate Bill 869 be reported favorable for passage and Representative Aylward seconded the motion. The motion carried.

The Chairman then called for testimony on Senate Bill 871 which would amend K.S.A. 79-1412a to prohibit the use of guides promulgated by the Director of Property Valuation on or after August 26 in establishing values for any property in the current tax year, unless the County Board of Equalization determines and certifies to the county appraiser that the change is in the best interest of the county and taxing subdivisions and that the change will not disrupt the orderly and timely execution of budgetary and taxing procedures.

Representative Dale Sprague testified in support of Senate Bill 871 and stated that this bill was requested to assist McPherson and School District 418 which will have to issue no-fund warrants as a result of a reduction in the value of the NCRA Refinery.

Representative Sprague introduced Jack Hobbs, Superintendent of schools for U.S.D. 418 in McPherson. Mr. Hobbs gave testimony in support of Senate Bill 871 and presented the members of the committee with a Value and Tax Summary for N.C.R.A. Appeal and the Tax District Break-down (Exhibit III). He testified that these figures were provided by the McPherson County Assessor and outlined the net loss to the district which would have to be covered by no-fund warrants to cover the losses to the district due to the reduction in the value of the NCRA Refinery.

John Magnusen, County Commissioner for McPherson County, testified in support of Senate Bill 871.

Senator Joe Harder, testified in support of Senate Bill 871. He stated that Senate Bill 871 makes no attempt to change the way in which property is appraised. He did state, however, that it was very difficult for a school district to absorb the kind of money involved should Senate Bill 871 not be passed.

Gene Buinger, Superintendent of Schools in Arkansas City, testified as a proponent of Senate Bill 871. He stated that he was informed in February that his district was going to lose \$138,000+ in revenue. He stated that his district is prepared to live with the future losses, but to lose revenue half way through a school year has presented a problem that they have no way of preparing for.

Craig Grant, Kansas National Education Association, testified in support of Senate Bill 871. He stated that he supports SB 871 as it relates to schools and school teachers for the good-faith negotiation of contracts.

The Chairman then called for the testimony of the opponents of Senate Bill 871.

Robert J. O'Connor, a partner in the law firm of Hershberger, Patterson, Jones and Roth, Wichita, testified in opposition to Senate Bill 871. (Exhibit IV) Mr. O'Connor represented the Getty Refining and Marketing Company in connection with the oil refinery valuation guidelines promulgated by the Director of Property Valuation.

Val Wachtel, N.C.R.A., McPherson, stated that his refinery is opposed to Senate Bill 871 and also stated that he was in agreement with the comments made by Mr. O'Connor. He further stated that he did not feel there was very much he could add to Mr. O'Connor's comments.

Stan Rinney, Derby Oil Company, testified in opposition to Senate Bill 871.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATION,
noon
room 527S, Statehouse, at 12:00 ~~xxx~~pm on April 5, 1984.

Jeff Bednar, representing Total Petroleum, spoke in opposition to Senate Bill 871. (Exhibit V)

The meeting was recessed until the first recess of the afternoon session of the House of Representatives.

When the meeting was reconvened, Phil Martin, Director of Property Valuation for the State of Kansas, presented testimony in opposition to Senate Bill 871. Mr. Martin gave a brief scenario of how the agreement was reached between the Department and the various refineries on how refinery property was to be valued.

Representative Sprague spoke briefly with regard to Senate Bill 871 and his support for it. He also presented a proposed amendment to the bill. (Exhibit VI) The amendment would provide for a sunset provision to be enacted in Senate Bill 871.

Representative Leach made a motion that Senate Bill 871 be amended by the contents of Representative Sprague's proposed amendment. (Exhibit VI) Representative Rolfs seconded the motion. The motion carried.

Representative Rolfs made a motion that Senate Bill 871 be tabled as amended until the Legislature returns following the recess for the next two weeks. Representative Erne seconded the motion. The motion carried.

This concluded the hearings and action on Senate Bill 871.

The Chairman then called for hearings on Senate Bill 817. Senate Bill 817 would enact a new statute to impose a tax lien on personal property which is used for business purposes when that property is voluntarily surrendered or transferred after the property has been assessed for property tax purposes (January 1) but before the property tax has been paid. The county treasurer would immediately issue a tax warrant for such property and the sheriff would collect the warrant. The lien would expire in three years if the taxes were still uncollected after that time.

Gerry Ray, Legislative Liaison for Johnson County, Kansas, testified in support of Senate Bill 817. (Exhibit VII)

Kim Dewey, Sedgwick County, testified in support of Senate Bill 817 and stated that his county has also had the same type of problem cited in Johnson County.

The question was asked of Phil Martin, Director of Property Valuation, as to how Senate Bill 817 would affect the utility properties. He stated that in the normal course of business, should a railroad sell off a portion of their box cars, or a motor carrier sell off a portion of their property, a lien that had been attached to such property would follow the property.

Representative Vancrum made a motion that Senate Bill 817 be reported favorable for passage and Representative Rolfs seconded the motion.

Representative Crowell stated that he felt there were too many unanswered questions regarding Senate Bill 817 and that there should be someone in opposition to the legislation and therefore made a motion that Senate Bill 817 be tabled. Representative Lowther seconded the motion. The motion carried.

STATE OF KANSAS

SENATE CHAMBER

MR. PRESIDENT:

I move to amend Senate Bill No. 869 (As Amended by Senate on Final Action) as follows:

On page 3, after line 105, by inserting two new sections to read as follows:

"Sec. 3. From and after July 1, 1984, K.S.A. 1983 Supp. 79-213, as amended by section 3 of 1984 Senate Bill No. 293, is hereby amended to read as follows: 79-213. (a) Any property owner requesting an exemption from the payment of ad valorem property taxes assessed, or to be assessed, against their property shall be required to file an initial request for exemption, on forms approved by the board of tax appeals and provided by the county appraiser.

(b) The initial exemption request shall identify the property for which the exemption is requested, provide the appraised value thereof and state, in detail, the legal and factual basis for the exemption claimed.

(c) The request for exemption shall be filed with the county appraiser of the county where such property is principally located.

(d) After a review of the exemption request, and after a preliminary examination of the facts as alleged, the county appraiser shall recommend that the exemption request either be granted or denied, and, if necessary, that a hearing be held. If a denial is recommended, a statement of the controlling facts and law relied upon shall be included on the form.

(e) The county appraiser, after making such written recommendation, shall file the request for exemption and the recommendations of the county appraiser with the board of tax

appeals.

(f) Upon receipt of the request for exemption, the board shall docket the same and notify the applicant and the county appraiser of such fact.

(g) After examination of the request for exemption, and the county appraiser's recommendation related thereto, the board may fix a time and place for hearing, and shall notify the applicant and the county appraiser of the time and place so fixed. In any case where a party to such request for exemption requests a hearing thereon, the same shall be granted. In all instances where the board sets a request for exemption for hearing, the county shall be represented by its county attorney or county counselor.

(h) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the request for exemption with the board.

(i) When a determination is made as to the merits of the request for exemption, the board shall enter its order thereon and give notice of the same to the applicant, the county attorney and the county appraiser by sending to each a certified copy of its order.

(j) The date of the order, for purposes of filing an appeal to the district court, shall be the date that a certified copy of the order is mailed to the party seeking to appeal.

(k) During the pendency of a request for exemption, and in the event that taxes have been assessed against the subject property, no interest shall accrue on any unpaid tax for the year or years in question from the date the request is filed with the county appraiser until the expiration of 30 days after the board issued its order thereon.

(l) In the event the board grants the initial request for exemption, the same shall be effective beginning with the date of first exempt use.

(m) In conjunction with its authority to grant exemptions, the board shall have the authority to abate all unpaid taxes that

have accrued from and since the date of first exempt use. In the event that taxes have been paid during the period where the subject property has been determined to be exempt, the board shall have the authority to order a refund of taxes for a period not to exceed three years.

(n) The provisions of this section shall not apply to farm machinery and equipment exempted from ad valorem taxation by K.S.A. 1983 Supp. 79-201j, and amendments thereto.

"Sec. 4. From and after July 1, 1984, K.S.A. 1983 Supp. 79-213, as amended by section 3 of 1984 Senate Bill No. 293, is hereby repealed.";

By renumbering existing sections 3 and 4 as sections 5 and 6, respectively;

In the title, by striking all in line 19; in line 20, by striking all before the semicolon and inserting "the administration of property tax exemptions"; in line 21, before "repealing" by inserting "K.S.A. 1983 Supp. 79-213, as amended by section 3 of 1984 Senate Bill No. 293 and"

Senator _____

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend Senate Bill No. 869, on page 3, following line 104, by inserting the following:

"Sec. 3. K.S.A. 1983 Supp. 74-2426 is hereby amended to read as follows: 74-2426. (a) Whenever the board of tax appeals enters a final order on any appeal, in any proceeding under the tax protest, tax grievance or tax exemption statutes or in any other original proceeding before the board, the board shall make written findings of fact forming the basis of its determination and final order and the findings shall be made a part of the final order. The board shall mail a copy of its final order to all parties to the proceeding within 10 days following the certification of the order. The appellant or applicant and the county appraiser shall be served by restricted mail.

(b) (1) No appeal shall be taken from a final order of the board unless the aggrieved party first files a motion for rehearing of that order with the board and the board has granted or denied the motion. If 30 days have lapsed from the date the motion was filed with the board, it shall be presumed that the board has denied the motion. Any order issued by the board following a rehearing shall become the final order of the board.

(2) Within 30 days following a denial of a motion for rehearing or following the certification of any final order of the board,~~or a motion for~~ upon a decision on rehearing, any aggrieved party to the appeal or proceeding may appeal to: (A) The court of appeals, in cases pertaining to property appraised and assessed by the director of property valuation or excise, income or inheritance taxes assessed by the director of taxation and (B) the district court of the proper county, in all other cases.

(3) No appeal shall be taken from any order of the board in a no-fund warrant proceeding issued pursuant to K.S.A. 12-110a, 12-1662 et seq., 19-2752a, 79-2938, 79-2939 and 79-2951, and amendments thereto, and statutes of a similar character.

(4) This statute shall be exclusive in determining appeals taken from all decisions of the board of tax appeals after the effective date of this act and shall exclusively govern the procedure to be followed in taking any appeal from the board of tax appeals from and after that date.

(c) (1) Appeals shall be taken by filing, with the clerk of the appropriate court, within 30 days of the certification of the board's order to the party, a written notice stating that the party appeals to the court and alleging the pertinent facts upon which the appeal is grounded. The appellant shall also, within 10 days of the filing of the notice of appeal, request in writing that the board of tax appeals certify the record of the proceedings before the board to the court. If a hearing was held before the board, the appellant shall also request, at the same time, that a transcript of that hearing be prepared and shall advance the costs of the transcript. Upon completion of the transcript, the board of tax appeals shall certify the record and transcript of proceedings before the board to the court in which the appeal has been filed.

(2) An appeal pursuant to this section shall not be heard as a trial de novo but shall be limited to the transcript of the board and any other public records of which the board can be held to have taken notice.

(3) The director of property valuation and the director of taxation shall not be required to give bond on appeal.

(d) (1) If an appeal is taken from an order of the board relating to excise, income or inheritance taxes, the appellant, other than the director of taxation, shall give bond for costs at the time the appeal is filed. The bond shall be in the amount of 125% of the amount of taxes assessed or a lesser amount approved by the court of appeals and shall be conditioned on the

appellant's prosecution of the appeal without delay and payment of all costs assessed against the appellant.

(2) Appeals from orders made by the board of tax appeals relating to the valuation or assessment of property for ad valorem tax purposes or relating to the tax protest shall be to the district court of the county in which the property is located or, if located in more than one county, to the district court of any county in which any portion of the property is located. Appeals from orders relating to tax exemption under K.S.A. 79-201 et seq. and amendments thereto shall be filed in the district court of Shawnee county. If the appeal is by a party other than the director of property valuation or a taxing subdivision and is from an order determining, approving, modifying or equalizing the amount of valuation which is assessable and for which the tax has not been paid, a bond shall be given in the amount of 125% of the amount of the taxes assessed or a lesser amount approved by the court to which the appeal is taken. The bond shall be conditioned on the appellant's prosecution of the appeal without delay and payment of all costs assessed against the appellant.

(e) No appeal may be taken from any order pertaining to the assessment of property for ad valorem tax purposes or the assessment of excise taxes unless the grounds for the appeal are that the order is unreasonable, arbitrary or capricious. Such appeals shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other actions except ~~eases-of-the--same--character and-criminal-cases~~ those having statutory priority.";

By renumbering sections 3 and 4 as sections 4 and 5;

Also on page 3, in line 105, before "are", by inserting "and K.S.A. 1983 Supp. 74-2426";

In the title, by striking all in line 18; in line 19, by striking all before the semicolon and inserting "certain information filed with the board and appeals from orders thereof"; in line 20, before "repealing" by inserting "K.S.A. 1983 Supp. 74-2426 and"

_____ District.

1983

VALUE AND TAX SUMMARY - N.C.R.A. APPEAL
TAX DISTRICT BREAKDOWN

J

	ORIGINAL VALUATION	AMENDED	NET LOSS	ORIGINAL TAX	AMENDED TAX	NET LOSS
USD #418	13,834,615	5,888,080	7,946,535	\$612,181.72	\$260,547.54	\$351,634.18
USD #419	43,020	0	43,020	\$ 1,907.94	\$ 0	\$ 1,907.94
COUNTY	13,877,635	5,888,080	7,989,555	\$299,340.60	\$127,005.90	\$172,334.70
EMPIRE TWP.	43,020	0	43,020	\$ 390.19	\$ 0	\$ 390.19
JACKSON TWP.	338,655	338,655	0	\$ 1,246.25	\$ 1,246.25	\$ 0
KING CITY TWP.	10,993,920	5,530,795	5,463,125	\$ 1,868.97	\$ 940.24	\$ 928.73
MCPHERSON TWP.	2,502,040	18,630	2,483,410	\$ 7,931.47	\$ 59.06	\$ 7,872.41
FIRE DIST. #4	338,655	338,655	0	\$ 84.66	\$ 84.66	\$ 0
FIRE DIST. #9	43,020	0	43,020	\$ 75.29	\$ 0	\$ 75.29
EMPIRE CEMETERY	43,020	0	43,020	\$ 18.93	\$ 0	\$ 18.93
S.C.K.L.	13,877,635	5,888,080	7,989,555	\$ 8,881.69	\$ 3,768.37	\$ 5,113.32
STATE	13,877,635	5,888,080	7,989,555	\$ 20,816.45	\$ 8,832.12	\$ 11,984.33
EMPLOYEE BENEFIT	13,877,635	5,888,080	7,989,555	\$ 555.10	\$ 235.52	\$ 319.58
				\$955,299.26	\$402,719.66	\$552,579.60

The following funds of McPherson USD #418 will be affected:

Fund	Amount
General	\$297,120.95
Capital Outlay	31,786.14
Special Assessments	317.86
Bonds & Interest	<u>22,409.23</u>
TOTAL	\$351,634.18

EXHIBIT III

4/5/84

TESTIMONY OF
ROBERT J. O'CONNOR
BEFORE THE
HOUSE ASSESSMENT AND TAXATION COMMITTEE
IN OPPOSITION TO SB-871
Thursday, April 5, 1984

Mr. Chairman and Ladies and Gentlemen of the Committee, I am Robert J. O'Connor, a partner in the law firm of Hershberger, Patterson, Jones & Roth, Wichita, Kansas. I do now and for some 20 years have practiced extensively before the State Board of Tax Appeals ("BTA") and in the courts on property tax matters. Recently I represented Getty Refining and Marketing Company (the "Getty refinery") in connection with the oil refinery valuation guidelines promulgated by the Director of Property Valuation ("DPV"). In that connection, I represented Getty as an intervenor in a lawsuit commenced in Butler County, Kansas, which will be described in greater detail in this testimony; I also was one of the principal negotiators for the Kansas refinery industry in working out the Industry-DPV Settlement Agreement dated November 22, 1983 and as supplemented January 19, 1983.

My testimony assumes that SB-871 will be amended in certain respects, as this Committee has already been advised through the testimony of Rep. Sprague, and which amendments the Committee already has adopted.

I oppose to SB-871 because it is based upon several fundamental errors: First, that McPherson County is entitled to have Five Hundred Thousand Dollars (\$500,000) tax revenue from the NCRA refinery for 1983 which the County would otherwise lose; Second, that the Bill grants real tax relief to the County and does something more than merely postpone the inevitable for a short while; and Third, that McPherson County has no other available and effective means to obtain tax relief.

SB-871 concerns certain guidelines which the DPV issued for valuing refinery property for Kansas ad valorem tax purposes. The DPV first issued those guidelines under date of May 16, 1983; it revised them under dates of June 28, 1983, July 5, 1983 and January 19, 1984; this latter revision was due to the aforesaid Industry-DPV Settlement Agreement. These guidelines marked the State's first incursion into the area of refinery valuation for tax purposes. Prior to the issuance of those guidelines, the respective counties had no guidance from the DPV relative to refinery valuation, and each county valued that property using such data and techniques as it had developed.

The DPV's guidelines concern primarily "refinery process plant" i.e.: the structures, buildings, equipment and machinery together with the associated piping, connections, computers, tools and other property items which are used more or less directly in the actual refining processes and operations. Land, administrative buildings, auxiliary

buildings, tank farms and similar items which are not directly associated with refining operations, all of which already are deemed to be real property, and miscellaneous property items, which already are deemed to be personal property, and manufacturer's inventory (whether raw material, work-in-process or finished goods), are not embraced within the "refinery process plant" concept and are not particularly targeted by the DPV's guidelines.

On or about August 2, 1983, the Board of County Commissioners of Butler County, Kansas filed suit in the District Court of Butler County, Kansas to enjoin the DPV and the Butler County Appraiser from implementing those guidelines and to have the guidelines declared unlawful. A temporary injunction was granted by the Court. Getty intervened on the side of the plaintiff and at trial was the principal litigant against the defendants. The principal issue was whether the Getty refinery process plant was real property under the applicable common law of fixtures or whether it was personal property. If it were real property, it would be assessed at the same rate as commercial real property in Butler County, at approximately 10% of fair market value, whereas if it were personal property it would be assessed at 30% of fair market value.

On November 22, 1983, the Industry-DPV Settlement Agreement was executed. Pursuant to that Agreement: (1) The DPV was to modify its guidelines, (this was done under date of January 19, 1984); (2) The District Court of Butler County, Kansas was to declare whether the

common law of fixtures was applicable to the Getty refinery process plant, and was to determine the extent to which that refinery process plant was real property; and (3) The BTA was to determine whether the respective Kansas refineries' "finished products manufacturing inventory", as defined in the DPV's guidelines, was entitled to the exemption provided by K.S.A. 79-201f for 1983 and for subsequent years. Also in the Settlement Agreement, the signatories expressly acknowledged that the DPV's January 19, 1984 revised guidelines would:

"[A]chieve a reasonable estimate of the fair market value of the taxable properties of Kansas refineries for ad valorem tax purposes, and shall achieve a reasonably uniform and equal valuation and assessment of such properties".

On November 28, 1983, trial of the Butler County action commenced. At the conclusion thereof, the Court declared that the common law of fixtures was applicable to refinery process plant, and determined that 90% of Getty's refinery process plant was real property. This 90% real property/10% personal property determination was also expressed in the January 19, 1984 Supplement to the aforesaid Settlement Agreement.

A.

SB-871 would give the refinery counties the option to suspend the DPV's January 19, 1984 guidelines and to render them inoperable for 1983. The claim is made that the Bill would thereby allow McPherson County to collect Five Hundred Thousand Dollars (\$500,000) taxes from the NCRA refinery which it otherwise would lose under the DPV's

guidelines and as a result of the Butler County decision. That claim assumes that McPherson County is somehow entitled to that additional money. That assumption is clearly wrong, for several reasons.

First, that \$500,000 is the excess over the amount of taxes which would be due if NCRA's refinery process plant were valued at fair market value, as Kansas statutes require, and if it were valued uniformly and equally with other refineries in the State, as the Kansas Constitution as well as statutes require. In other words, that is the tax on the amount by which McPherson County's valuation of the NCRA refinery exceeds the proper valuation under the DPV's January 19, 1984 guidelines and the Butler County decision.

The DPV's January 19, 1984 guidelines deserve this Legislature's fullest support. They are based upon long-standing and accepted refinery industry practices and techniques for comparing and valuing refinery properties for all manner of purposes, including fair market valuation. They demonstrably achieve reliable fair market value estimates of refinery property. They produce valuations of refinery properties which are demonstrably uniform and equal one to another. They bring stability to a major area of property taxation which previously was handled by the respective counties on a "patch-work quilt" basis. They are the product of difficult and prolonged negotiations and study by the industry and by the DPV, both of whom utilized knowledgeable and recognized experts from the ranks of

refinery industry consultants and of property appraisers. The integrity of those guidelines should be maintained.

Five Kansas counties had refineries in 1983 which are covered by the January 19, 1984 guidelines: Butler has Getty, Pester and Mobil; Sedgwick has Derby; Montgomery has Farmland; Cowley has Total; and McPherson has NCRA. The DPV's January 19, 1984 guidelines have had the following effect: in Butler County, the valuation of refinery process plant has increased so as to yield an additional approximately Six Hundred Thousand Dollars (\$600,000) taxes over the preceding year; in Sedgwick, Montgomery, and Cowley Counties, the valuation of refinery process plant has increased, although the ultimate amount of the refinery tax bill in Sedgwick County is complicated by an industrial revenue bond exemption issue which presently is before the BTA, and the ultimate amount of the refinery tax bill in Cowley County was less than in the preceding year due to the manufacturer's inventory finished goods tax exemption. Only in McPherson County has the valuation of refinery process plant been reduced. McPherson County's position lacks sufficient equity or legality to disturb the substantial benefits (described in this paragraph and in the preceding paragraph) which the DPV's January 19, 1984 revised guidelines have produced.

Second, McPherson County's sole justification for wanting that additional \$500,000 taxes is that the County has already budgeted and, in effect, spent the money. That is an insufficient justification for seeking excessive tax money. If the shoe were on the other foot, and

the taxpayer said to the tax man, "I would love to pay my taxes, but I have already spent all my money", we all know how far the taxpayer would get. The principle should work both ways.

Third, McPherson County's predicament for 1983 results from its having maintained an unlawful and unconstitutional property classification system. It taxed and assessed NCRA's refinery process plant as personal property, at a 30% rate, when in fact that property was real property and should have been taxed and assessed at an approximately 14% rate.

B.

The claim is also made that SB-871 would grant real tax relief to McPherson County. In fact, the Bill would merely postpone the inevitable for only a short while.

First, McPherson County's anticipated \$500,000 tax reduction does not result from application of the DPV's January 19, 1984 (i.e.: post-August 26, 1983) guidelines; it results, instead, primarily from application of the 90% real property/10% personal property application of the common law of fixtures as expressed in the Butler County case. SB-871 is limited in its application to the DPV's January 19, 1984 revised guidelines; it does not --- and constitutionally cannot --- embrace the results of the common law decision of the Butler County District Court. SB-871 could impact only upon that 10% of NCRA's refinery process plant which is assessed as personal property. The tax

dollar difference between the DPV's July 5, 1983 and its January 19, 1984 guidelines on that small portion of NCRA's property is trivial.

Second, McPherson County's anticipated \$500,000 tax reduction results from the application of the common law doctrine of fixtures to NCRA's refinery process plant. The common law is the controlling law on the point. In NCRA's pending application to the BTA for refund of taxes paid under protest, the BTA is as surely bound to apply that same law, with the same result, as was the Butler County District Court. SB-871 cannot, legally or constitutionally, give ultimate relief from the common law; at the most, SB-871 can only postpone the inevitable. McPherson County must sustain the reduction of its tax revenues either when NCRA pays its taxes based on the lower valuation, or when the BTA orders McPherson County to refund the taxes which NCRA paid under protest based on McPherson County's illegally higher valuation.

C.

Finally, SB-871 infers that McPherson County has no other effective remedy available for its relief. No-fund warrants have been part of the law of Kansas for many years. See K.S.A. 79-2938, et seq.

Changes in property valuation for ad valorem tax purposes commonly occur, not only after August 26 of a current tax year (the date arbitrarily specified in SB-871) but in subsequent years as well.

County appraisers, especially in the oil and gas counties, as well as the BTA, particularly in oil and gas cases and in state assessed property cases, make such changes, sometimes years after the tax year in question.

McPherson County surely must know, as counties and taxing districts long have known, that it can apply to the BTA, through a simple and efficient process, with the assurance of obtaining no-fund warrants for 1983 if the County legitimately needs them as a result of NCRA's lawful and constitutional tax assessment.

CONCLUSION

Accordingly SB-871 is based on several misconceptions, and should not be passed. On the contrary, the Legislature should give the fullest measure of support to the DPV's January 19, 1984 oil refinery valuation guidelines and to the decisions of the courts of this State.

Thank you. .

Respectfully submitted,

Robert J. O'Connor
HERSHBERGER, PATTERSON, JONES & ROTH
100 South Main, Suite 600
Wichita, Kansas 67202
Telephone: (316) 263-7583

By _____

STATEMENT IN OPPOSITION
TO SENATE BILL NO. 871

Total Petroleum owns and operates a 40,000 barrel refinery at Arkansas City, Kansas. In addition, Total markets gasoline through its Vickers stations within the State of Kansas.

Total Petroleum opposes Senate Bill No. 871 for the following reasons:

1. Senate Bill 871 addresses an issue which has already been resolved through a settlement agreement between the Division of Property Valuation of the State of Kansas and certain refineries operating within the State of Kansas including Total Petroleum.

2. The settlement agreement was reached in 1983 after much discussion and negotiation between and among the Division of Property Valuation, Kansas refineries, County Appraisers and County Commissioners.

3. The settlement agreement even required state district court determination to resolve a key issue regarding the percentage of plant/machinery being classified as a fixture to real estate. The trial court's decision in Board of County Commissioners of Butler County, Kansas v. Phil Martin et. al., Butler County District Court, Case No. 83 C 449 (1983) and the settlement agreement have been followed by all parties.

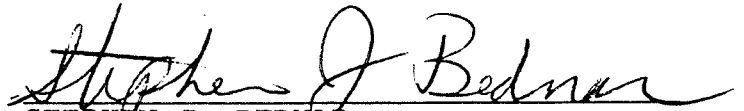
4. Senate Bill 871 would vitiate the settlement agreement and the progress that the parties have made in resolving the issue of refinery valuation.

5. Those portions of Senate Bill 871 requiring retroactive application are unconstitutional.

6. Enactment of Senate Bill 871 would again create the same confusion, turmoil and litigation all of which have been resolved through the settlement agreement.

7. Refineries are already experiencing large operating losses and do not need further uncertainties concerning taxation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stephen J. Bednar". The signature is written in black ink and is positioned above the typed name.

STEPHEN J. BEDNAR
Attorney for Total Petroleum
358 N. Main
Wichita, Kansas 67202
(316) 267-3843

Rep. [Signature]

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STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend Senate Bill No. 871 as follows:

On page 2, in line 79, after the period by inserting "Nothing in this subsection or subsection (c) shall be deemed to apply to or affect any order, determination or decision of the state board of tax appeals or any state court relating to the valuation of property for taxation purposes."; in line 80, by striking "all tax years" and inserting "the tax year"; in line 81, before "and" by inserting "and ending before January 1, 1984,";

On page 3, after line 86, by inserting a new subsection to read as follows:

"(d) The provisions of subsections (b) and (c) shall expire on December 31, 1984."

District.

TESTIMONY OF GERRY RAY, LEGISLATIVE LIAISON
JOHNSON COUNTY, KANSAS

SENATE BILL 817
HOUSE ASSESSMENT AND TAXATION
APRIL 5, 1984

Mr. Chairman, members of the committee

Basically what Senate Bill 817 does is allow taxes to follow personal property as with real property. The bill applies only to personal property used for business purposes.

In Johnson County we have encountered problems many times when a corporation files bankruptcy, that corporation is dissolved and the county cannot bring a suit to collect the taxes owned.

There was one case about eighteen months ago that amounted to a \$100,000 loss to the county because of the dissolution of the corporation and the disappearance of the owner. In another instance the corporation declared bankruptcy and closed two drug stores. The bank repossessed the personal property then sold it back to the same people under a different corporate name, and the county lost close to \$25,000. Currently we are involved in one in which the company is going out of business, if the creditors repossess before bankruptcy is filed, our loss will be in excess of \$20,000.

We feel confident if we are faced with these losses, than other counties are also encountering the same problem. SB 817 will allow the counties the authority to attach liens to such property and close a rather significant tax loophole.

Thank you.