

MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation

The meeting was called to order by Senator Fred A. Kerr at
Chairperson

11:00 a.m./~~p.m.~~ on Wednesday, February 6, 1985 in room 526-S of the Capitol.

All members were present ~~XXXX~~:

Committee staff present:

Tom Severn, Research Department
Melinda Hanson, Research Department
Don Hayward, Revisor's Office
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee:

Fred Weaver, Board of Tax Appeals
Keith Farrar, Board of Tax Appeals

Fred Weaver reviewed the Order In the Matter of the Request for a Reappraisal of All Real Property in Sedgwick, Ford and Rice Counties and Statewide Equalization of All Real Property: Dewey Brittain, Walter L. Groves, Donald Hornung, and Bert A. Oaklead (also known as the Janssen case and Small Business Trust case) (Attachment 1). The first part of the order describes in detail the testimony in the case. Chairman Weaver said that the Board has basically two authorities: statutory and authority given by the courts. The parties in the case tended to rely very heavily on the ratio study, and Chairman Weaver stated that he feels the study has certain flaws in it. He said that the matter of taxation is legislative and does not exist without statutory authority. The reappraisal case was limited to three counties and to real property. Thus, the question was not the disparity between real and personal property, but was one of merely establishing a disparity between appraisal of real property. The three subject counties used basically the same procedures and methodology for appraisal. Chairman Weaver described how real property is currently appraised by establishing market value and then debasing back to 1968-70. He said there was not a clear showing that one taxpayer was being treated differently than another. He said the Board gave strong consideration to what would happen if they did order reappraisal under this case. The Board's conclusion was that such an order would probably be overturned because of statutory barriers. Chairman Weaver pointed out that the Board was limited to the facts in this particular case and said that the Committee should not conclude that a different case would necessarily merit the same decision. Chairman Weaver stated that there is a system in place for maintaining equity and uniformity, but that system won't provide what is needed without statewide reappraisal. Responding to questions from Committee members, Chairman Weaver said that before the Board could order reappraisal, a case would likely have to include every county. He stated that reappraisal is necessary; and beyond that, it is necessary to enforce the statutes. Chairman Weaver stressed that the courts have more power than does the Board to order reappraisal. He cautioned that a court-ordered reappraisal is dangerous, and that reappraisal needs to be carefully planned and organized. He advised that the subject case may be appealed. Chairman Weaver emphasized that if current practices by county appraisers and county boards of equalization, etc. are allowed to continue, reappraisal will be wasted. He again stressed that the system must be enforced.

Keith Farrar pointed out that even though the three counties in the subject case used the same appraisal procedures, there are other counties who use other guides and procedures.

The Committee turned its attention to Bill Draft 5 RS 0744. Chairman Kerr explained that the bill is identical to the reappraisal bill which passed the Senate in 1983 except that rather than containing detailed procedural timetables for reappraisal, the bill provides that the guidelines are to be established by the Division of Property Valuation. Senator Burke moved that the Committee introduce the bill. Senator Thiessen seconded the motion, and the motion carried.

Senator Karr moved that the minutes of the February 5, 1985 meeting be

CONTINUATION SHEET

Minutes of the Tax Committee on February 6, 1985

approved. Senator Hayden seconded the motion, and the motion carried.

Meeting adjourned.

ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
2/6/84	Clark P. Young	TOPEKA	intern - Mr Ford Kim
"	TREVA POTTER	TOPEKA	NORTHERN NAT. GAS
"	Don Schnack	"	ICTIOGA
	John K. Blythe	Manhattan	Ks Farm Bureau
	Phyllis Rosenow	Green	
	Don Rosenow	Green	
	DAN MCGEE	GREAT BEND	CENTEL
	JANET STUBBS	TOPEKA	HOME BUILDERS OF KS
	Gene Sager	Hays	Western Retail Assn
	D. WAYNE ZIMMERMAN	TOPEKA	THE ELECTRIC CO.'S ASSOC. OF KS
	Steve Humphrey	Topeka	KS Manufac. Training
	CHARLES BELT	WICHITA	WICHITA AREA C. OF C.
	Lou Rosselot	Topeka	Student
	WALTER DUNN	✓	FIKUGA
	RON CALBERT	NEWTON	U. J. U.
	Leroy Jones	Overland Park	B. L. E.
	Paul Weidner	Sublette Ks Haskell Co	County Commission
	Wayne Zeffler	American Ks	Co. Comm.
	H. Duncanson	Topeka	Deputy Rep
	Bob Thomas	"	KCCI
	Brenda V. Stockman	Lawrence	Intern Sen. Winter
	GARY Lee Blackwood	Topeka	W.U.
	FRED L. WEAVER	TOPEKA	BOARD OF TAX APPEALS
	LINDA TERRILL	TOPEKA	Atty " " " "
	KEITH FARRAR	Topeka	Board of Tax Appeals
	LEO BATHN	ESTRIDGE	COUNTY COMMISSIONER
	BOU BRADLEY	LAURELCE	KS Assoc of Counties
	DANA Ferrell	Topeka	Budget

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE REQUEST
FOR A REAPPRAISAL OF ALL REAL
PROPERTY IN SEDGWICK, FORD AND
RICE COUNTIES AND STATEWIDE
EQUALIZATION OF ALL REAL PROPERTY:

DEWEY BRITTAIN, WALTER L. GROVES,
DONALD HORNING, AND BERT A. OAKLEAF Docket No. 3278-83-CP

AND THE RELATED COMPLAINT OF

JACK & DOROTHY JANSSEN,
FILED PURSUANT TO K.S.A. 79-1413a Docket No. 3591-83-CP

O R D E R

NOW, on this 30th day of January, 1985, the above captioned matters come on for consideration and decision by the Board of Tax Appeals of the State of Kansas, sitting as the State Board of Equalization.

The Board has jurisdiction of the subject matter and the parties hereto, proper filings having been made to this Board pursuant to K.S.A. 79-1413a.

The subject matter of these related and joined complaints is the reappraisal of all real property in the counties of Sedgwick, Rice and Ford, and the equalization of all real property in Kansas.

The Board conducted a hearing on these matters on August 13 and 14, 1984.

After having carefully considered all of the evidence presented thereat, the BOARD FINDS AS FOLLOWS:

(page numbers refer to pages in the official transcript).

1. Mr. Bert Allen Oakleaf, an individual complainant, is a property taxpayer and a resident of Kansas, residing at 1019 Westline, Wichita, Sedgwick County, Kansas. Mr. Oakleaf is also the owner of the manufacturing firm, Excel Tool. Excel Tool is not a complainant. However, because Mr. Oakleaf is the owner, he was allowed to testify generally as to his knowledge of the property owned by Excel (page 11).

Mr. Oakleaf purchased his 1019 Westlink residence for \$34,000 in 1973 (page 11). It was his belief that the residence is now worth \$80,000 (page 12). Sedgwick County has a 100% valuation placed on the home of \$24,470. Mr. Oakleaf testified he did not understand all of the information on his property record card. Mr. Oakleaf has no special knowledge of appraisal techniques. This value represents his opinion of the value of his residence.

Mr. Marvin Clements, an independent fee appraiser and former Chief Deputy Appraiser for Sedgwick County, appraised Mr. Oakleaf's residence in preparation of this complaint (Taxpayer's Exhibit No.7). The on-sight appraisal considered neighborhood sales and arrived at a value of \$72,000 (page 85). The Sedgwick

County Special Counsel was not provided a copy of this appraisal prior to this hearing. Not having seen the document, Sedgwick County did not controvert appraisal. The Board allowed it into evidence, giving it the weight that it should be given dependent on the evidence offered in it's support. The only evidence offered in support and explanation was Mr. Clement's credentials as an appraiser (Taxpayer's Exhibit No. 12).

2. Mr. Dewey L. Brittain, an individual complainant, is a property taxpayer and a resident of Kansas, residing at 4340 South West Street, Wichita, Sedgwick County, Kansas. Mr. Brittain is also the President of Brittain Machine, Incorporated, a machine shop doing business in the City of Wichita. Brittain Machine, Inc., is not a complainant. However, Mr. Brittain, as the owner of the same, was allowed to testify generally as to his knowledge of the property owned by his business.

Mr. Brittain has purchased and sold real property in Kansas. He currently owns the following:

- A. 4340 South West Street, Wichita, Kansas.
(personal residence)
- B. 1915 South St. Clair, Wichita, Kansas.
(commercial residential rental property)
- C. 4209 West Bounous, Wichita, Kansas.
(commercial rental property)
- D. 1310 West Douglas, Wichita, Kansas.
(commercial rental property)

Mr. Brittain has no special knowledge of appraisal techniques. He also testified he cannot explain the the details of the Sedgwick County property record card on his properties. Mr. Brittain testified as on the above-mentioned properties as follows:

4340 South West Street, Wichita, Kansas
Mr. Brittain purchased it in 1982 for \$100,000. He has made some improvements. (Note: There was no testimony that he did or did not make the county aware of these improvements.) He believes the property is worth \$140,000. The Sedgwick County property record card indicates a value of \$38,630 (page 29).

1915 South St. Clair, Wichita, Kansas
No testimony was offered as to the purchase date. The purchase amount was estimated at \$28,000. The property card reflects a value of \$8,360 (pages 29 & 30).

4209 West Bounous, Wichita, Kansas
Mr. Brittain built this property in 1984 at a cost of \$125,000 (land and improvement). The building is leased out. The property record card reflects a value of \$70,290 (pages 30 & 31).

1310 West Douglas, Wichita, Kansas
Mr. Brittain purchased this in 1984 for \$235,000. This purchase included one residential building and two commercial buildings. The several property record cards, reflect, subject to Mr. Brittain's calculations, a value of \$50,160 (page 31).

Mr. Brittain testified he had no evidence of any other taxpayers being assessed differently (page 37). He further testified he had taken no steps, beyond this complaint, to have the valuation of his property adjusted up to reflect what he believes fair market value to be (page 37).

3. Mr. Walter L. Groves, an individual complainant, is a property taxpayer in Kansas, residing at 2177 Bella Vista, Wichita, Sedgwick County, Kansas.

Mr. Groves has purchased and sold several pieces of real estate in Kansas. He currently owns and resides at the above-mentioned address. He purchased the property for \$45,000 in 1972. He believes it to be worth \$115,000 currently. The property record card reflects a value of \$31,630 (pages 42 & 43).

4. Mr. Donald F. Hornung, an individual complainant, is a property taxpayer in Kansas, residing at 2009 Fairway Drive, Dodge City, Ford County, Kansas. Mr. Hornung is also the President of Crust Buster, Incorporated, a farm machinery manufacturing company. Crust Buster, Inc., is not a complainant. However, because Mr. Hornung is the owner, he was allowed to testify generally as to his knowledge of the property owned by Crust Buster (page 44).

Mr. Hornung first purchased real property, his personal residence, in Ford County in 1975. He estimated the cost of building his house at \$145,000 (page 50). He believes that currently it has a "conservative" value of \$225,000 (page 45). The taxpayer had marked "Taxpayer's Exhibit #11" which reportedly was a copy of the Ford County property card. However, this exhibit was never offered or received into evidence (pages 4, 46 & 47).

Mr. Hornung's business also owns real property in Ford County, i.e., farm real estate and commercial property. Mr. Hornung believes the farm real estate has a value of \$1,200,000. Mr. Hornung offered no evidence as to the legal description of this property. The Board is unaware of the acreage, soil type, use of the land, etc. This evidence has no probative value.

Mr. Hornung has no special qualifications in appraisal techniques (page 49).

5. Mr. Jack Janssen, an individual complainant with Dorothy Janssen, spouse, in Board of Tax Appeals Docket Number 3591-83-CP, is a property taxpayer in Kansas, residing in Rice County. Mr. Janssen has been previously represented by counsel, Mr. Paul Aylward. Mr. Aylward could not be present and requested Mr. Schodorf to represent Mr. Janssen at this proceeding.

Mr. Janssen is a real estate broker, farmer and former State Senator in the Kansas Legislature.

Mr. Janssen prepared "Taxpayer's Exhibit #9." Page one, reproduced here, shows property owned by Jack and Dorothy Janssen in Rice County, Kansas. It contains the following:

Location	Market Value	Assessed Value	% Assessed Value To Market Value
NE/4 14-19- 8, Harrison Twp.	160,000	12,600	.078
619 W. Main Lyons, Ks. (Office Bldg.)	44,000	2,640	.06
512 W. Moses (house)	26,000	3,480	.13
114 N Dinsmore 116 N Dinsmore (Lyons Office Rentals)	80,000	10,610	.13

"I am in the real estate business and do a lot of appraisal work, there is no question in my mind that these properties could not be sold for at least the market value within ninety days." Jack Janssen.

Mr. Janssen has 14 years experience in the real estate business, but has not taken any appraisal courses and is not a Certified Kansas Appraiser (page 55). He also served Kansas as a State Senator for sixteen years and was a member of the Senate Assessment and Taxation Committee.

Page two of Mr. Janssen's document lists sales in Lyons, Kansas since January 1, 1984. Page three lists sales of farm property sold in Rice County since January 1, 1984. Approximately 60% of the properties on page two were sold by Mr. Janssen's firm. He could not identify these specifically (page 65). The balance of the information came from discussions with friends (page 63). All of the farm property sales were handled by his firm. Opposing counsel did not have a copy of this document prior to the hearing. The Board allowed in the document with the caveat that it would only be given the weight that the evidence would support. No other evidence was offered in support of this exhibit.

6. Mr. Clements, a resident of Wichita, Kansas testified as an expert witness. Mr. Clements is a Certified Kansas Appraiser and former Chief Deputy Appraiser (December, 1981 to August 1983) for Sedgwick County, Kansas.

Mr. Clements testified as to the process of property appraisals used by him during his employment as Chief Deputy Appraiser of Sedgwick County. Personal property was appraised according to guides provided to him by the Property Valuation Division, Department of Revenue. Trending factors are now in use where mandated.

Real property, according to Mr. Clements, was appraised as follows:

" . . . the general process is, from the time of discovery through building permits, or visual location of particular property that needs appraised, the clerical staff in the appraiser's office gives that property record card assignment to a field appraiser whereupon they go out to the site, make the proper data collection, and from the data that they have collected on size, quality, type of construction, et cetera, they will then go to the manual, which is a prescribed guide, or a guide that is used by the county to derive a particular value per square foot. Then they apply that value to the total area of the property, and add the amenities of value, such as porches, garages, et cetera; then they apply the judgment of depreciation, any types of depreciation, obsolescence, that is assigned to the property." (page 81)

Mr. Clements testified this process will arrive at a fair market value for ad valorem tax purposes but not a market value in the "real market" today (pages 82 & 83). He thinks the appraisals, on the records today, are one-third of one hundred percent market value, or at least, in that vicinity (page 84). Mr. Clements testified it was his private opinion that the "assessments" of real estate should be higher (page 96).

Mr. Clements estimated a reappraisal of Sedgwick County to cost \$6,400,000. There would also be annual costs associated with keeping the appraisals current (page 97).

7. Mr. Gary Post, Ford County Appraiser testified as to the valuation procedures utilized by him as Ford County Appraiser since 1978.

Personal property is valued according to guides provided to him by the Property Valuation Division, Department of Revenue. He believes those values represent fair market value (page 108).

Newly constructed real property is appraised in the manner described by Mr. Clements. He testified, in his opinion, real property appraisals in Ford County do not represent fair market value (page 108).

Mr. Post testified, however, that all real property in Ford County is assessed and valued in the same manner (page 109).

8. Mr. Jack Duncan, 225 East Jay, Lyons, Kansas testified as to the manner of property appraisal in Rice County by him in his capacity as Rice County Appraiser.

Mr. Duncan values personal property identical to the process as testified (page 114).

Real property is valued as follows:

"We use the Marshall and Swift Cost Guide, which is a cost indicator of cost to build. I am talking primarily of residential property here, because when we appraise, we try to establish current market value, and then we adjust those appraisal values to a level where our county appraisal stands, which is somewhat similar to the other counties. The effective date of our last reappraisal was 1970 for the effective values." (page 115).

Mr. Duncan testified that all real property in Rice County was equalized to 1970 values (page 115). Mr. Duncan, however, does not believe the de-based values satisfy the requirements of K.S.A. 79-503a (page 117).

9. Mr. Ronald G. Miller, 115 East Eighteenth, Wichita, Sedgwick County, Kansas, testified as to the processes of property appraisal used by him in his position as Sedgwick County appraiser.

Mr. Miller believes the same processes are used by him, with slight variations, as testified to by the other appraisers, including Mr. Clements (page 119).

Real property is valued using the Marshall and Swift Cost Approach guide. Those values are then de-based to the last appraisal date pursuant to direction from the Property Valuation Division and an equalization order from the State Board of Tax Appeals.

Mr. Miller believes that all real property is appraised and assessed in the same manner (page 125). This process arrives at a fair market value for ad valorem tax purposes, which according to Mr. Miller is a different value by definition than fair market value (page 127).

10. The taxpayer originally intended to call Phil Martin. Mr. Martin resigned his position as Director of Property Valuation prior to the evidentiary hearing on this complaint. Mr. Robert Badenoch, duly appointed Acting-Director, testified, to the best of his knowledge, as to Property Valuation Division (PVD) policy.

Mr. Badenoch is known to this Board as a highly qualified appraiser, with lengthy accreditations and a substantial appraisal - related educational background. Mr. Badenoch has served Kansas as Chief of Personal Property (1974-1977); Chief of Motor Carrier Bureau (1977-1982); and Chief of the Public Utility Section (1982-1984). Mr. Badenoch has never personally appraised real property of a residential nature.

Mr. Badenoch presented the PVD report: Division of Property Valuation Statistical Report of Property Assessment and Taxation, 1983.

Mr. Badenoch also presented, at the request of complainants' counsel, annual lists from 1975 to 1983 prepared by the respective Directors of PVD pursuant to K.S.A. 79-1445. This statute requires the Director to publish this list indicating counties not in substantial compliance with the requirements of the law to appraise all taxable property, both real and personal, at fair market value as defined by K.S.A. 79-503. (Note: The repeal of K.S.A. 79-503 will be discussed on page 13 of this order.) The year 1975 shows no counties in compliance. That finding does not change through 1981 (page 148).

In 1981, the list format was changed to no longer differentiate between real and personal property.

Mr. Badenoch testified that if he were to publish a list today, he would also state that no counties were in substantial compliance (page 149).

Mr. Badenoch testified on the preparation of the 1983 Study as follows:

- A. There were 66,582 real estate transfers involved in the 1983 study.
- B. After screening out procedures occurred, 72%, or 48,161, sales qualified as bona fide sales.
- C. These numbers reflect a 24% increase in the number of transfers considered in the preparation of the 1982 study.

D. A three-member advisory committee consisting of faculty members from Kansas University, Kansas State University and Wichita State University assist the Director. Mr. Badenoch, as of this hearing, has not had the opportunity to meet with this group.

E. The screening out process (for reasons such as: sales by a sheriff, bankruptcies, sales where the grantee is a religious, charitable or benevolent organization, et cetera) is first conducted at the local level and checked by PVD.

F. Qualified transactions are entered into a computer and a ratio study is calculated.

Mr. Badenoch testified that, to his knowledge only three rural counties have a coefficient of deviation between zero and twenty. There are no urban counties with a coefficient of deviation between zero and twenty (page 156).

Finally, Mr. Badenoch testified concerning mass appraisal techniques. K.S.A. 79-503a allows for the valuation of real and tangible personal property by procedures which are adaptable to mass appraisal. Mass appraisal techniques attempt to appraise at fair market value the greater number of parcels in the least possible time with the smallest possible error. Refinements available in an individual appraisal will result in a different valuation. This difference is not significant. Individual cases, regardless of the variation, will also be insignificant.

Q. "Well, my question is this, if it's one parcel out of 160,000, what statistical significance does that have from a mass appraisal technique?" (By Mr. Robert Bell)

A. "Whatever it divides out to be, which is relatively small, statistically." (By Robert Badenoch, page 164).

11. Doctor Nancy McCarthy Snyder, 6021 Gracelane Wichita, Kansas, testified as an expert witness on behalf of the complainants. Dr. Snyder received her Ph.D. in Economics in 1977. Her fields of specialization include Econometrics, Human Resources, and Public Finance. Dr. Snyder's resume on her background, accomplishments and education are included in full in Taxpayer's Exhibit No. 15. The Board carefully reviewed the same and recognizes Dr. Snyder as an expert witness in the fields in which she specializes.

Dr. Snyder is not an appraiser. Her testimony relates to the preparation and explanation of real estate assessment ratio studies.

Dr. Snyder testified as follows:

"The Kansas Assessment Sales Ratio is the methodology used in compiling the Kansas Assessment Ratio, it's standard methodology used in the assessing profession. Techniques are supported by the International Association of Assessing officers, the National Tax Administrators, and the Department of Commerce which publishes similar type studies nationwide for local governments in census government. So I have looked at some of those statistics. . . .The document does state the purposes of this study is an attempt to evaluate the quality of assessment in Kansas to determine its assessment is in compliance with the constitution, or uniform and equal requirements, and the statutory 30% market value requirement. Its main practical use is in the school district equalization aid distribution where the property tax base is adjusted by the assessment sales ratio to achieve equalization across the counties" (page 176).

Dr. Snyder testified it is her belief that the sales used in the ratio study represent a fair representation of fair market values of property because of the number of sales used and the screening out process. She further stated that you could find examples where a sale did not reflect market value, but it would be a small percentage of the sales included in the sales assessment ratio study.

In addition, Dr. Snyder testified while the assessment sales ratio study itself is used to measure the quality of assessment and the accuracy of assessments relative to sale prices, there is also a coefficient of deviation which is a measure of the uniformity of assessment. It measures how closely individual assessment sales ratios for individual transactions are clustered around a median value. (The lower the coefficient of deviation, the more uniform the property appraisal assessment.) It should also be noted that the coefficient of deviation only describes the degree of uniformity. It is possible to achieve a low coefficient of deviation and have the entire state remain far above or below the statutory 30% assessment of fair market value.

Dr. Snyder gave the following example:

"Sedgwick County, as an example, in 1983, had a coefficient of deviation for residential property of 36%. That means that--well, the average urban property, not the highest assessed urban property, or the lowest assessment urban property, but the average assessed residential property--excuse me, they changed the classification between 82 and 83, I have to work to keep them straight. The average residential property in 1983 in Sedgwick County was either over assessed, or under assessed 36%. With a median ratio of 8%, that means the average assessment ratios, they ranged from 5% to 11%. The individual assessment sales ratio, average assessment sales ratio in Sedgwick County for residential ranged from 5% to 11%. That is 36% above median 8 and 36% below the median 8, or it actually was about 7 1/2, within the county. Thus, a relatively over assessed property owner would pay 2.2 times the taxes that the relatively under assessed property owner would pay, if those properties were equally valued, had the same market value. The coefficient--on the 1982 coefficient of deviation for rural property in Sedgwick County, it was 71%. That means that the average range of assessment sales ratios for rural property was 1% to 9% with corresponding different tax burdens. The average over assessed tax property owner would be 9 times more property tax on identically valued property as the average under assessed property owner" (page 187).

Dr. Snyder also testified from the Statistical Report of Property Assessment and Taxation, prepared by the Division of Property Valuation, State Department of Revenue.

"It shows the composition of the Kansas property tax base by type of property, by real estate, and personal property, and state assessed property in the years 1970 and 1982. It shows during that period of 1970 to 1982, a period when the consumer prices more than doubled, that the valuation of real estate in the State of Kansas increased

only 42.6% whereas that of personal property increased 198.4%. These figures, in fact understate the actual increase in personal property as well, because in 1970, automobiles were included in personal property, and in 1982, they were not. The next page shows the resulting change and breakdown in the percentage base of the Kansas property tax base, and shows that between 1970 and 1982, the share of real estate total property tax base of Kansas fell from 59.3% to 45.5%, whereas the share of personal property increased from 23.2% to 37.4%. And the reason for that is because personal property is revaluated (sic) annually, and, much more closely reflects the 30% market assessment ratio, and real estate has not been reappraised during this period at all, and it lags significantly behind. That decline in real estate shows up in Chart 1 at the very beginning, which is also taken directly from the ratio study. That simply shows the steady decline in the state wide assessment ratio. The reason is real estate prices have increased very rapidly due to inflation and market forces whereas assessed values have not (page 190)."

Dr. Snyder was questioned as to her familiarity with the changes in the classifications of property by the legislature. Dr. Snyder testified that the study's statistics do not reflect the fact that Sedgwick County, had for a number of years, assessed oil refineries as personal property. The study also does not reflect the recent decisions on assessing refineries.

These statistics deal with aggregate data, subject to the subjective determinations as to sub-classifications by county and state officials. The aggregate data will also not reflect any unusual but significant valuation changes in any sub-classification of property, i.e., the rapid escalation in oil prices during the early 1970's.

Another problem, apparent in the commercial and commercial-industrial area, relates to the sale of an entire business. Many sales of real estate involve overall sales contracts which encompass not only the sale of the real estate, but also the sale of substantial amounts of personal property and good will. These sales are compared with strictly residential sales, or those sales which generally do not include the addition of any personal property (page 210).

Dr. Snyder testified as to the manner in which the Sales Assessment Ratio Study and the Statistical Report of Property Assessment and Taxation Report can be utilized in a hearing of this nature. Dr. Snyder testified at some length and with great specificity as to the data and information available from these reports. Dr. Snyder also, through her testimony, showed the assumptions that are used in the preparation of these reports.

CONCLUSIONS OF LAW

The first step is to review the procedures and the laws in this area and apply them to the facts of this case.

The Board approached this case with a tremendous sense of responsibility. Reappraisal is a significant undertaking. Because of this, the Board went to great lengths to reiterate the facts of this complaint and the reasoning behind this decision. Judicial direction in this area is specific, Northern Natural Gas Co. v. Dwyer, 208 Kan. 337 (1971).

The Constitution for the State of Kansas, Article 11, Section 1, provides:

Article 11. FINANCE AND TAXATION

§ 1. System of taxation; classification; exemption. The legislature shall provide for a uniform and equal rate of assessment and taxation...(Emphasis added)

The entire matter of taxation is legislative and does not exist apart from statute. Ness County v. Light and Ice Co., 110 Kan. 501; Crawford County Commissioners v. Radley, et al., 134 Kan. 704, Shell Oil Co. v. Board of County Commissioners, 165 Kan. 642, Ray v. Board of County Commissioners, 173 Kan. 252.

The power of taxation lies with the Legislature, as does the responsibility to provide for the means and agencies to enforce its responsibilities. Silven v. Osage County, 76 Kan. 687 (1907), Gordon v. Hiett, 214 Kan. 690 (1974). The legislature has provided for the same.

The legislature has provided for a system of appraisal and reappraisal of taxable real and tangible personal property.

There are four entirely different routes to a reappraisal.

First, the Supreme Court can order a reappraisal. A number of varying opinions have been issued by the Supreme Court in this area.

For instance, in Gordon v. Hiett, 214 Kan. 690 (1974), the plaintiff proved that his property was illegally assessed for tax purposes at 43% of the fair market value. It was also shown that all real property in that county was assessed at a median ratio of 15% of fair market value. The plaintiff requested that his assessment be lowered to the median ratio. The court found,

that, while his property could not be assessed at 43%, it could not be lowered below the statutory rate of 30%. Furthermore, the court did not order that all property be reappraised and assessed at the statutory rate. The court stated,

"In the instant case the taxpayer's property has a fixed and stipulated value. To assess the property at any percentage creates discrimination against property not assessed at the same percentage. Conceding some discrimination is inherent in our conclusion it would seem logical that adherence to the statutory directive of thirty percent of justifiable value should dominate. Any conclusion other than this would enhance discrimination rather than deter discrimination. If we must judicially acknowledge discrimination exists we prefer that those discriminated against are not those assessed at the rate designated by the legislature."

The Supreme Court, however, based it's opinion on what they believed to be strong legislative support for the system. They surmised legislative intent from the severity of the sanctions in K.S.A 79-1447.

"Retention of local ad valorem tax reduction fund otherwise payable to counties for failure to comply with K.S.A. 79-1439 is a drastic sanction. Criminal sanctions against taxing officials who knowingly and willfully assess property other than as provided by law are set forth in K.S.A. 79-1426 and are punishable by fine, imprisonment and forfeiture of office. These sanctions exemplify the unyielding attitude of the legislature to enforce the 30% law."

This opinion was issued in January, 1974, and K.S.A. 79-1447 was repealed in the 1974 legislative session.

The Board is unsure how the Supreme Court would decide Gordon v. Hiatt today in light of that repeal and the passage of additional permissive legislation. (See, for example, K.S.A. 79-1451 and K.S.A. 79-1436b.)

The Board cannot speak for the Supreme Court and does not know what that Court would opine when all complainants, as in this complaint, are assessed at a rate substantially less than 30%, and are requesting all real property to be raised to the statutory rate of 30%. While unsure of the result, the Board is confident of the Supreme Court's authority to do so.

Secondly, the Director of Property Valuation is authorized to order a reappraisal.

"In taxable years commencing after December 31, 1980, whenever the director of property valuation shall determine that the coefficient of deviation for any one classification or sub-classification of property in a county, as shown from the ratio studies for such year, is greater than 20, the director is hereby authorized to order all property within the classification or sub-classification within such county to be reappraised. K.S.A. 79-1436b.

The Legislature changed K.S.A. 79-1436b from a mandatory order of reappraisal to a permissive authorization.

The Board has an additional concern. The director's annual report, from which coefficients of deviation are calculated, shall determine the average ratio of all sales of urban real estate and rural real estate and for each classification of property. Classifications of property are to be determined by K.S.A. 79-503, a statute repealed in 1982. (See K.S.A. 79-1436a and K.S.A. 79-1437.) The Board is unsure as to exactly how the director could authorize a reappraisal of a classification or sub-classification of property since the statute setting out the classifications and sub-classifications, that he is directed to use, has been repealed.

If the Board were to order the director to comply with the provisions of K.S.A. 79-1436b, it would only amount to a directive to comply with permissive legislation. Permissive legislation which requires a finding by the director using repealed legislation. Clearly, the Legislature intended for the classification and sub-classification of property for this purpose as indicated by the number of times K.S.A. 79-503 is referred to in the statutes. It is also clear K.S.A. 79-503 has been repealed. K.S.A. 79-503a is a separate statute and not an amendment to K.S.A. 79-503, (See, Berry v. Kansas City, Ft. S. and M.R. Co., 52 Kan. 759), and cannot be read as such.

Thirdly, the Board of Tax Appeals can, pursuant to K.S.A. 79-1413a, order a reappraisal within a county.

"Whenever upon complaint made to the State Board of Tax Appeals...a summary proceeding in that behalf had, it shall be made to appear to the satisfaction of said State Board that the assessment of taxable real estate and tangible personal property in any county is not substantial compliance with the law, and that the interest of the public will be promoted by a reappraisal of such property, said Board of Tax Appeals shall order a reappraisal of all or any part of the taxable property in such district to be made by one or more persons, to be appointed by the

Board of Tax Appeals for that purpose, the expense of any such reappraisal to be borne by the county in which is situated the property to be reappraised: Provided, that the Board of Tax Appeals shall, upon its own motion, after a hearing, order any such reappraisal if it shall clearly appear that the public would be benefited thereby." (emphasis added)

Lastly, the Legislature can order a statewide reappraisal. The entire area of taxation is legislative. The Legislature has done much in this area but has specifically refused to order a reappraisal.

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 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 all 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." K.S.A. 79-1451

The complainants chose to file with this Board. The original complaint involved real and personal property. It was amended to address only real property. The Director of Property Valuation moved to be dismissed as a party to this complaint. The complainants concurred and the Board dismissed the same.

The complainants are requesting this Board to order a reappraisal of all taxable real property in Sedgwick County, Ford County and Rice County. After completion of the same, they are requesting this Board to issue an order of statewide equalization.

The testimony received by the Board in support of that request is simple to summarize.

The complainants believe their real property is worth more than their appraised values determined for said property by their county appraisers. Only one independent appraisal was offered; however, there was no foundation presented for that appraisal. Further, the counties were unaware of the appraisal prior to this hearing. No evidence was offered by this fee-appraiser that correct comparables were used, nor was there evidence of the assessed value of the comparables. One complainant testified with absolutely no documentation on unidentified property. Another testified partially based on information received from his friends. All complainants came without the necessary supporting evidence. The balance of the testimony was that all real estate in the three counties are valued in the same manner. Specifically, the appraisers use a real estate manual to arrive at a fair market value. The amount is then de-based to reflect the fair market value of the last reappraisal year. There was no evidence that this procedure was not used uniformly as to all real property.

The complainants also introduced into evidence the 1983 Real Estate Assessment Sales Ratio Study. The Board viewed this evidence in accordance with the statutes and case law. There is a long line of Supreme Court cases that conclude that ratio studies standing alone are not conclusive as to value. Panhandle Eastern Pipe Line Co. v. Dwyer, 207 Kan. 417. See also K.S.A.79-503a.

"Ratio studies . . . are proper evidence of justifiable value but such evidence, standing alone, is not conclusive in establishing a basis for comparison in determining uniformity of values for assessment purposes." Beardmore v. Ling. 203 Kan. 802.

The ratio study is not conclusive as to value. Additionally, directives from the Supreme Court indicate that because the sales assessment ratio study contains too many speculative elements, it may not be relied upon by this Board to order a reappraisal. It may, however, serve as a signal that a reappraisal is in order. Panhandle Eastern Pipe Line Co., supra.

In summary, the Legislature and the Supreme Court require more evidence than the ratio study to grant the relief requested; however, the study was properly admitted as corroborative evidence.

As mentioned previously, the Board has authority under K.S.A. 79-1413a to order a reappraisal within a county. This statute mandates that the Board make two specific findings:

- (1) it must be made to appear to the satisfaction of this Board that assessment of taxable real estate and tangible personal property is not in substantial compliance with the laws, and
- (2) the interests of the public would be benefitted by an order or reappraisal.

The legislature mentioned twice in K.S.A. 79-1413a that the Board must make a specific finding that an order of reappraisal is in the best interests of the public. The Supreme Court has also said the Board must consider the best interests of the public. The Board must therefore consider the best interests of all of the property owners in the state, not just the complainants herein. Board of County Commissioners v. Brookover, 198 Kan.70 (1967).

The Board also considers this requirement to be the most important. The interests of the public as a whole must be greater than that of one individual.

In considering this question, the Board considered several areas of concern.

First, the Board is empowered only with hearing the case and sitting in judgment on the facts presented. The Board is not empowered to try the case or to defend the system, nor is the Board empowered with the authority to repeal statutory road-blocks or legislate solutions.

The Board is aware of much that is wrong with the system. The Board hears tax appeals daily and has some difficulty in separating general knowledge from the case at hand. For instance, is there equity when a person pays the same amount of ad valorem taxes on a 1985 compact to mid-size automobile as they would on a 20 year old home with a fair market value of \$35,000 to \$40,000? Is there equity in the relative deviations of assessment as testified to by Dr. Snyder?

While the questions are easy, the answers are not found within the system. The legislature provided for a system for the Board to maintain uniformity and equality. That system is a good scheme. However, after decades of neglect and lack of enforcement, it would be chaotic if it were used to overhaul the total property tax system.

It is the opinion of this Board that a reappraisal of three counties and an equalization of the remaining one hundred and two counties would be inappropriate and totally inadequate. Re-appraisal must be done on a statewide basis if results are to comply with the uniform and equal requirements of our state's constitution. While some may desire this Board or the courts to undertake the responsibility for reappraisal, it is the opinion of this Board that the only way to order reappraisal and comply with the constitutional requirements and also comply with the

statutory requirement that a reappraisal be in the best interests of all Kansans, is for the Kansas Legislature to take affirmative action. Therein lies the authority to change the laws, appropriate money and to ensure an orderly and enforceable taxing scheme.

Local units of government have chosen to ignore and reject orders by this Board. It is more than just a reasonable assumption that an order of reappraisal by this Board, without the necessary enforcement statutes, would invite even more "creativity" by local units.

The system has deteriorated to such an extreme state that only an overhaul will cure it. The Legislature has recognized that the solution is a statewide reappraisal. That is apparent when they slammed the door on a countywide reappraisal. However, a statewide reappraisal without a comprehensive plan ensuring an orderly process and statutory safeguards for the maintenance of uniformity would only be promoting the continuous trend by the counties of departing from legislative mandates. Is it in the best interests of the people to order millions of dollars to be spent only to have the system completely dismantled by county boards of equalization?

Secondly, the Board understands that those authorized to order a reappraisal may not be relieved of that responsibility because of the fiscal implications, Northern Natural Gas Co., v. Bender, 208 Kan. 135 (1971). However, it would be inappropriate for this Board to order, for example, a reappraisal in Sedgwick County costing \$6.5 million, in light of K.S.A. 79-1451, which prohibits any county from implementing reappraisal and levying against the reappraised values. If the Board should grant the relief requested, it would amount to a futile expenditure of millions of dollars, only to have K.S.A. 79-1451 prohibit the implementation of the reappraisal so ordered. The legislature has specifically directed that there will be no isolated cases of countywide reappraisals. K.S.A. 79-1451 requires statewide reappraisal. This complaint specifically requests only a three county reappraisal. In this instance, the Legislature has found this request to not be in the public interest. Without specific authority, this Board may not substitute its judgment for that of the legislature. Cray v. Kennedy, 230 Kan. 663.

Therefore, the Board of Tax Appeals finds and concludes that, as a matter of law, the relief requested is not in the best interest of the people of Kansas.


Because of this finding, it is not necessary to determine if the method of appraising real property using a de-basing factor to equalize all values to a prior taxing year violates the substantial compliance requirement of K.S.A. 79-1413a.

IT IS THEREFORE, BY THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS, SITTING AS THE STATE BOARD OF EQUALIZATION, CONSIDERED AND ORDERED that these complaints, for the reasons more fully set forth herein, must be, and the same are hereby, denied.


IT IS SO ORDERED.

SEAL


ATTEST:


LINDA ANN TERRILL
ATTORNEY & SECRETARY


FRED L. WEAVER, CHAIRMAN


DALLAS E. CRABLE, MEMBER


JOHN P. BENNETT, MEMBER


ROBERT C. HENRY, MEMBER


KEITH FARRAR, MEMBER