

Approved January 22, 1988  
Date

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./~~xxx~~ on January 21, 1988 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Tom Severn, Research  
Chris Courtwright, Research  
Don Hayward, Revisor's Office  
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Gerry Ray, Johnson County Board of Commissioners  
Gary Smith, Shawnee County Appraiser  
John Torbert, Exec, Dir., Kansas Association of Counties  
Donna Zwick, Reno County Commissioner  
Bill Waters, Counsel for Property Valuation Dept.

Chairman Kerr called the meeting to order and then asked for a bill introduction that had been requested by Sister Mary Serena Sheehy and Sister Joan Sue Miller of Leavenworth, Ks. (Att. 1) The bill would exempt certain property used for religious purposes.

Senator Hayden made the motion to introduce the bill. Senator Thiessen seconded. Motion carried.

Chairman Kerr then called on Secretary Harley Duncan for the purpose of requesting several bill introductions. Senator Hayden made the motion to introduce the package of bills that was being requested by Secretary Duncan. Senator Mulich seconded. Motion carried. (Att. 2)

SENATE BILL 451

Gerry Ray, Johnson County Board of Commissioners, testified in opposition to S.B. 451. (Att. 3) She stated that the Johnson County Commissioners have concerns regarding language in lines 78 through 88. She said it was their understanding that this amendment will give the Director of property valuation the authority to reverse a decision of commissioners to suspend or terminate the county appraiser and order reinstatement of the incumbent. She stated that because the existing law is silent in this area, it is implied that the PVD director can require such reinstatement. She said that the commissioners did not necessarily agree with this and feel it required further research. She stated that even though the appraiser is a position regulated by the state that it is still a county appointment. The county appraiser is paid by the county in which he works, and should be under the authority of the county, even in the event of termination.

Senator Burke gave background information explaining why he feels the Property Valuation Director already has been given this authority. He stated that the occasion had previously arisen when county appraisers had been politically pressured into exempting property or reducing values. He stated that he felt the appraisers should be given all the authority they needed to do their job appropriately.

Gary Smith, Shawnee County Appraiser testified in support of S.B. 451. (Att. 4) He stated that he felt a change in policy from a "hearing" to an "inquiry" may remove security for the Appraiser that he felt the legislation had originally intended. He felt the hearing process would allow the Commission to state their cause for removal and allow the suspended Appraiser to at least be able to introduce evidence for himself.

John Torbert, Executive Director, Kansas Association of Counties, testified

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,  
room 519-S, Statehouse, at 11:00 a.m.~~xxx~~ on January 21, 1988

in opposition to S.B. 451. He stated that he was present on behalf of the Kansas County Commissioners Association Executive Committee, who were unanimously opposed to S.B. 451. He stated that they felt they did not want to give the director of property valuation veto authority over a locally elected board regarding the suspension or termination of an appraiser. He stated that the commissioners feel that the hiring and firing of county personnel is a county matter, and passage of this bill would grant authority to an individual - the Director. (Att. 5)

Donna Zwick, Reno County Commissioner testified in opposition to S.B. 451. (Att. 6) She stated that she felt the current system provides for a hearing process which allows the protection needed for county appraisers. She felt allowing the final decision to be made by the director of property valuation would create very difficult working relationships in the county environment.

Bill Waters, Counsel for Property Valuation Director testified. He stated that the issue was an "independent inquiry" vs. a "hearing." He also felt "reinstatement" was an issue. He said if the director has the authority to have a hearing, but not to reinstate, then what is the purpose of the hearing?

Chairman Kerr informed the committee that Senate Bills 451, 452, and 453 would have to be continued at a later date due to the Governor's Tax Proposal being scheduled for the next several days.

Senator Burke made the motion to adopt the minutes of the January 20, 1988 meeting. Senator Mulich seconded. Motion carried. Meeting adjourned.






**KANSAS DEPARTMENT OF REVENUE**  
*Division of Property Valuation*  
**Robert B. Docking State Office Building**  
**Topeka, Kansas 66612-1585**

**M E M O R A N D U M**

TO: Senator Fred Kerr, Chairman Senate Committee on  
Assessment and Taxation; and Committee Members

FROM: Terry D. Hamblin, Director  
Division of Property Valuation 

DATE: January 19, 1988

SUBJECT: Senate Bills 451, 452, and 453

Senate Bills 451, 452, and 453 are all bills introduced by the Interim Committee at the request of the Division. Most of the amendments contained in these bills are either "clean-up" provisions to clarify or eliminate conflicts in current language and eliminate conflict between current statutory language and the Constitution; or provide definitions necessary for the orderly and uniform implementation of the classification amendment.

First, Senate Bill 451 provides the director of property valuation authority to conduct an independent inquiry and eliminates the necessity of a hearing before such director at the request of an appraiser suspended or terminated by a board of county commissioners. This provides the director with considerable flexibility and discretion to determine the justification, or lack thereof, of such suspension or termination. Presently, the director is limited to the role of a hearing officer once a board of county commissioners suspends or terminates an appraiser. The bill recognizes the fact that the director exercises supervisory authority over appraisers and thus is an interested party who should not be limited to the role of hearing officer. The bill does not eliminate the possibility that the director may conduct a "hearing" as a part of the independent inquiry.

We would request that the committee consider one amendment to this bill as introduced. This proposal would retain the present provision requiring the director of property valuation to fix the time of the hearing before the Board of Tax Appeals, which shall be held in the county seat of the county where the appraiser serves or served. It is respectfully suggested that the Board of Tax Appeals be authorized to set its own hearing at its option in either Topeka or at the county seat. This can be accomplished by amending lines 0114 - 0119 as follows: "thereon, the board of tax appeals shall fix the time, not later than 10 days thereafter, when a hearing concerning the same shall be commenced before such board. At the."

Second, Senate Bill 452 amends statutes governing the operation and publication of the annual assessment/sales ratio study. Many of the amendments contained in this proposal are "clean-up" in nature; some legitimize current practice; however, many of the amendments are

THE STATE



OF KANSAS

## BOARD OF TAX APPEALS

Keith Farrar, Chairman

Docking State Office Building, 10th Floor  
Topeka, Kansas 66612-1582  
AC-913 296-2388

Robert C. Henry, Member  
Fred L. Weaver, Member  
Victor M. Elliott, Member  
Conrad Miller, Jr., Member

M E M O R A N D U M

TO: Senator Fred Kerr, Chairman  
Senate Assessment and Taxation Committee

FROM: Keith Farrar, Chairman *KF*  
Board of Tax Appeals

DATE: January 20, 1988

RE: Senate Bill No. 452

The proposed change to Section 4 of Senate Bill 452, at lines 89 through 97, effectively removes farm sales from the assessment/sales ratio study since very few farm sales exist that will not have real estate in more than one classification. I believe it is inappropriate to exclude otherwise valid sales because this will lead to an invalid assessment/sales ratio study. The assessment/sales ratio study is the guide for evaluating reappraisal. It is, therefore, imperative that a valid study be prepared.

In many rural counties where there is an increase in the number of sales of farm property, including sales of property with improvements located thereon, the sales will be excluded from the assessment/sales ratio study simply because there are different classifications being applied. This raises questions as to the validity of the assessment/sales ratio study from that county when the only rural agricultural land being included in the study is the sale of land without improvements constructed thereon. This proposed change could require the director to exclude the sale of a whole section of land, for example, because the land has various buildings located upon a one acre homesite. Should a whole section of land be excluded? This situation will occur in almost all farm sales except where only bare land is being sold, and raises a question as to the validity of the ratio study. Even though farm and urban residences are assessed at 12%, for the most part, only urban residences will be included in the assessment/sales ratio study because most farm residences will have been excluded.

Page 2  
Senator Fred Kerr  
Senate Bill No. 452  
January 20, 1988

It should also be noted that urban sales could also be affected where there is a sale of a parcel that has both commercial and residential improvements. For example, if an individual operates his business out of a small detached garage, there will be both commercial and residential property on the same parcel. This sale would be excluded from the assessment/sales ratio study.

Pursuant to K.S.A. 1987 Supp. 79-1479(c), the Board is required to review the Kansas Assessment/Sales Ratio study to determine county compliance with K.S.A. 79-1439, the requirement to appraise all property uniformly and equally at fair market value and assessed at the appropriate percentage based upon the property's classification. This presumes a correction of K.S.A. 79-1439 to incorporate the classification amendments assessment percentages. If the assessment/sales ratio study is not valid, the Board has no way of effectively or accurately determining compliance.

AN ACT relating to property taxation; exempting certain property used for religious purposes.

Be it enacted by the Legislature of the State of Kansas:

Section 1. The following described property, to the extent herein specified, shall be and is hereby exempt from all property or ad valorem taxes levied under the laws of the state of Kansas:

Any building, together with the land necessary to accommodate such building, owned by a church or nonprofit religious society or religious order which is exempt from the payment of Federal taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, and such buildings and lands are actually and regularly occupied and used exclusively as a residence <sup>or for religious purposes</sup> by a community of persons who are bound [by vows] to a religious life and who conduct or assist in the conduct of religious services and are actually and regularly engaged in religious, benevolent, charitable, and educational ministries.

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Requested for introduction 1-21-88 by

Sister Mary Serena Sheehy }  
Sister Joan Sue Miller } Leavenworth

Language has been examined by all religious communities of women in Kansas & by Diocese' in Kans.





**KANSAS DEPARTMENT OF REVENUE**  
*Office of the Secretary*  
Robert B. Docking State Office Building  
Topeka, Kansas 66612-1588

**MEMORANDUM**

**TO:** The Honorable Fred Kerr, Chairman  
Senate Committee on Assessment and Taxation

**FROM:** Harley T. Duncan *HTD*  
Secretary of Revenue

**RE:** Requested Legislation

**DATE:** January 14, 1988

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The Department of Revenue respectfully requests the introduction of bills to accomplish the following:

**TREATMENT OF PARIMUTUEL AND LOTTERY WINNINGS AS KANSAS SOURCE INCOME**

No specific provision exists to identify parimutuel winnings as being taxable in Kansas for nonresident taxpayers.

**Recommendation.** Amend K.S.A. 79-32,109 so that parimutuel winnings are specifically included as Kansas source income. **In addition**, although the Kansas lottery statute provides that lottery prizes are taxable in Kansas, the department recommends that lottery prizes be included in the statutory definition of "modified Kansas source income" of nonresidents.

**TENTATIVE TAX RETURNS**

The current provision in K.S.A. 79-3221 which permits a tentative return is seldom used, and when used, creates processing difficulties. In view of other provisions regarding extensions of time to file and the administrative procedures which permit taxpayers to remit estimated balances due with extension requests, this provision is no longer needed.

**Recommendation.** Amend K.S.A. 79-3221(b) so that tentative corporate returns will no longer be accepted.



## DUE DATE FOR CORPORATE INCOME TAX RETURNS

Corporate tax returns are presently due by the 15th day of the fourth month following the close of the taxable year. K.S.A. 79-3221 controls the due date for all income tax returns and provides a single due date of the 15th day of the fourth month following the close of the taxable year. The due date for federal returns varies depending on the type of taxpayer. For corporations, a return is due by the 15th day of the third month after year-end. For certain co-ops, the due date is the 15th day of the 9th month following year-end. For tax-exempt entities, returns to report taxable activities are due by the 15th day of the fifth month after year-end.

For all filers, the computation of Kansas taxable income requires that the related federal return be done first. The department suggests that K.S.A. 79-3221 be amended to provide that all Kansas returns are due at the same time as the federal return. This would accelerate filing for most corporations by one month. This should not impose a significant hardship on corporate taxpayers. Most multi-state corporations are accrual basis taxpayers and typically must have state tax data prepared so they can accrue and deduct state income taxes in computing their federal liabilities. Conformity to federal due dates should be the most efficient route in the long-run.

**Recommendation.** Amend K.S.A. 79-3221 to provide that the due date for Kansas returns is the same as related federal returns. In the event a Kansas return is due from a taxpayer for which a federal return is not required, the department suggests defaulting to a due date of the 15th day of the fourth month following the close of the taxable year. **In addition**, a corollary change to K.S.A. 79-3225 relating to the time for the payment of tax is necessary.

## PENALTY ON DELINQUENT RETURN

Confusion exists as to the computation of a late filing penalty when an extension of time has been granted and the taxpayer fails to file by the extended due date. It is our position that if the taxpayer has been granted an extension of time, usually due to a federal extension, and fails to meet the agreed upon due date, the penalty should be computed from the original due date. This is the manner in which the IRS computes similar penalties. Some argue that our statute's wording could be construed to mean the penalty is only computed from the time of expiration of the extension period.

**Recommendation.** The department recommends a statutory amendment to clarify that if a taxpayer fails to comply with the terms of an extension agreement, the penalty is computed from the original due date.

## EXEMPTED ORGANIZATION

The separate tax provisions relating to Express Companies have been repealed. However, K.S.A. 79-32,113 contains a list of organizations exempt from Kansas Income Tax which retains a reference to Express Companies.

**Recommendation.** The exemption in K.S.A. 79-32,113 for Express Companies should be deleted so that in the unlikely event such a company begins operating in Kansas it will be subject to the Kansas Income Tax.

## **SURTAX EXEMPTION**

The issue here involves groups of corporations who file a combined return and whether they should be limited to one \$25,000 surtax exemption. If two commonly controlled corporations operate solely within Kansas and file a federal consolidated return, they must file a Kansas consolidated return and are allowed only one surtax exemption. If two commonly controlled corporations have operations within and out of Kansas, they must use the combined reporting method, but are allowed a \$25,000 surtax exemption for each corporation.

**Recommendation.** The department suggests a statute which would provide that any time a group of corporations is required to divide multiple tax benefits pursuant to 1561(a) of the Internal Revenue Code of 1986, such corporations shall be required to divide the \$25,000 surtax exemption provided by K.S.A. 79-32,110. This provision would apply whether consolidated, combined or separate returns are required.

## **HOMESTEAD RENT CLAIM FOR 40 ACRES**

The current statute for Homestead property tax refunds allows farm owners to claim, for refund purposes, the property tax paid for 40 acres of land including the house and outbuildings. It appears that the 40 acre limit allowed to farmers is beyond the original scope and intent of the Homestead Act.

**Recommendation.** Amend K.S.A. 79-4502(f) to allow farmers to claim only one acre instead of 40 in determining the amount of property tax in claiming a Homestead refund.

## **PENALTY FOR FAILURE TO FILE INFORMATION RETURN**

K.S.A. 79-3222 allows the Director of Taxation to disallow a tax deduction or credit if proper information returns (forms 1099) reporting such payments are not filed. The department feels the statutory permitted penalties for failure to file information returns should be less severe.

**Recommendation.** Amend K.S.A. 79-3222 so that a penalty of \$50 per each failure to file is the exclusive penalty.

## **FEDERAL ADJUSTMENT NEGLIGENCE PENALTY**

Statutory provisions are required to increase compliance with state tax code as a result of federal adjustments to income. The department currently receives copies of federal adjustments made to taxpayers' returns. If the taxpayer fails to properly amend the Kansas return as a result of the federal change, the department adjusts the return and notifies the taxpayer of the adjusted liability plus interest. If the taxpayer fails to pay the liability within the 20 days allotted, the appropriate penalty, 25 percent, is added and a second notice is sent.

**Recommendation.** Taxpayers have a statutory responsibility to amend Kansas returns to reflect federal changes. If a taxpayer fails to voluntarily amend a Kansas return, the department should not allow additional time without penalty to correct the account. Therefore, in order to further enhance our compliance effort, a negligence penalty should be enacted. A penalty of 10 percent would be added to the initial assessment as a failure to properly amend the Kansas return.

The changes recommended also take into account a procedural change by the IRS. The IRS no longer adjusts accounts solely by Revenue Agent Reports. They may simply send an "adjustment notice". Technically, our statute does not cover such situations.

## WITHHOLDING TAX

The Sales Tax statute presently provides that a new registration shall not be issued to an applicant if a liability is outstanding for a different registration. No similar provision is contained within the withholding tax law.

**Recommendation.** The department proposes that the Withholding Tax statute be modified so that before a Certificate of Registration is issued, the applicant must not owe any withholding tax, penalty or interest. **As an additional note**, the committee may want to consider a more expansive change to require cross checking so that no registration of any kind can be issued when there is an unpaid tax liability of any type.

## STATUTE OF LIMITATIONS

This is an issue of federal conformity in that the Kansas statutory period of limitations for a refund or credit of corporate income tax is four years and the corresponding federal provision is three years. Currently, K.S.A. 79-3230(a) provides a four year statute of limitations period for assessment of additional corporate tax. K.S.A. 79-3230(c) provides a four year statute of limitations period for the refund of overpaid corporate tax.

**Recommendation.** Amend K.S.A. 79-3230 so that the Kansas period of limitations conforms to the federal provision. A separate statute, K.S.A. 79-3228, provides additional time if a federal change requires a subsequent change to the Kansas return.

## STATUTE OF LIMITATIONS - DELINQUENT SET-UP RETURNS

The issue here is whether the statute of limitations provisions should be amended to provide that a refund claim could be filed within some period of time from the date an amount is paid as opposed to the current statutory language which grants one year from the date assessed.

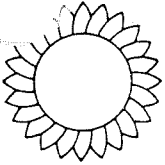
The relevant statutory provision, K.S.A. 79-3230(c), currently provides that no refund or credit shall be allowed by the director of taxation after four years from the date the return was filed or one year after an assessment is made, whichever is the later date. The problem arises with delinquent set-up returns. Legal opinions issued indicate that technically a "return" has not been filed, so the operative portion of the statute is that no refund can be made within one year of the assessment.

**Recommendation.** This problem is handled on the federal level by a provision that a taxpayer who is entitled to a refund of any tax paid by must file a refund claim no later than three years from the date prescribed by law for filing the return, provided it was filed before the due date. If the return was filed after the due date, a refund claim must be filed no later than three years from the time the return was actually filed, or two years from the date the tax was paid, whichever period expires later. The department suggests a similar provision in Kansas. In this manner, taxpayers' remedies are not cut off by our assessment date, but rather, are tied to an action of which they would have actual notice, i.e., the filing of a return or payment of tax.

**"DOUBLE DEDUCTION" OF CERTAIN FOREIGN DIVIDENDS**

The current statutory terminology could be construed to allow a double benefit to corporate taxpayers receiving foreign dividends. 1987 House Bill 2177 provides for the exclusion of 80 percent of the amount of dividends received from corporations incorporated outside of the United States or the District of Columbia. This particular language inadvertently allows a double deduction for certain types of dividends. A corporate taxpayer would obtain a deduction under 245 of the Internal Revenue Code as follows: (1) 85 percent of dividends from a foreign corporation if at least 50 percent of its gross income was effectively connected with the U.S. business, and (2) 100 percent of dividends if all of the foreign corporation's income is effectively connected with U.S. business i.e., foreign sales corporation (FSC). These deductions are made to arrive at federal taxable income. Eighty percent of these same amounts would then be deducted from federal taxable income under the current statute because the dividends would in fact be "received" by the corporate taxpayer. Although the fiscal impact of allowing a double deduction is not believed to be significant, an amendment is necessary to correct the situation.

**Recommendation.** In order to eliminate the possible "double deduction" of certain foreign dividends, it is recommended that K.S.A. 79-32,138(c)(vi) be amended. In addition to eliminating the double deduction for certain dividends, this change would also require the exclusion of 80 percent of subpart F income which would not have been the case under House Bill 2177.



SENATE ASSESSMENT AND TAX COMMITTEE  
JANUARY 21, 1988  
TESTIMONY OF GERRY RAY, INTERGOVERNMENTAL COORDINATOR  
JOHNSON COUNTY COMMISSION

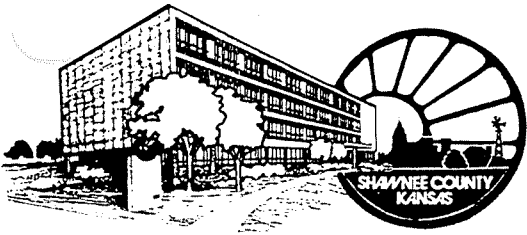
SENATE BILL 451

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS GERRY RAY, APPEARING ON BEHALF OF THE JOHNSON COUNTY BOARD OF COMMISSIONERS ON SB 451 PERTAINING TO COUNTY APPRAISERS.

THE JOHNSON COUNTY COMMISSIONERS HAVE CONCERNS ABOUT THE BILL, DUE TO THE LANGUAGE IN LINES 0078 THROUGH 0088. IT IS OUR UNDERSTANDING THAT THIS AMENDMENT WILL GIVE THE DIRECTOR OF PROPERTY VALUATION THE AUTHORITY TO REVERSE A DECISION OF COMMISSIONERS TO SUSPEND OR TERMINATE THE COUNTY APPRAISER AND ORDER REINSTATEMENT OF THE INCUMBENT. THERE IS A QUESTION THAT BECAUSE EXISTING LAW IS SILENT ON THIS ASPECT IT IS IMPLIED THAT PVD DIRECTOR CAN NOW REQUIRE SUCH REINSTATEMENT. WE DO NOT NECESSARILY AGREE WITH THIS INTERPRETATION AND FEEL IT DESERVES FURTHER RESEARCH.

ALTHOUGH THE POSITION OF APPRAISER IS ONE CLOSELY REGULATED BY THE STATE IT IS NEVERTHELESS A COUNTY APPOINTMENT. THE PERSON FILLING THE POSITION IS SELECTED AND PAID BY THE COUNTY AND IT FOLLOWS SHOULD BE UNDER THE AUTHORITY OF THE COUNTY IN THE EVENT OF TERMINATION. OUR COMMISSIONERS BELIEVE EMPLOYEE/EMPLOYER RELATIONS IS A MATTER OF HOME RULE AND SHOULD REMAIN SO. THEREFORE, THEY ARE OPPOSED TO THE PASSAGE OF SB 451 AND REQUEST THE COMMITTEE REPORT THE BILL UNFAVORABLY.

THANK YOU FOR YOUR TIME AND FOR THE OPPORTUNITY TO PRESENT THE VIEWS AND CONCERNS OF JOHNSON COUNTY ON THIS ISSUE.



Shawnee County  
Office of County Appraiser

GARY M. SMITH ASA, CKA  
APPRAISER

ROOM 102  
291-4100

COURTHOUSE  
TOPEKA, KANSAS 66603-3960

January 21, 1988

Senator Fred Kerr, Chairman  
Senate Assessment and Taxation Committee

Senator Kerr,

I would like to discuss the changes put forth in Senate Bill 451 and the possible impact of those changes. A change in policy from a hearing to inquiry may remove any security for the Appraiser that the legislation had intended in its original statutes.

As we have learned, words have meaning and a change from hearing to inquiry would indicate the legislation does not intend the Director to hold an official hearing, ascertaining the facts on both sides of the dispute, and giving the Appraiser the right to be heard in an official, open hearing.

If in the future, the Director were to take lightly the responsibility of ascertaining the facts in disputes between Commissioners and Appraisers or if the case were a political problem, an inquiry would allow the Director to informally ascertain facts from only one party and issue his official proceedings.

The hearing process would allow the Commission to state their cause for removal and allow the removed or suspended Appraiser to introduce evidence, to ascertain the facts and basis for the removal.

The Director is the supervisor of the County Appraiser and should desire to determine all the facts concerning the dismissal of anyone under his direction and the best method of determining all the facts is a formal hearing process.

I thank you on behalf of the County Appraisers of Kansas.

Sincerely,

Gary M. Smith ASA, CKA  
Shawnee County Appraiser

GMS/jw

Attachment - Black Law Dictionary, Pg.852  
Definition - Hearing



## SENATE BILL No. 451

By Special Committee on Assessment and Taxation

Re Proposal No. 7

12-16

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0018 AN ACT relating to county appraisers; concerning duties of the  
0019 director of property valuation relating to the suspension or  
0020 termination thereof; amending K.S.A. 19-431 and repealing  
0021 the existing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 19-431 is hereby amended to read as fol-  
0024 lows: 19-431. Whenever it shall be made to appear to the board of  
0025 county commissioners of any county or the district board of an  
0026 appraisal district by evidence satisfactory to ~~said~~ *such* board that  
0027 the appraiser of such county or district has failed or neglected to  
0028 properly perform the duties of ~~his~~ *such appraiser's* office, by  
0029 reasons of incompetency or for any other cause, the board shall  
0030 enter upon its journal an order suspending or terminating the  
0031 county or district appraiser from ~~his~~ office, which order shall  
0032 state the reasons for such suspension or termination; ~~and~~. Upon  
0033 the service of any such order upon the appraiser so suspended or  
0034 terminated ~~he~~ *such appraiser* shall at once be divested of all  
0035 power as county or district appraiser and shall immediately  
0036 deliver to the person appointed to discharge the duties of the  
0037 office ~~in his stead~~, all books, records and papers pertaining to the  
0038 office. The board of county commissioners or district board shall  
0039 appoint a temporary appraiser to discharge the duties of the  
0040 office until the suspension is removed or the vacancy filled, and  
0041 the person so appointed shall take the oath of office required by  
0042 law and thereupon such person shall be invested with all of the  
0043 powers and duties of the office.

0044 If at the time of the suspension or termination of any appraiser  
0045 as hereinbefore provided such appraiser requests a hearing

0046 thereon, the board of county commissioners or district board  
 0047 making such suspension or termination shall fix the time, not  
 0048 later than ten (10) days thereafter, when a hearing concerning the  
 0049 same shall be had by the director of property valuation at the  
 0050 county seat of such county or if such appraiser is a district  
 0051 appraiser at the county seat of the county within the district  
 0052 having the greater population. At the hearing the director of  
 0053 property valuation shall make inquiry as to all facts connected  
 0054 with such suspension or termination, and Any appraiser sus-  
 0055 pended or terminated as provided in this section may within 10  
 0056 days thereafter request ~~an independent inquiry~~ by the director  
 0057 of property valuation into such suspension or termination.  
 0058 Thereupon, the director shall conduct ~~an independent inquiry~~.  
 0059 If after said ~~the inquiry is made~~, the director of property valua-  
 0060 tion shall determine that the appraiser so suspended should be  
 0061 removed permanently and his the office declared vacated or  
 0062 should be terminated, then, the director of property valuation  
 0063 shall make and enter upon the record of his official proceedings  
 0064 an order removing said the appraiser. A copy of which such  
 0065 order, duly certified and under the seal of the director of prop-  
 0066 erty valuation, shall be sent to the board of county commission-  
 0067 ers or district board employing such appraiser who shall cause  
 0068 the same to be recorded in full upon the journal of the board.  
 0069 Immediately upon the making of such order by the director of  
 0070 property valuation said the office of appraiser shall be vacant,  
 0071 and the board of county commissioners or district board shall  
 0072 appoint a certified Kansas appraiser as appraiser to fill such  
 0073 vacancy, who shall qualify as provided by law in such cases.  
 0074 Should the person so appointed be other than the person ap-  
 0075 pointed to discharge the duties of the office temporarily, the  
 0076 person so discharging the duties of the office temporarily shall  
 0077 immediately transfer to the person appointed to fill the vacancy  
 0078 all the books, records, and files of the office. If after the inquiry,  
 0079 the director of property valuation determines that the sus-  
 0080 pended or terminated appraiser should be reinstated, the direc-  
 0081 tor shall make and enter upon the record of official proceedings  
 0082 an order reinstating the appraiser. A copy of such order duly

A HEARING

A HEARING AND SHALL MAKE INQUIRY AS TO ALL THE FACTS CONNECTED WITH SUCH SUSPENSION OR TERMINATION

THE HEARING

THE HEARING

0083 certified and under the seal of the director of property valuation,  
0084 shall be sent to the board of county commissioners or the  
0085 district board employing such appraiser who shall cause the  
0086 same to be recorded in full upon the journal of the board.  
0087 Thereupon, such appraiser shall be reinstated by the employing  
0088 board.

0089 Whenever the director of property valuation shall on ~~his~~ *the*  
0090 director's own motion conclude, after inquiry, that the appraiser  
0091 of any county or district has failed or neglected to discharge ~~his~~  
0092 duties as required by law and that the interest of the public  
0093 service will be promoted by the removal of such appraiser, the  
0094 director of property valuation shall enter upon the record of  
0095 proceeding in ~~his~~ *the* director's office an order suspending or  
0096 terminating ~~said~~ the appraiser from ~~his~~ office, which order shall  
0097 state the reason for such suspension or termination ~~and~~. From  
0098 and after the date of service of such order upon such appraiser  
0099 and the board of county commissioners or district board em-  
0100 ploying such appraiser, the person so suspended or terminated  
0101 shall be divested of all power as appraiser and shall immediately  
0102 deliver to the person appointed to discharge the duties of the  
0103 office ~~in his stead~~, all books, records and papers pertaining to the  
0104 office. Upon receipt of an order by the director of property  
0105 valuation suspending or terminating the appraiser of the county  
0106 or district, the board of county commissioners or district board  
0107 shall appoint a temporary appraiser to discharge the duties of the  
0108 office until the suspension is removed or the vacancy filled, and  
0109 the person so appointed shall take the oath of office required by  
0110 law and thereupon such person shall be ~~invested~~ *vested* with all  
0111 of the powers and duties of the office.

0112 If at the time of the suspension or termination of any appraiser  
0113 as hereinbefore provided such appraiser requests a hearing  
0114 thereon, the director of property valuation shall fix the time, not  
0115 later than ~~ten~~ *(10)* 10 days thereafter, when a hearing concerning  
0116 the same ~~shall be had~~ *is held* by the state board of tax appeals at  
0117 the county seat of such county or if such appraiser is a district  
0118 appraiser, such hearing shall be held at the county seat of the  
0119 county within such district having the greatest population. At the

0120 hearing the board of tax appeals shall make inquiry as to all facts  
0121 connected with such suspension or termination, and if after ~~said~~  
0122 *the* inquiry is made the board of tax appeals shall determine that  
0123 the appraiser so suspended should be removed permanently and  
0124 ~~his~~ *the* office declared vacated ~~or should be terminated~~, then the  
0125 board of tax appeals shall make and enter upon the record of its  
0126 official proceedings an order removing ~~said~~ *the* appraiser, a copy  
0127 of which order, duly certified by the secretary under the seal of  
0128 the board, shall be sent to the board of county commissioners or  
0129 district board, who shall cause the same to be recorded in full  
0130 upon the journal of the board. Immediately upon the making of  
0131 such order by the board of tax appeals ~~said~~ *the* office of county  
0132 appraiser shall be vacant, and the board of county commissioners  
0133 or district board shall appoint a certified Kansas appraiser as  
0134 appraiser to fill such vacancy, who shall qualify as provided by  
0135 law in such cases. Should the person so appointed be other than  
0136 the person appointed to discharge the duties of the office tem-  
0137 porarily, the person so discharging the duties of the office tem-  
0138 porarily shall immediately transfer to the person appointed to fill  
0139 the vacancy all the books, records, and files of the office. *If after*  
0140 *the hearing the board of tax appeals determines that the sus-*  
0141 *pending or terminated appraiser should be reinstated, the board*  
0142 *shall make and enter upon the record of its official proceedings*  
0143 *an order reinstating such appraiser. A copy of such order duly*  
0144 *certified and under the seal of the board shall be sent to the*  
0145 *board of county commissioners or the district board employing*  
0146 *the appraiser who shall cause the same to be recorded in full*  
0147 *upon the journal of the board. Thereupon, such appraiser shall*  
0148 *be reinstated by the employing board.*

0149 Sec. 2. K.S.A. 19-431 is hereby repealed.

0150 Sec. 3. This act shall take effect and be in force from and  
0151 after its publication in the statute book.

gs. Anc.Laws & Inst. of Eng. Gloss.; Spelman, Gloss.

**HEALTH.** State of being hale, sound, or whole in body, mind or soul, well being. *Venable v. Gulf Taxi Line*, 105 W.Va. 156, 141 S.E. 622, 624. Freedom from pain or sickness; the most perfect state of animal life. Not synonymous with "sanitation." *Black v. Lambert*, Tex.Civ.App., 235 S.W. 704, 706. The right to the enjoyment of health is a subdivision of the right of personal security, one of the absolute rights of persons. 1 Bl.Comm. 129, 134. As to injuries affecting health, see 3 Bl. Comm. 122.

**Bill of health.** See Bill.

**Board of health.** See Board.

**Health laws.** Laws prescribing sanitary measures, and designed to promote or preserve the health of the community.

**Health officer.** The officer charged with the execution and enforcement of health laws. The powers and duties of health officers are regulated by local laws.

**Public health.** As one of the objects of the police power of the state, the "public health" means the prevailing healthful or sanitary condition of the general body of people or the community in mass, and the absence of any general or widespread disease or cause of mortality. The wholesome sanitary condition of the community at large. *State ex rel. Pollock v. Becker*, 289 Mo. 660, 233 S.W. 641, 649.

**Sound Health.** See "Sound."

**HEALTHY.** Free from disease or bodily ailment, or any state of the system peculiarly susceptible or liable to disease or bodily ailment. *Bell v. Jeffreys*, 35 N.C. 356.

**HEARING.** Proceeding of relative formality, generally public, with definite issues of fact or of law to be tried, in which parties proceeded against have right to be heard, and is much the same as a trial and may terminate in final order. In re Securities and Exchange Commission, D.C.N.Y., 14 F.Supp. 417, 419. Synonymous with trial, and includes reception of evidence and arguments thereon. *Grant v. Michaels*, 94 Mont. 452, 23 P.2d 266. It is frequently used in a broader and more popular significance to describe whatever takes place before magistrates clothed with judicial functions and sitting without jury at any stage of the proceedings subsequent to its inception, and may include proceedings before an auditor. *Menard v. Bowman Dairy Co.*, 296 Ill.App. 323, 15 N.E.2d 1014, 1015.

**In equity practice.** The trial of the case, including introduction of evidence, argument of counsel, and decree of court. *Wolfe v. Wolfe*, 144 Neb. 55, 12 N.W.2d 368, 369.

The words "final hearing" have long been used to designate the trial of an equity case upon the merits, as distinguished from the hearing of any preliminary questions

arising in the cause, which are termed "interlocutory." *Akerly v. Villas*, 24 Wis. 171, 1 Am.Rep. 166.

The term is broad enough to include judicial examination of issue between the parties whether of law or of fact. *Keown v. Keown*, 231 Mass. 404, 121 N.E. 153, 154.

**In criminal law.** The examination of a prisoner charged with a crime or misdemeanor, and of the witnesses for the accused.

**Fair hearing.** See Fair Hearing.

**Final hearing.** See Final.

**Preliminary examination.** The examination of a person charged with crime, before a magistrate. *Van Buren v. State*, 65 Neb. 223, 91 N.W. 201.

**Preliminary hearing.** In criminal law. Synonymous with "preliminary examination." *State v. Rogers*, 31 N.M. 485, 247 P. 828, 833.

The hearing given to a person accused of crime, by a magistrate or judge, exercising the functions of a committing magistrate, to ascertain whether there is evidence to warrant and require the commitment and holding to bail of the person accused. See Bish. New Cr.L. §§ 32, 225.

It is in no sense a trial for the determination of accused's guilt or innocence, but simply a course of procedure whereby a possible abuse of power may be prevented, and accused discharged or held to answer, as the facts warrant. *State v. Langford*, 293 Mo. 436, 240 S.W. 157, 168.

**Unfair hearing.** See that title.

**HEARING DE NOVO.** Generally, a new hearing or a hearing for the second time, contemplating an entire trial in same manner in which matter was originally heard and a review of previous hearing. On hearing "de novo" court hears matter as court of original and not appellate jurisdiction. *Collier & Wallis v. Astor*, 9 Cal.2d 292, 7 P.2d 171, 173.

**HEARSAY.** Evidence not proceeding from personal knowledge of the witness, but from mere repetition of what he has heard others say. That which does not derive its value solely from the credit of the witness, but rests mainly on the veracity and competency of other persons. The very nature of the evidence shows its weakness and it is admitted only in specified cases from necessity. *State v. Ah Lee*, 18 Or. 540, 23 P. 421, 47. *Young v. Stewart*, 191 N.C. 297, 131 S.E. 734, 737.

It is second-hand evidence, as distinguished from original evidence; it is the repetition at second-hand of what would be original evidence if given by the person who originally made the statement. Literally, it is what the witness has heard another person say. *Stockton v. Williams*, Doug., Mich., 546, 570 (citing 1 Starkie, Ev. 229). Oral or written, is hearsay when its probative force rests in whole or in part on the competency and credit of a person other than the witness. *State v. Kluttz*, 127 Neb. 726, 804, 175 S.E. 81. Hearsay is a statement made by a person not called as a witness, received in evidence at a trial. *People v. Kraft*, 36 N.Y.S. 1034, 1035, 91 N.Y. 200. The term is sometimes used synonymously with "rumor." *State v. Vetter*, 76 Mont. 574, 248 P. 179, 183; *State v. "Rumor"*.

**HEARTH MONEY.** A tax levied in England by Stat. 14 Car. II. c. 10, consisting of two shillings for every hearth or stove in the kingdom. It was extremely unpopular, and was abolished by Stat. 12 Geo. II. c. 22.

M. St. 1, c. 10. "chimney money."

**HEARTH SILVE**  
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*Seaton*, 106 Mo. 19

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866, 867.

**HEAT STROKE.**  
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*v. Standard Sanit*  
W. 806, 807.

**HEAVE TO.** In  
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*The Hugo*, D.C.N

**HEBERMAN.** L  
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Hen. VII, c. 15; C

**HEBERTHEF.**  
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**HEBBING-WEAR**  
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**HERDOMADIUS.**  
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**HEROTE.** The k  
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**HERREW.** Not  
and *Engel v. Tod*,  
Tidish.

# Kansas Association of Counties

*Serving Kansas Counties*

212 S.W. Seventh Street, Topeka, Kansas 66603

Phone (913) 233-2271

January 21, 1988

Testimony Concerning SB 451

To - Honorable Members, Senate Assessment & Taxation Committee

From - John T. Torbert, Executive Director  
Kansas Association of Counties

I am hear today to represent the position of the Kansas County Commissioners Association Executive Committee with regard to SB 451. That committee, composed of six county commissioners representative of the state of Kansas met via telephone conference call this morning and voted unanimously to oppose this legislation.

The opposition centers mainly around the idea of giving the director of property valuation veto authority over a locally, duly elected board with respect to the suspension or termination of an appraiser. I think the reasons for the opposition are self-evident but let me delineate some of them for you.

1) The fact that the director of property valuation has apparently exercised the implied authority in the past is not reason to codify it into statute. Power fills a vacuum. Just because this action was taken in the past does not automatically mean it was legally justifiable or supportable. It simply means that the action was accomplished and probably not challenged by a board of county commissioners.

A & T

1/21/88

ATTACHMENT 5

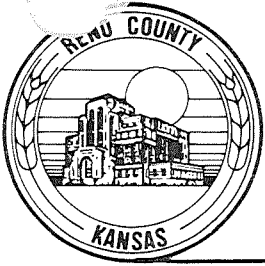
2) The commissioners feel very strongly that the hiring and firing of county personnel is a county matter. If the state were paying the appraiser's salary, it would be a different situation but as we all know, that is not the case.

3) The authority to reinstate under the legislation is omnipotent. In other words - it knows no bounds. Under what conditions should a reinstatement be made? What criteria are applied to the decision? On what specific grounds is the director supposed to make his decision? None of these issues are spoken to in the legislation.

4) This is a grant of authority to an individual - the director of property valuation. Although I can now say that we don't feel the current director would abuse the authority, there is no assurance that abuse wouldn't take place under a future director.

Let me say in closing that all of us have worked hard to see the reappraisal law work smoothly. I think part of the reason it is going well is that we have a concept of shared authority and responsibility. The legitimate roles of the state and counties as partners in the process is recognized. I would submit to you that this legislation tips the balance too far in the direction of state control over what is, and should be, a local function.





COUNTY COMMISSION

RENO COUNTY  
206 West First St.  
Hutchinson, Kansas 67501  
316 665-2929

January 21, 1988

Statement: Senate Bill 451

Kansas statutes provide the authority to oversee and direct the technical aspects of property appraisal. That is the only legitimate state interest. It is not the function of the state to impose personnel administration on local government.

The current system provides for a hearing process which allows the protection deemed adequate for County Appraisers.

To change this process to allow the Director of Property Valuation the final decision concerning the employment of appraisers would create a very difficult, if not impossible working relationship in the County Environment.

Managing counties is difficult enough without further complications by outside influence.

If the state Property Valuation Department determines it necessary to make appraisers state employees, we feel this should be done in its entirety not piecemeal!

Donna S. Zwick  
Member  
Board of Reno County Commission

A & T

1/21/88

ATTACHMENT 6