

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATIONThe meeting was called to order by Senator Fred A. Kerr at
Chairperson8:00 526-S
11:00 a.m./p.m. on February 12, 1988 in room 519-S of the Capitol.

All members were present except:

Senator Mulich (8:00 a.m. mtg.)

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:

John Torbert, Assoc. of Counties
Terry Hamblin, PVD Director
Dave Cunningham, Board of Tax Appeals

Chairman Kerr called the meeting to order and said the agenda for the day would be to have discussion and possible action on S.B.'s 451, 452, and 453. There would be discussion only on S.B. 450, if time allows.

SENATE BILL 451

John Torbert reviewed his analysis of S. B. 451. He explained that S.B. 451 would allow the director of Property Valuation to reinstate a terminated appraiser. He stated that Kansas Association of Counties is opposed to the bill because they feel it should be a county decision. He offered an attachment requesting several amendments. (Att. 1)

Terry Hamblin said that he felt the issue boiled down to the subject of "what is the standard of review". He said he would like for the words, "arbitrary or capricious" in Mr. Torbert's amendment be stricken and the words, "without cause" inserted. He also requested other amendments to the bill.

Senator Nancy Parrish stated that she felt there definitely needed to be a hearing in those situations. Otherwise, it could be very hard to understand both sides and it could be unfair.

Dave Cunningham (Att. 2) stated that the Board believes the committee should be aware that the language proposed by Mr. Torbert could limit the Director's ability to make an independent decision based on the facts derived in the director's independent inquiry. This would mean that the only basis for reinstatement would be if the Director finds the decision to terminate the appraiser was arbitrary or capricious. He also said that the Board thinks that the appeal process is already in place and that the proposed language in line 88 is inappropriate.

Senator Karr offered a conceptual motion to remove the Board of Tax Appeals from involvement in this process. Senator Burke seconded. Motion carried.

Senator Frey moved that there be a provision provided in the bill that would establish that the procedures being used would include provisions for an appeal. This would include a hearing with records of the hearing. (Administrative Procedures Act concepts would be amended into the bill.) Senator Burke seconded. Motion carried.

Senator Karr moved that the original language of the statute be reinstated with the exception of the two conceptual amendments that were adopted. Senator Frey seconded. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT & TAXATION,
room ~~519-S~~ ^{526-S &} Statehouse, at ~~11:00~~ ^{8:00 a.m. &} a.m./p.m. on Feb. 12, 1988

*Chairman Kerr stated that the committee would further look at the bill when the Revisor incorporates the amendments into the bill.

Chairman Kerr said the discussion would continue at the 11:00 meeting.

SENATE BILL 452

The committee reconvened at 11:00.

Chairman Kerr stated that he had discussed S.B. 452 with the Property Valuation Director. The bill had been first recommended by the Department of Revenue. Senator Kerr said that Director Hamblin feels that S.B. 452 should not be considered further since the sales ratio concept may change with the implementation of reappraisal and classification.

Senator Frey moved that S.B. 452 be recommended adversely. Senator Burke seconded. Motion carried.

SENATE BILL 453

There was committee discussion on the definition of "livestock". It was noted that there are several definitions of "livestock" in the statutes. Comments were made as to whether items such as racing horses and dogs, fish, and fowl should be included in the definition.

Senator Karr moved that lines 36 and 37 be stricken from the bill. Senator Allen seconded. Don Hayward, Revisor, explained that by striking the words on line 36 and 37 it would be left up to the courts to define what "livestock" is under the constitution. He also said that the courts could also change the definition if one is adopted. Motion carried.

Attachment 3 explains a proposed definition of "Vacant Lot". It was drafted by the P.V.D. It would define "Vacant Lot" as a parcel of land which is unimproved except for utility services. It would be inserted on p. 8, line 274 of S.B. 453. Senator Karr moved to adopt the proposed definition. Senator Mulich seconded. Motion carried.

Senator Burke moved to adopt the amendment requested by P.V.D. (Attach. 4) Senator Mulich seconded. Motion carried.

Senator Frey moved to strike language from lines 163 to 165 listed under Subsection (5). The effect of the motion would be to require the Board of Tax Appeals to make an initial review of these inventory exceptions. Senator Karr seconded. Motion carried.

Senator Karr moved to technically amend on line 162 to separately number livestock. Senator Thiessen seconded. Motion carried.

Attachment 5 from the Department of Revenue explains "retail cost when new" as meaning "fair market value when new". Senator Salisbury moved to adopt this amendment. Senator Thiessen seconded. Motion carried.

As requested by the Revisor, Don Hayward, Senator Thiessen moved to insert a "comma" in line 292 before the word "at". Senator Montgomery seconded. Motion carried.

Senator Hayden moved to recommend S.B. 453 favorably for passage as amended. Senator Karr seconded. Motion carried.

Senator Mulich moved to adopt the minutes of the February 11 meeting. Senator Hayden seconded. Motion carried.

Meeting adjourned.

SENATE BILL No. 451

By Special Committee on Assessment and Taxation

Re Proposal No. 7

12-16

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

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

23 Section 1. K.S.A. 19-431 is hereby amended to read as fol-
24 lows: 19-431. Whenever it shall be made to appear to the board of
25 county commissioners of any county or the district board of an
26 appraisal district by evidence satisfactory to ~~said~~ such board that
27 the appraiser of such county or district has failed or neglected to
28 properly perform the duties of ~~his~~ such appraiser's office, by
29 reasons of incompetency or for any other cause, the board shall
30 enter upon its journal an order suspending or terminating the
31 county or district appraiser from ~~his~~ office, which order shall
32 state the reasons for such suspension or termination; ~~and~~. Upon
33 the service of any such order upon the appraiser so suspended or
34 terminated ~~he~~ such appraiser shall at once be divested of all
35 power as county or district appraiser and shall immediately
36 deliver to the person appointed to discharge the duties of the
37 office ~~in his stead~~, all books, records and papers pertaining to the
38 office. The board of county commissioners or district board shall
39 appoint a temporary appraiser to discharge the duties of the
40 office until the suspension is removed or the vacancy filled, and
41 the person so appointed shall take the oath of office required by
42 law and thereupon such person shall be invested with all of the
43 powers and duties of the office.

44 *If at the time of the suspension or termination of any appraiser*
45 *hereinbefore provided such appraiser requests a hearing*

to determine the basis of the suspension or termination.

suspension or termination was arbitrary or capricious, the director shall make findings of fact and conclusions of law and thereafter the

and

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 11
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 and
0062 should be terminated, then, the director of property valuation
0063 shall make and enter upon the record of his official proceeding
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

subject to appeal to the district court of the county within such appraiser's district.

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.



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*

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

FROM: Keith Farrar, Chairman
Board of Tax Appeals

DATE: February 9, 1988

RE: Proposed Amendments to Senate Bill 451

The Board has had the opportunity to review the proposed changes to Senate Bill 451 at lines 58, 79, 80 and 88.

With respect to the proposed changes at line 58, the additional language appears to clarify the purpose of the independent inquiry and the Board has no objection to this language.

With respect to the language found at line 79 the Board believes the committee should be aware that the proposed language could limit the Director's ability to make an independent decision based upon the facts derived in the director's independent inquiry. This language suggests that the only basis for reinstatement would be if the Director finds the decision to terminate the appraiser was arbitrary or capricious. If the committee prefers the director to have the ability to make an independent decision apart from that made by the commissioners, this language may be too limiting. If, on the other hand, the committee prefers for the Director merely to view the facts surrounding the dismissal and, barring an arbitrary or capricious decision by the commissioners, not allow the director to substitute his judgment, this language is probably appropriate. Since this provision impacts the Director, the Board takes no position on this language other than to make you aware of the potential limitations.

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Senator Fred Kerr
Senate Bill No. 451

With respect to the proposed language at line 88, the Board does have some concern with the potential impact on the current procedural avenues of appeal. The proposed language provides that the county commissioners can appeal the Director's decision to reinstate the terminated appraiser to the District Court. However, K.S.A. 74-2438 clearly provides that an appeal may be taken to the State Board of Tax Appeals from any finding, ruling, order, decision, or other final action on any case of the Director of Property Valuation by any person aggrieved thereby. If this proposed language is adopted, the county could have a direct appeal to the District Court without first appealing to the Board of Tax Appeals. Furthermore, there is no indication as to the scope of the District Court's review if this language is adopted. If the commission is required to appeal the Director's decision to the Board of Tax Appeals, the Board would take evidence on the issues related to the reinstatement of the terminated appraiser and render a decision as to whether the Director's reinstatement of the terminated appraiser was appropriate. Either party aggrieved by the Board's decision could then appeal to the Court of Appeals; however, that appeal would not be a new trial, but rather, an appeal on the record made before the Board of Tax Appeals. In the case where the Director of Property Valuation has terminated an appraiser, the appraiser may appeal that decision directly to the Board of Tax Appeals and any further appeals would be to the Court of Appeals, not the District Court. Thus, the Board believes it is important to fully explore the avenues of appeal and determine which is preferred. The Board suggests that the appeal process is already in place and that the proposed language at line 88 is inappropriate.



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

MEMORANDUM

TO: Senate Assessment & Taxation Committee
Senator Fred Kerr, Chair
FROM: Terry D. Hamblin, Director
DATE: February 12, 1988
SUBJECT: Vacant Lots

Article 11, Section 1(b) of the Kansas Constitution now requires that "Real property be further classified into four subclasses," and that "Such property shall be defined by law for the purpose of subclassification and assessed uniformly as to subclass . . ." All real property is now defined as Class 1, and Subclass C consists of "Vacant Lots," which are to be assessed at 12% of their market value.

For the purposes of classification, the Property Valuation Division has defined "Vacant Lot" as a parcel of land which is unimproved except for utility services. Following from that:

- * Parcel is defined as a contiguous area of land under one ownership that can be included under one description for appraisal purposes as set forth in the Kansas Mapping Specifications.
- * Improvement is defined as buildings, structures, or other development located upon or attached to the land which, under Kansas law, become part of the real estate.
- * Utilities are defined as water, gas, electric, or sewer services available to the parcel.

Based upon this definition, the following implications should be noted:

1. Regardless of highest and best use considerations or current surrounding use, all residential, commercial, and industrial properties meeting the vacant lot definition criteria will be sub-classed and assessed as vacant lots. **However, they will be appraised at their highest and best use.**
2. Use of the word "lot" does not restrict how the parcel is legally described. It applies to platted subdivision lots and parcels described by metes and bounds descriptions or U. S. Government Survey references.

3. Vacant lots may be either urban or rural and no size limitation is imposed. For example, a vacant lot may be 50 X 100 feet, 1000 X 1000 feet, or 160 acres.
4. The definition implies that a parcel of land having an improvement (except utilities) on any portion thereof could not be considered a vacant lot. For example: A 10-acre tract of which 9 acres are vacant and unimproved and 1 acre is improved with a homesite or industrial facility. The 9 acres that are vacant and unimproved would not be segregated and sub-classed as a vacant lot. Additionally, such items as asphalt paving, fencing, or a small dilapidated shed having little or no value would all be considered improvements to the parcel.

This definition was developed after considerable thought, discussion and research. Formulation of the definition and its implication was not a matter taken lightly. The Property Valuation Division carefully reviewed existing legislation, attempted to track legislative intent, and studied many other possible definitions completely. Eventually, the definition just presented was selected as being most representative of the wording contained in the constitutional amendment. Should the committee feel differently and have other suggestions, the division would welcome the opportunity to hear and address them. Ultimately we are interested only in carrying out the order of the amendment, which is to ensure that each subclass of property be assessed uniformly throughout the state.

0120 county appraiser's recommendation related thereto, the board
 0121 may fix a time and place for hearing, and shall notify the appli-
 0122 cant and the county appraiser of the time and place so fixed. In
 0123 any case where a party to such request for exemption requests a
 0124 hearing thereon, the same shall be granted. In all instances
 0125 where the board sets a request for exemption for hearing, the
 0126 county shall be represented by its county attorney or county
 0127 counselor.

0128 (h) In the event of a hearing, the same shall be originally set
 0129 not later than 90 days after the filing of the request for exemption
 0130 with the board.

0131 (i) When a determination is made as to the merits of the
 0132 request for exemption, the board shall enter its order thereon and
 0133 give notice of the same to the applicant, the county attorney and
 0134 the county appraiser by sending to each a certified copy of its
 0135 order.

0136 (j) The date of the order, for purposes of filing an appeal to
 0137 the district court, shall be the date that a certified copy of the
 0138 order is mailed to the party seeking to appeal.

0139 ~~(k) During the pendency of a request for exemption, and in
 0140 the event that taxes have been assessed against the subject
 0141 property, no interest shall accrue on any unpaid tax for the year
 0142 or years in question from the date the request is filed with the
 0143 county appraiser until the expiration of 30 days after the board
 0144 issued its order thereon.~~

0145 (l) In the event the board grants the initial request for ex-
 0146 emption, the same shall be effective beginning with the date of
 0147 first exempt use.

0148 (m) In conjunction with its authority to grant exemptions, the
 0149 board shall have the authority to abate all unpaid taxes that have
 0150 accrued from and since the date of first exempt use. In the event
 0151 that taxes have been paid during the period where the subject
 0152 property has been determined to be exempt, the board shall have
 0153 the authority to order a refund of taxes for a period not to exceed
 0154 three years.

0155 (n) ~~The provisions of this section shall not apply to farm
 0156 machinery and equipment exempted from ad valorem taxation~~

During the pendency of a request for exemption, and in the event that taxes have been charged against the subject property pursuant to K.S.A. 79-2004 and 79-2004a which remain unpaid for the year or years in question, said taxes shall not be considered delinquent until the expiration of 30 days after the Board issues its order thereon. In the event the Board determines the applicant has presented no reasonable evidence in support of the request for exemption, the taxes charged shall be considered delinquent as of the day the taxes were originally due.



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

MEMORANDUM

TO: Senate Assessment & Taxation Committee
Senator Fred Kerr, Chair

FROM: Terry D. Hamblin, Director

DATE: February 12, 1988

SUBJECT: Retail Cost When New

Issue: What does the term, "retail cost when new," mean?

The term, "retail cost when new," appears in Art. 11, Sect. 1 of the Constitution of the State of Kansas (the "Classification Amendment"), which was passed by the voters of Kansas in 1986.

The meaning of the term, "retail cost when new," can be determined by examining the explanatory statement which appeared on the ballot in 1986 (See, HCR 5018, L. 1985, ch. 364). The explanatory statement provides in part as follows: "{c}ommercial and industrial machinery and equipment would be assessed at 20% of its fair market value." (Emphasis added.) It is therefore submitted that in the context of the "classification amendment" the term, "retail cost when new," is synonymous with the term, "fair market value" when new. Therefore, the starting point in determining the value of any commercial and industrial machinery and equipment is its fair market value when new, not fair market value determined at some other point in its economic life.

It is recommended, therefore, that no statutory definition of "retail cost when new," be approved by the Legislature. The Division of Property Valuation will prescribe commercial guides showing "retail cost when new" or devise such guides for distribution to county appraisers. The term, "retail cost," is a common term in commercial guides.

All commercial and industrial machinery and equipment will retain a residual value of 20% of the retail cost when new unless such property is no longer being used. If such property is no longer being used, its value shall be its "fair market value," which may be less than 20% of the retail cost when new. The assessment rate will remain 20%.