

Approved \_\_\_\_\_

2/16/89

Date

MINUTES OF THE House COMMITTEE ON Taxation

The meeting was called to order by Representative Keith Roe at  
Chairperson

9:00 a.m. ~~pm~~ on February 15, 1989 in room 519-S of the Capitol.

All members were present except:  
Representative Long, excused

Committee staff present:  
Tom Severn, Research  
Chris Courtwright, Research  
Dan Hayward, Revisor's Office  
Lenore Olson, Committee Secretary

Conferees appearing before the committee:  
Gary Toebben - Lawrence Chamber of Commerce  
Jim Dahmen - Columbus Telephone Co.  
Larry Froschheuser - Junction City-Geary County Economic Development Corp.  
Mason Ashby - First Kansas Venture - Junction City, KS  
Jim DeMarco - Ellis County Economic Development Comm.  
David Cunningham - Attorney for Secretary of Board of Tax Appeals  
Wayne Zimmerman - Deputy Secretary of Commerce

Chairman Roe stated that the purpose of this meeting was to hear concerns in the area of economic development.

Wayne Zimmerman testified that the constitutional provision which was thought to provide a valuable economic development tool has proven to be very complex in its application. (Attachment 1)

Gary Toebben stated that the amendment is obviously accomplishing the purpose for which it was intended but has created a disincentive for firms who lease their buildings and for communities that construct speculative industrial buildings to attract prospects. (Attachment 2)

Jim Dahmen asked that corporations be provided the ability to build buildings and lease them to job creating entities without the burden of tax liabilities for a specified period of time. (Attachment 3)

Larry Froschhueser stated that the current interpretation that the industry must own the property is too restrictive and negates the tax abatement incentives. (Attachment 4)

Mason Ashby stated that under the present circumstances, there is no effective, easy remedy and the Legislature and the Administration are urged to begin the process of developing timely, effective corrections which obtain the intended result of the 1986 amendment. (Attachment 5)

Jim DeMarco stated that they believe that when Kansas' voters approved the constitutional amendment, they did not intend to see it so narrowly interpreted and applied. (Attachment 6)

David Cunningham reviewed examples of applications for Economic Development Exemptions. (Attachment 7)

The minutes of February 14, 1989, were approved.

The meeting adjourned.

# Testimony

*Presented to:*

The House Taxation Committee

*by*

D. Wayne Zimmerman  
*Deputy Secretary of Commerce*

February 15, 1989

2/15/89  
attachment 1

The Department of Commerce appreciates the opportunity to discuss with you a concern in the area of economic development. We continue to have questions and concerns expressed to us about Article II, Section 13 of the constitution relating to the ability of city and county governments to grant property tax abatement on land, building, and equipment to companies engaged in manufacturing; warehousing and distribution; or research and development.

The constitutional provision which was thought to provide a valuable economic development tool has proven to be very complex in its application. City and county governments are unsure about what commitments they can make to be competitive in seeking new businesses for Kansas.

The language used in the constitution, as now interpreted, may not contemplate the innovative financing and complex ownership arrangements being commonly used today. For example, it is a common practice for corporations to have real estate subsidiaries that own property and lease it to the production units within the corporation. This arrangement does not meet the "exclusive use" test now being applied.

Attached is a letter from Dillard's Department Stores relating to their experience with this subject.

The Department of Commerce is in attendance today not to debate the legal positions of the Board of Tax Appeals or the courts. We are here to provide a forum for our co-workers in economic development from Lawrence, Junction City, Columbus, Hays and other Kansas communities. Some of these community representatives are in attendance to inform the committee of the challenges that communities face in attracting new jobs and investment to Kansas.

# Dillard Department Stores, Inc.

4501 N. BEACH ST.  
FORT WORTH, TX 76137

February 10, 1989

State of Kansas  
400 W. 8th - Suite 500  
Topeka, Kansas 66603-3457

Attn: Mr. Harland E. Priddle  
Secretary of Commerce

Dear Mr. Priddle,

As the State of Kansas evaluates its various economic development efforts, specifically the use of ad valorem tax exemptions, I thought it might be worthwhile to express some concerns that Dillard Department Stores, Inc. experienced in moving a major warehouse operation into Kansas.

Corporations that are involved in job relocation and expansions often find themselves involved in complex real estate transactions, as we were with our Kansas relocation.

In order to fully utilize tax incentives and to deal effectively with capital gains laws that have been in effect until recently, many corporations utilize real estate holding companies. These holding companies take advantage of tax options, and then lease buildings back to the principal-use companies.

In Kansas, this was very difficult due to the limitations of the state constitution in Section 13 Article II as it effects the normal processes of holding companies.

As federal law on capital gains now stand, the holding company tool is less important than it was a few years ago, but nonetheless I would encourage state officials to consider lifting the limitations on holding company usage. As federal laws change, and tax incentives become more and more critical to effective economic enhancement, Kansas should be making every effort to lift restrictive limitations on the companies that can bring economic growth to the state.


In the case of Dillards, we considered utilization of a holding company, but ultimately decided against using that particular tool. For companies in different situations, the restrictions placed on holding companies that may require tax incentives could create an unfavorable economic environment.



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Thank you for your consideration of my comments, and please accept my compliments for your continuing effort to create a positive, pro-growth environment for the State of Kansas.

Sincerely,

A handwritten signature in black ink that reads "D.C. Bradley". The signature is written in a cursive style with a large, looped initial "D".

D.C. Bradley  
Vice President

DCB/bt

Testimony before the  
HOUSE TAXATION COMMITTEE

February 15, 1989

by

Gary L. Toebben, CCE  
President  
Lawrence Chamber of Commerce  
Box 581  
Lawrence, Kansas 66044  
(913) 843-4411

For more than twenty years, Kansas communities used industrial revenue bonds as the vehicle to provide property tax abatement to new and expanding industries. Industrial buildings that were financed with revenue bonds were eligible for a property tax abatement, even if they were speculative or were intended to be leased rather than sold. As the sunset of tax-exempt IRBs approached, Kansas needed a new vehicle to provide these abatements to remain competitive with other states.

The 1986 Constitutional Amendment allowing cities and counties to provide property tax abatement to industrial, warehouse and research and development firms provided this vehicle.

Packer Plastics was the first firm in Lawrence, and maybe the State, to use the Amendment. The result was a \$6.7 million expansion and the addition of over 100 new jobs. Property tax abatement was also a major factor in the location of UARCO in Eudora. This firm will invest nearly \$35 million and create over 200 highly skilled jobs.

*2/15/89  
Attachment 2*

The Amendment is obviously accomplishing the purpose for which it was intended. It has however, created a disincentive for firms who lease their buildings and for communities that construct speculative industrial buildings to attract prospects. These speculative buildings are usually developed by a non-profit organization whose sole purpose is to create jobs, but without a specific tenant in mind. The reasoning is, of course, that industrial prospects prefer existing facilities and the availability of a "shell" building allows a firm to get into production faster.

A non-profit group in Lawrence is about to embark on such a project. An 80,000 square foot shell building will be constructed in our new East Hills Business Park. Favorable financing for up to 80 percent of the project cost will be provided by six local financial institutions. The remainder of the funds needed will be raised from within the business community.

The key to the success of such a project is to keep the costs, both initial and long term, as reasonable as possible. Should the building remain unoccupied for a long period of time, carrying costs such as interest, property taxes and insurance could force up the asking price of the building to a level unacceptable to prospects. A property tax abatement on a speculative facility would help keep costs reasonable.

The reason we are constructing a spec building is to attract a new or expanding manufacturing or warehouse firm, so it is consistent with the intent of the 1986 Constitutional Amendment.



Unfortunately, because the building is not being constructed for a specific firm, a property tax abatement cannot be obtained.

Many communities in Kansas and across the nation have attracted new industry by using a local development corporation or a private developer to build and own a facility for lease to a specific tenant.

Another problem is that many industrial prospects will only consider leasing facilities. Rather than become a real estate owner and developer, they prefer to concentrate on what they do best -- manufacture and market products.

Also, many firms that have great job creation potential are relatively new and do not have a long term track record. As a result, they cannot secure the financing necessary to own a building.

As the Amendment is currently interpreted, local development groups and private developers cannot receive a property tax abatement on a facility they construct and lease unless the lease includes an option to purchase. Since many firms desire a simple lease, there is no method of passing on the advantages of a property tax abatement.

In Lawrence, we currently have two proposals out (one from our non-profit development corporation and one from a private developer) to potential new firms that wish to lease facilities. If these firms were to locate, they would create 175 jobs. Our competitive position would be greatly enhanced if we had the ability to offer lower rents because of a property tax abatement on their buildings.

ORAL TESTIMONY BY JIM DAHMEN BEFORE THE

HOUSE TAXATION COMMITTEE;

02-15-89, 9:00 A.M.

MR. KEITH ROE, CHAIRMAN :

Why in the world would anyone want to build a 40,000 s.f. speculative industrial building in the second poorest\* county in the State of Kansas \*(Ks. Statistical Abstract '87-'88)? Why in the world would anyone struggle, beg, plead for an improved highway through a county that time and State Government has all but forgotten? Why in the world would anyone try to save a county that has lost 50% of its current population in the last 60 years? BECAUSE it is a part of the State of Kansas; BECAUSE we need jobs desperately, and BECAUSE IT'S WORTH SAVING!

Presently, there is a group of dedicated people in the City of Columbus who meet every other Wednesday morning at 7:01 A.M. to discuss, plan and take action to save their community. In the last 30 months, they and a host of other people, both elected and volunteer, have accomplished the following: built a new high school, a new medical clinic, opened a new 147 parcel residential development, developed an industrial park, put down \$400,000 in street overlay, refurbished 38 buildings in the central business district, attracted a full-line implement dealer, two new auto dealerships, and built a clock tower to house a refurbished 1919 Seth Thomas Courthouse clock.

Yet, even with all of the above, in the last 3 weeks, we've had a local meat processing plant close, a restaurant close, a convenience store close, plus the announcement of our bakery and a farm/automotive supply store being placed on the market for liquidation and closure, Parsons Ammunition plant announcing permanent layoff of 400 people, many Cherokee Countians, Pillsbury Co. in Joplin, Missouri, closing, leaving 200 people unemployed, and we're still reeling from the March, 1986 closure of B.F. Goodrich and the loss of 1900 jobs in the area.

2/15/89  
attachment 3

Our community and county must respond to these evermounting pressures or merely set back and let the grim reaper of rural decay win the battle of life as we know it. That is why, on the issue of highways, we have not asked you to give us a highway, but to give us a way to pay for a highway. That is why we, as a community, also built a 40,000 s.f. speculative industrial building through our 501(c) industrial development corporation. We didn't build it to make money. We built it to create jobs. We built it as a part of our strategy to counter some very disturbing trends in our county.

In the few moments I have left at the podium, please walk with me through the handout and see that what I have been saying are not words from some wildeyed person screaming "the sky is falling". I represent the 22,000 people of Cherokee County who want and need economic stability.

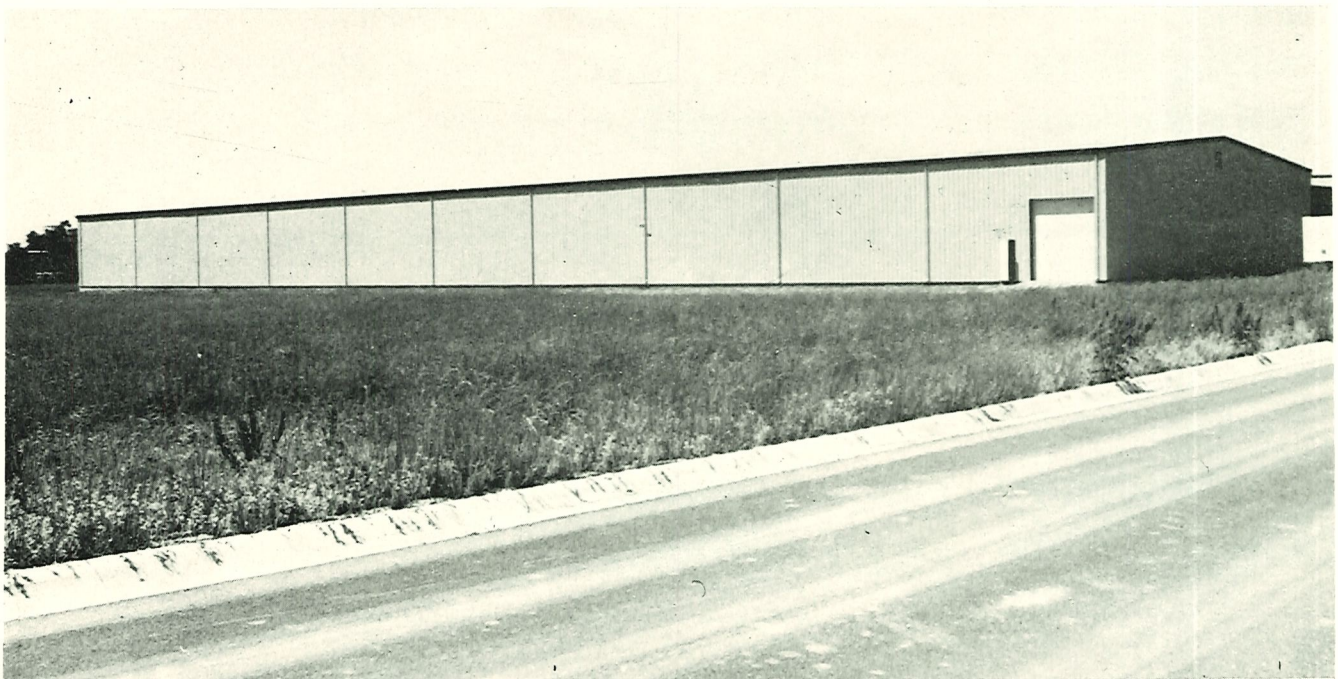
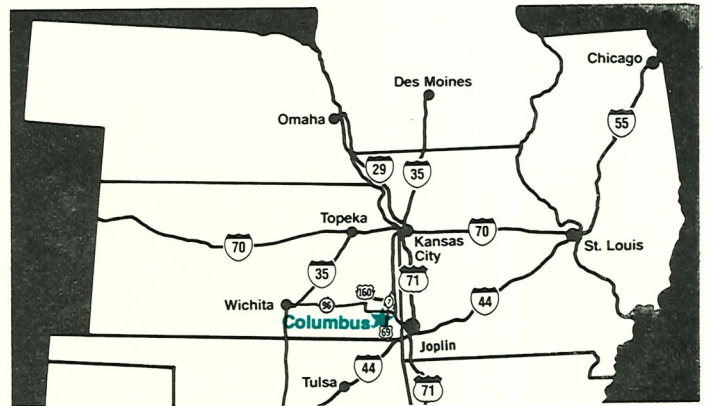
(Review Handout)

In closing, please let us help you with your goal of creating jobs for Kansans by passing a job creating/industrial buildings incentive program, directed at non-profit 501(c) corporations. Providing them the ability to build buildings and lease them to job creating entities without the burden of tax liabilities for a specified period of time.

Thank you, Mr. Chairman, I stand for questions.

Columbus Area Chamber of Commerce  
520 East Maple  
Columbus, KS 66725

City	Distance
Tulsa	101
Kansas City	147
Wichita	169
St. Louis	312
Chicago	649



**Industrial Building Available**  
**Columbus, Kansas**

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## GENERAL INFORMATION

### LOCATION

Columbus Industrial Park  
Inside Columbus City Limits  
Within the Columbus Enterprise  
Zone.

### SIZE

3.7 (acres)  
9 (acres) adjacent acreage

### ZONING

Industrial

### HIGHWAY

U.S. Hwy 69, KS 7, KS 96

### DISTANCE TO AIRPORT

Twenty-two miles to Joplin  
Airport.

### DISTANCE TO RAILROAD

One mile to Burlington Northern &  
M-K-T.

### DISTANCE TO WATERWAY

One hundred miles to Arkansas  
River-Muskogee

### DISTANCE TO INTERSTATE

Twenty-two miles to I-44

### MOTOR FREIGHT

8 Interstate Lines

## BUILDING INFORMATION

### TOTAL AREA

40,200 square feet

### BUILDING EXPANDABLE

Yes

### YEAR CONSTRUCTED

1988

### CONSTRUCTION

Steel

### COLUMN SPACING

25' x 60'

### CEILING HEIGHT CENTER

23'

### SIDE WALL HEIGHT

20'

### ROOF CONSTRUCTION

Steel

### LOADING DOCK

### ONE TRUCK DOOR

Height 14'

Width 12'

### FIRE CLASS RATE

5

## UTILITIES INFORMATION

### WATER SUPPLIER

City of Columbus

8" main, 60 P.S.I.

### SEWER SUPPLIER

City of Columbus

10" main

### ELECTRICAL SERVICE

The Empire District Electric Co.

12 KV 3 Phase

### NATURAL GAS SUPPLIER

KPL Gas Service Co.

2" main, 58 P.S.I.

## Contacts

Wes Houser

c/o Columbus State Bank

316-429-2515

Randy Burleson

c/o Empire Dist. Elec.

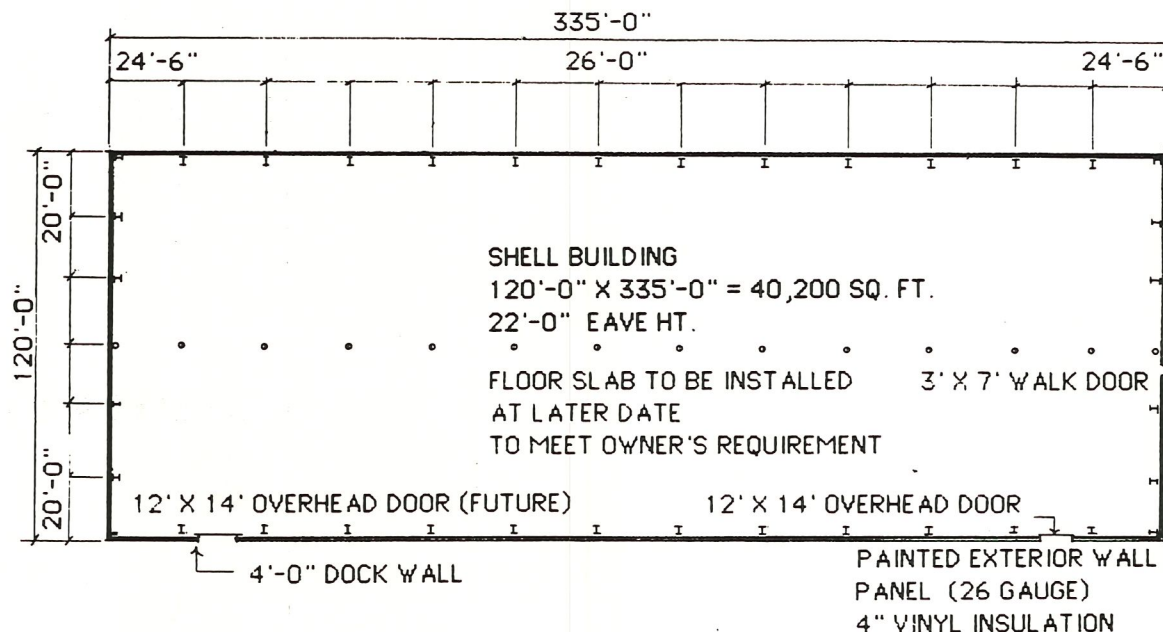
316-429-2375

Jim Dahmen

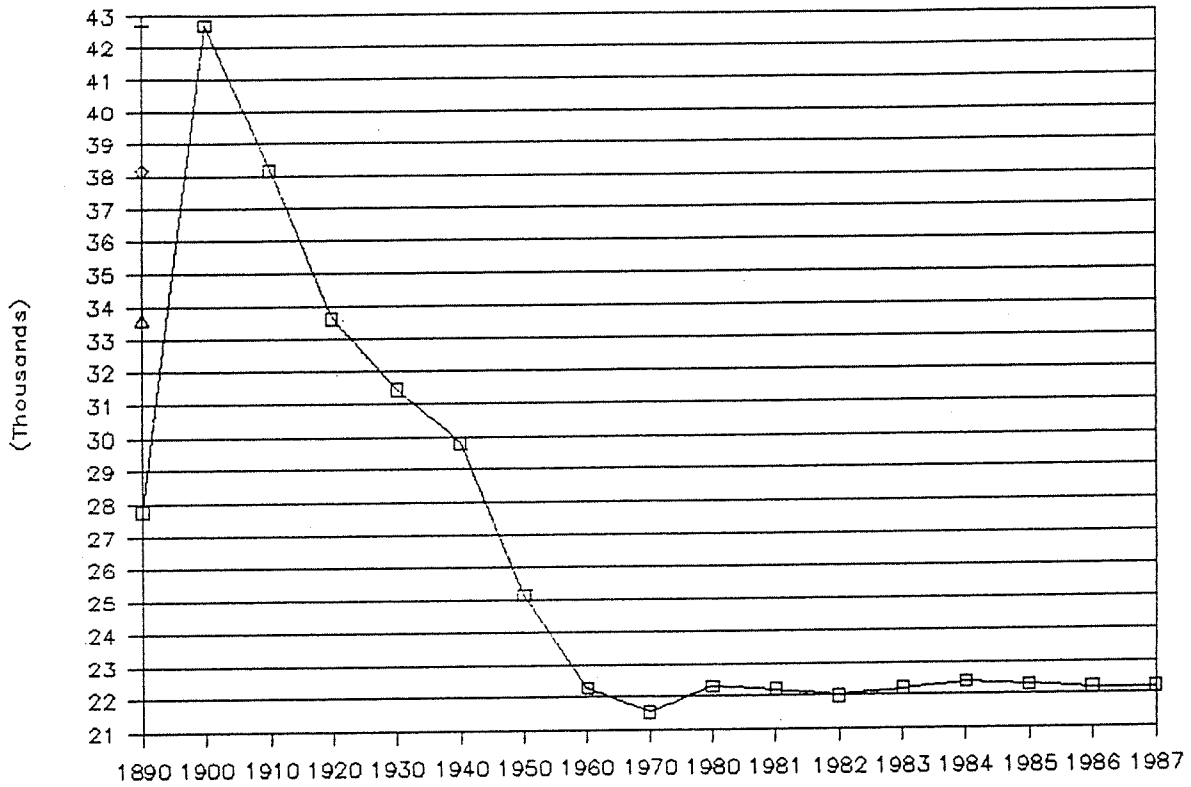
c/o Columbus Telephone Co.

316-429-3132

*According to the Edison Electric Institute, The Empire District Electric Co. industrial rates are among the lowest 15 percent nationally.*



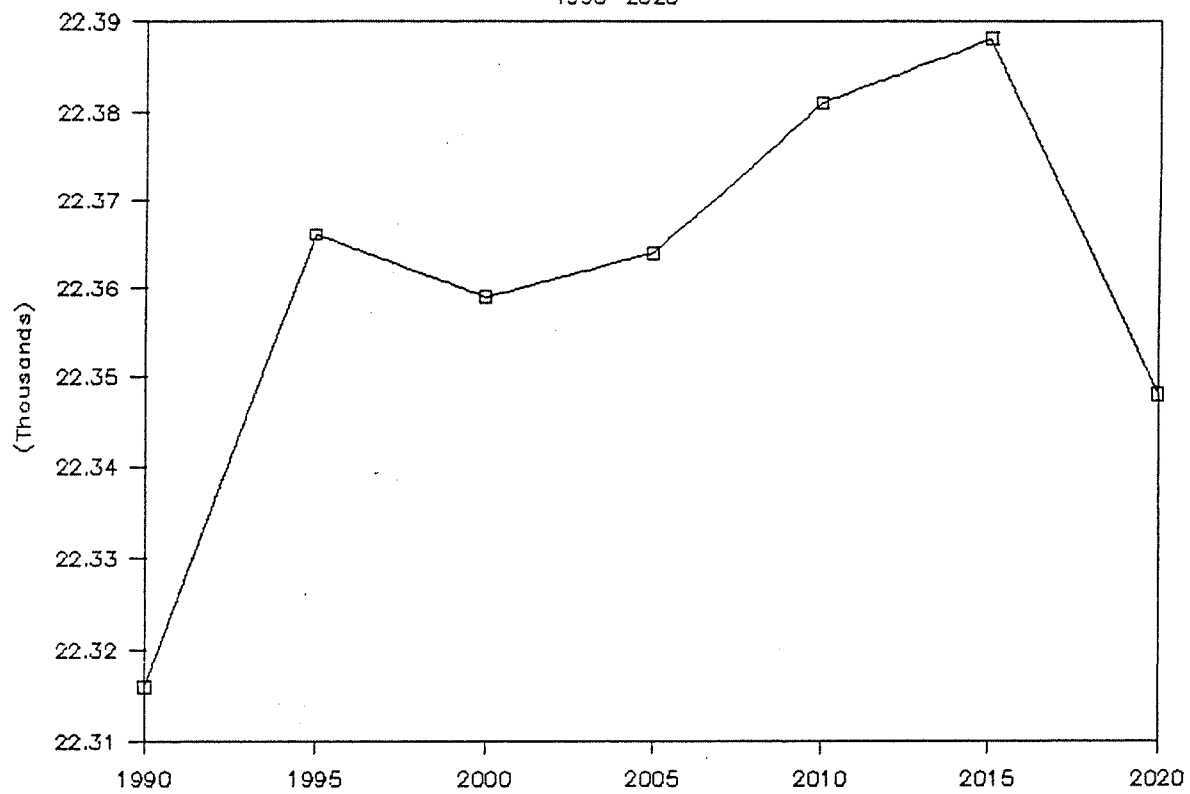
# Population: Cherokee County 1890-1987



Source: KS Statistical Abstract 1987-88

# Population Projections: Cherokee County

1990-2020

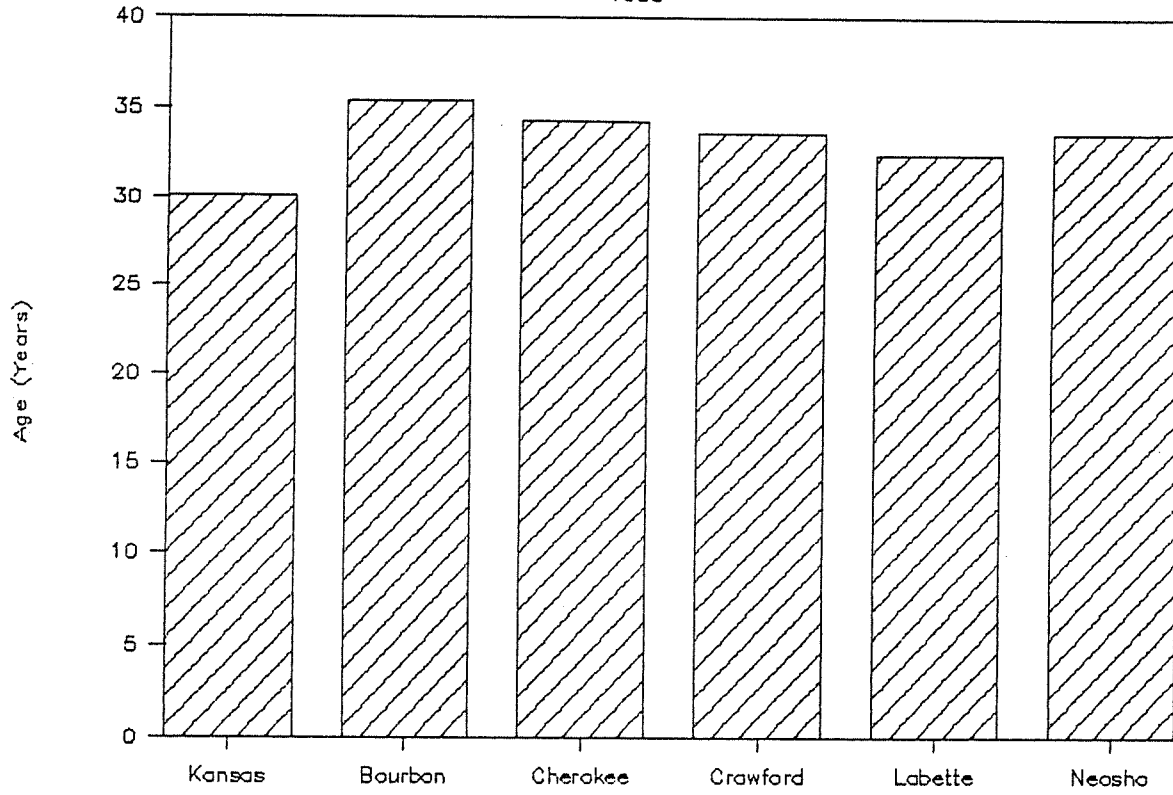


Source: KS Statistical Abstract 1987-88

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# Median Age: Persons in Kansas Counties

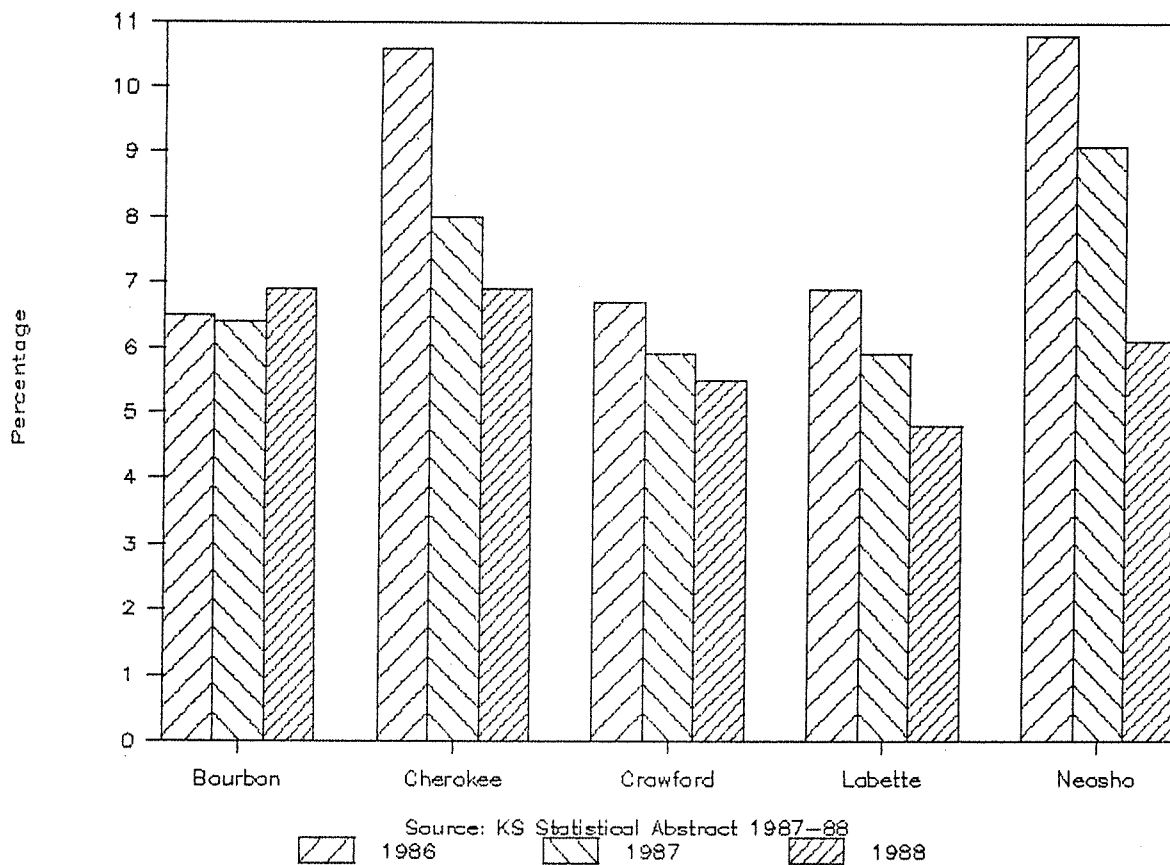
1980



Source: KS Statistical Abstract 1987-88

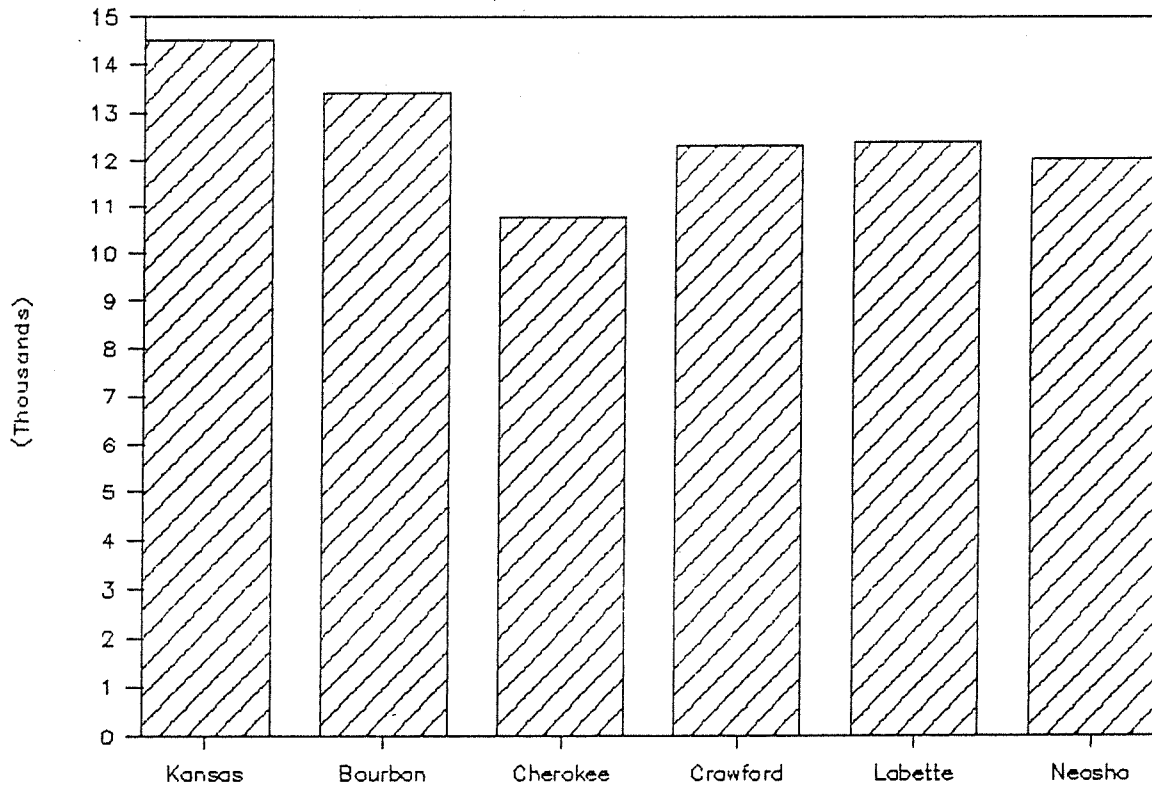


# Rate of Unemployment



# Per Capita Personal Income By County

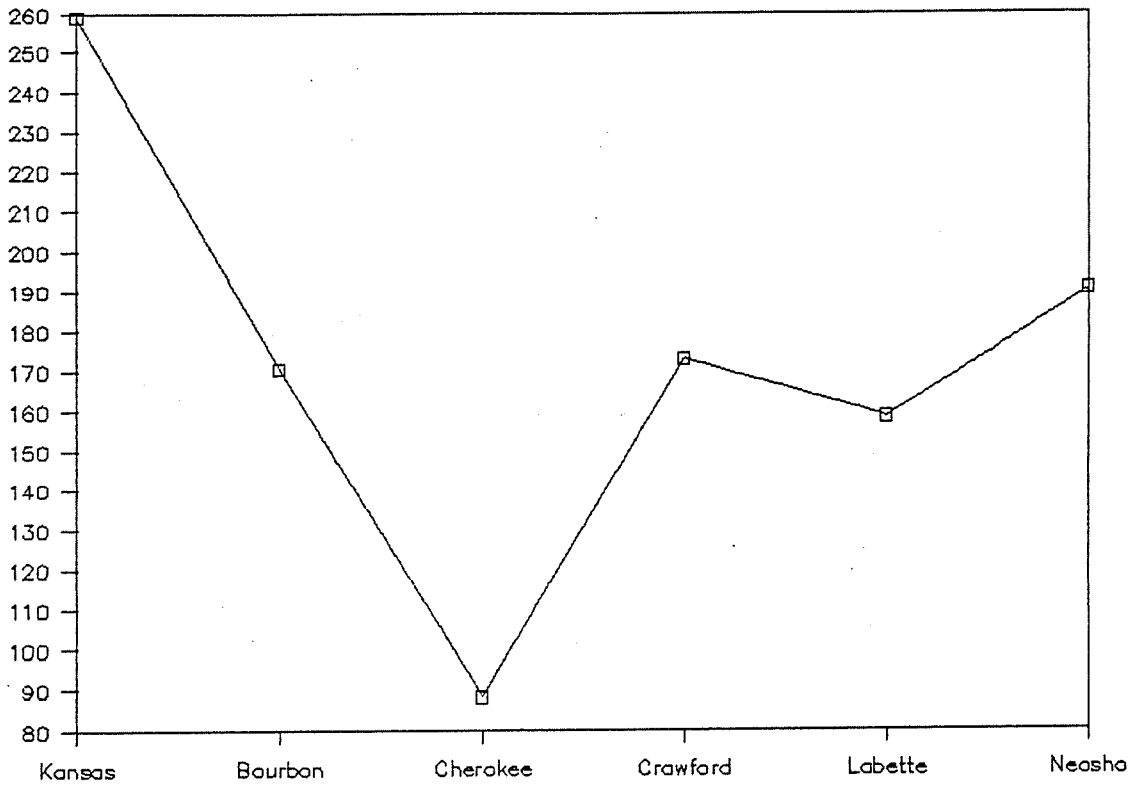
1986



Source: KS Statistical Abstract 1987-88

# Per Capita Sales Tax/Collected—County

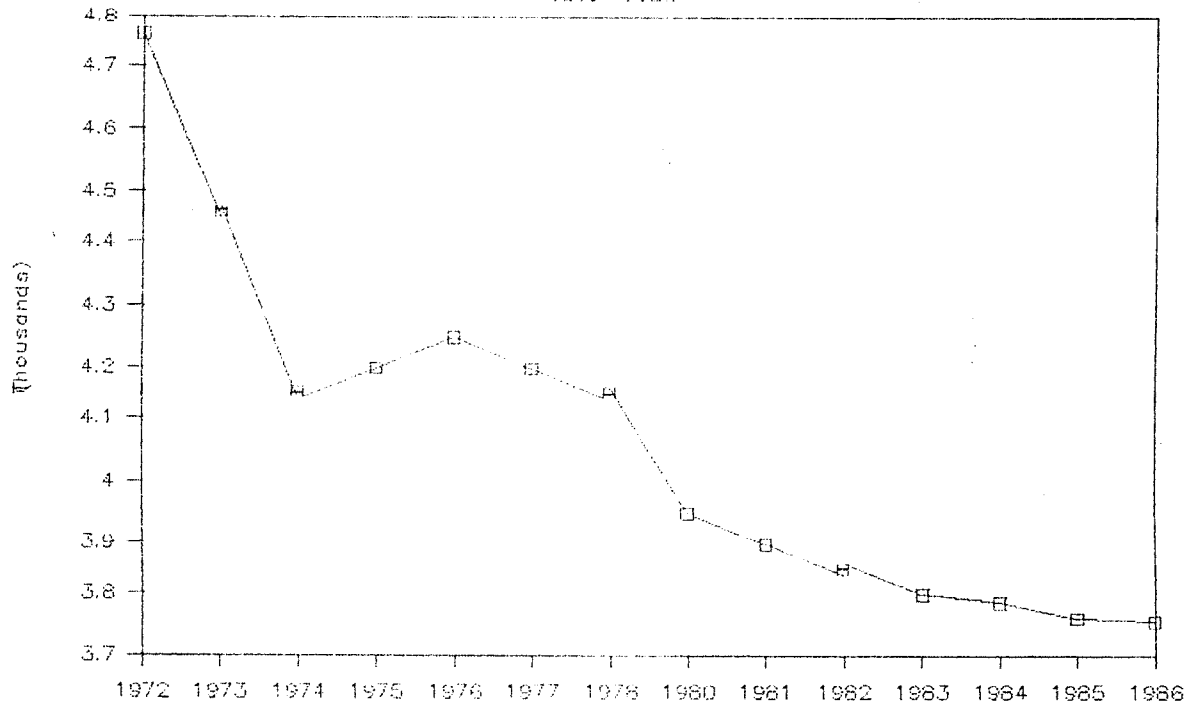
1987



Source: KS Statistical Abstract 1988-87

# Public School Enrollment

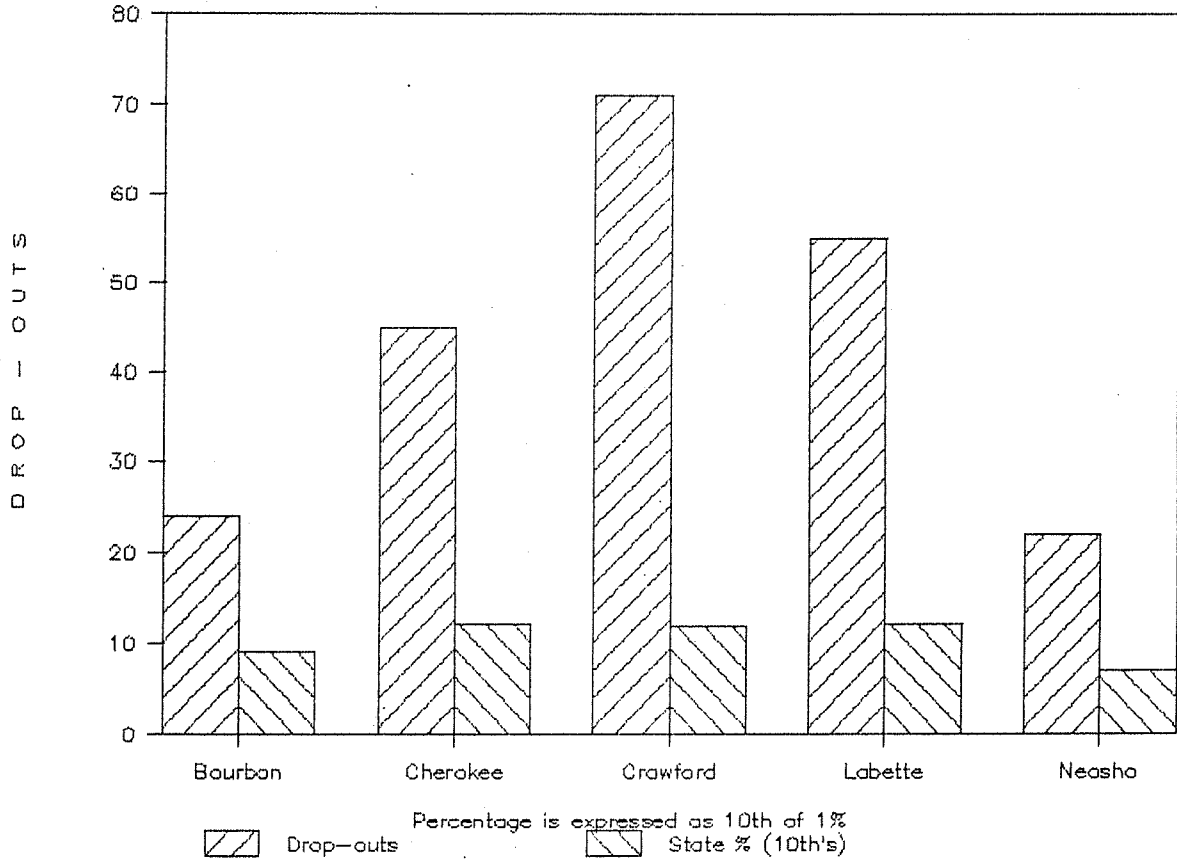
1972-1986



Source: KS Statistical Abstract 1987-88

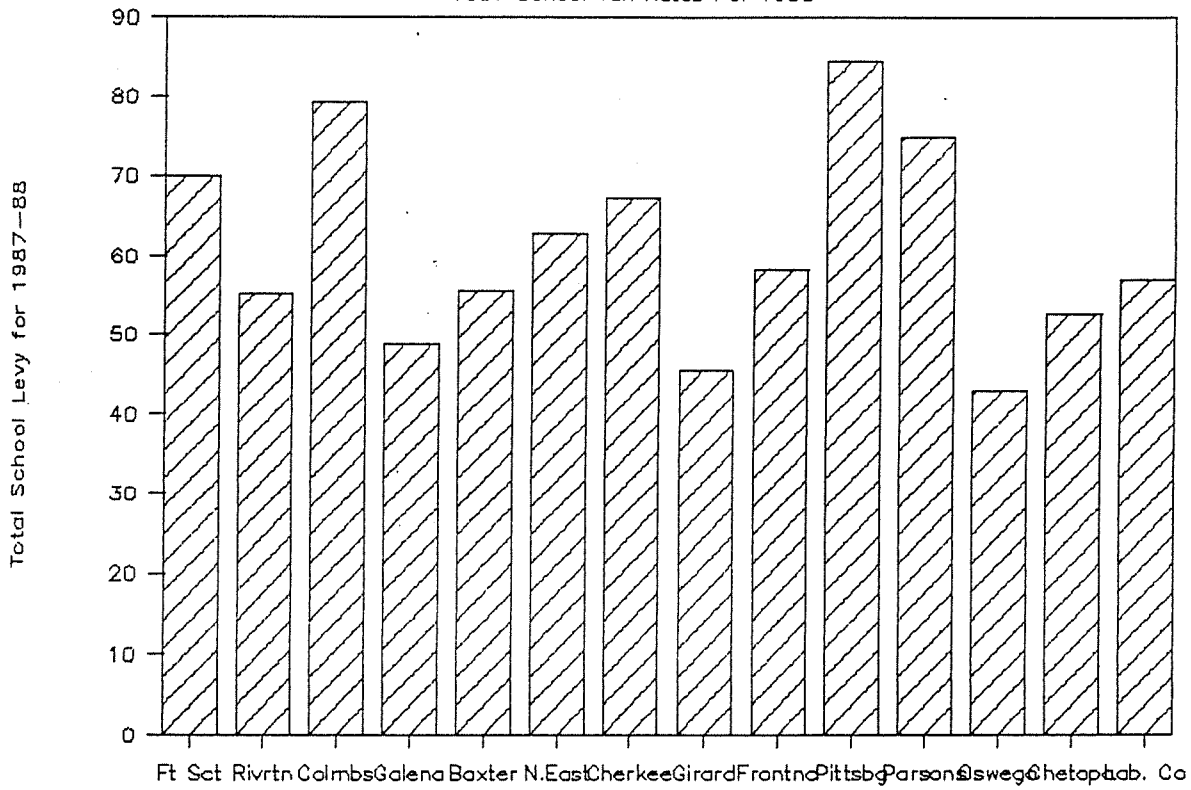
# DROP-OUTS BY COUNTY

1986-87



# Selected Data & Tax Rates/KS Sch.Dist.

1987 School Tax Rates For 1988



Source: KS Statistical Abstract 1987-88

**E** ECONOMIC DEVELOPMENT COMMISSION  
JUNCTION CITY, GEARY COUNTY

425 NORTH WASHINGTON • BOX 1976 • JUNCTION CITY, KANSAS 66441 • (913) 762-1976

HAROLD O. WILSON - Chairman

TO: HOUSE TAXATION COMMITTEE

2-15-89

My name is Larry Froschheuser, Executive Director of the Junction City & Geary County Economic Development Commission. We in the trenches, fighting for new business and industry need innovative incentives to offer if Kansas is to compete on the industrial development battlefield. We applaud your support in the past and encourage a positive step forward in allowing tax abatement without property ownership. It is my understanding that current interpretation of the Kansas Constitution as amended in 1986 provides allowance of up to a 10 year tax abatement for a manufacturing, warehousing or distribution, or research and development industry that create new jobs in the city or county, providing that industry owns the land and building within that taxing authority.

Incentives to industry enhance our ability to attract industry and the creation of new jobs and ultimately a broadened tax base. It is an expensive commitment for an industry to relocate or expand to a new location. When we can offer an industry incentives that reduce these expenses its an inducement for an employer to give prime consideration to our state.

When Kansas provides an opportunity to abate taxes for 10 years, thats an incentive to industry. Likewise, when our city or county can lease the property to a new industry for 10 years that's another incentive. That incentive lowers the up front expenditure of capital by a new industry and enhances that new employers chances to become profitable in a shorter time span. Profitability leads to stability, growth, and potential for future job creation. However, the current interpretation that the industry must own the property is too restrictive and negates the tax abatement incentives. We have a current situation where a prime industrial client may expand here, but a positive revision of the current tax abatement program would be important. I would like to introduce Mason Ashby, immediate past executive director of our Economic Development Commission who will add to my remarks.

*2/15/89  
attachment 4*

February 15, 1989

**For: Taxation Committee, House of Representatives  
Kansas Legislature**

**Testimony: re Property Tax Abatement Authorized by the 1986  
Kansas Constitutional Amendment**

A significant percentage of the new or expanding industry Kansas is able to attract wishes, at least initially, to lease manufacturing or distribution facilities to reduce initial capital requirements.

For instance, a community may organize a private or not-for-profit development group to construct and lease new facilities to a firm at cost; meaning the return on investment (ROI) would only cover the cost of funds borrowed to construct the plant.

Under the example cited the new firm would be ineligible to enjoy the benefit of the property tax abatement provided by the 1986 constitutional amendment. My observation is that the term "used exclusively for" manufacturing, distribution or research and development appearing in the amendment has been used by the Board of Tax Appeals to make a very narrow construction of the amendment. In the example cited, the facility would fail the "exclusive use" test because the new plant would be producing a rent, although only sufficient to cover the investor's basic funds cost, and is therefore a dual-use facility, disqualified for a tax abatement.

The example cited is neither extreme nor unusual and illustrates a negation of the basic intent of the amendment to the constitution - to assist with the inducement of new industrial investment and the creation of jobs in Kansas.

Under the present circumstances, there is no effective, easy remedy and the Legislature and the Administration are urged to begin the process of developing timely, effective corrections which obtain the intended result of the 1986 amendment.

*Mason Ashby*  
Mason Ashby  
Senior Vice President  
First Kansas Development, Inc.  
Junction City, Kansas

On behalf/Junction City - Geary County  
Economic Development Commission

*2/15/89  
Attachment 5*



# Ellis County Economic Development Department

A Member of the Ellis County Coalition for Economic Development

STATEMENT OF I.J. "JIM" DE MARCO, DIRECTOR  
ELLIS COUNTY ECONOMIC DEVELOPMENT DEPARTMENT

before

HOUSE TAXATION COMMITTEE

FEBRUARY 15, 1989

Mr. Chairman, Members of the Committee, my name is Jim De Marco, I am employed by the County of Ellis as the Director of the Ellis County Economic Development Department.

Thank you for the opportunity to appear before you to share our concerns regarding the interpretation and application of Article 11, Section 13 of the Kansas Constitution.

We have been fortunate enough, in recent months, to use the constitutional amendment approved by the voters in August of 1986 as a negotiating tool to create new jobs for our county. However, if the current interpretation of the amendment by the Board of Tax Appeals prevails, we have incorrectly used this economic development tool to our financial detriment and our efforts to create new jobs will be adversely affected.

We believe that when Kansas' voters approved the constitutional amendment, they did not intend to see it so narrowly interpreted and applied.

Western Kansas is especially adversely affected by the dilution of any economic development incentive because it is not as well positioned economically and geographically as its sister regions to the East.

The Board's extremely restrictive interpretation is especially

*2/15/89  
Attachment 6*

harmful to community based not-for-profit economic development corporations whose financial resources are solely dedicated to the creation of new jobs for their communities. Their investors do not stand to gain any financial rewards. As a matter of fact, they never recover their original investment.

We also believe that such restrictive interpretation is not compatible with modern business practices - specifically, the long term leasing rather than the purchasing of property to carry out commercial activities including those contemplated in the amendment.

Your willingness to hear our comments is indeed appreciated. It is fortuitous that you have allowed us to appear before you only a few days after we received information that may add to the confusion about the application of the amendment. We are speaking of the decision by District Judge Adrian Allen in District Court of Shawnee County regarding Kansas Avenue Properties v. Board of Tax Appeals "IN THE MATTER OF THE APPLICATION OF KANSAS AVENUE PROPERTIES FOR EXEMPTION FROM AD VALOREM TAXATION IN WYANDOTTE COUNTY, KANSAS". Your concern in our plight, therefore, assumes added importance and significance and any action that you may take in its regard will clarify matters considerably for all concerned.

Thank you very much for the opportunity to appear before you. I will be happy to answer any questions that you may have regarding our particular situation.

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
FOURTH DIVISION

IN THE MATTER OF THE APPLICATION  
OF KANSAS AVENUE PROPERTIES FOR  
EXEMPTION FROM AD VALOREM TAXATION  
IN WYANDOTTE COUNTY, KANSAS.

Case No. 88 CV 1088

MEMORANDUM DECISION

This matter comes before this Court on a petition for judicial review which was filed by Kansas Avenue Properties for judicial review of the Order on Rehearing of the Board of Tax Appeals in Docket No. 0620-87-TX of June 1, 1988, sustaining the Board's original order of April 29, 1987, in which the application of Kansas Avenue Properties for exemption of the property described on Exhibit A to the order for rehearing from ad valorem taxation was denied.

The Court has carefully considered the documents attached to the certification of records of David C. Cunningham, Secretary of the Board of Tax Appeals, filed with this Court.

The Court agrees with the arguments contained in the memorandum in support of the application of Kansas Avenue Properties for exemption from ad valorem taxation in Wyandotte County, Kansas, and adopts the arguments in that memorandum as its conclusions of law.

The order of the Board of Tax Appeals on rehearing is accordingly reversed and Kansas Avenue Properties is awarded judgment exempting the property described in Exhibit A to the order on rehearing from all ad valorem taxation.

This memorandum shall serve as the journal entry.

DATED this 31<sup>st</sup> day of January, 1989.



Adrian J. Allen, District Judge

cc: David C. Cunningham  
William M. Modrcin  
John M. Duma

BEFORE THE BOARD OF TAX APPEALS OF THE STATE OF KANSAS

IN THE MATTER OF THE APPLICATION  
OF KANSAS AVENUE PROPERTIES FOR  
EXEMPTION FROM AD VALOREM TAXATION  
IN WYANDOTTE COUNTY, KANSAS

Docket No. 0620-87-TX

MEMORANDUM IN SUPPORT OF THE APPLICATION  
OF KANSAS AVENUE PROPERTIES FOR EXEMPTION  
FROM AD VALOREM TAXATION IN WYANDOTTE COUNTY, KANSAS

INTRODUCTION

This matter is currently before the Board of Tax Appeals (hereinafter "BOTA") on the motion for rehearing filed by Kansas Avenue Properties. The Board made its original decision in this matter without a hearing. Kansas Avenue Properties sought a rehearing to present additional legal arguments to the Board as to the applicability of Appeal of Wirt, 225 Kan. 517, 592 P.2d 875 (1979) to this controversy as well as to present additional evidence to support the exemption.

Many of the pertinent background facts to this controversy are set forth in BOTA's initial Order entered on May 4, 1987. BOTA has jurisdiction over the parties and the subject matter of this proceeding pursuant to K.S.A. 79-213. The property at issue is set forth in a legal description attached as Exhibit A to BOTA's previous Order. Kansas Avenue Properties seeks an exemption pursuant to Article 11, Section 13 of the Kansas Constitution, the exemption for property used for purposes of economic development. This amendment was adopted by the people of Kansas in an election held in August, 1986.

The property in question is located just off Kansas Avenue and I-635 in Kansas City, Wyandotte County, Kansas. The current project consists of a 50,000-square-foot building on approximately 4.3 acres. Kansas Avenue Properties, the developer, will rent this building to businesses using the property for the exempt purposes

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outlined in Article 11, Section 13. One lease has already been signed; others are currently being negotiated. Once rental of the initial building is completed, other buildings to be used in an identical manner are planned for construction. The tax exempt status of this property has previously been approved by the city of Kansas City, Kansas, in a resolution dated December 5, 1986, and the property has been recommended for exemption by Robert C. Gardner, Wyandotte County Appraiser, in the application currently before the Board. In summary, both the city and the county support the granting of the exemption.

BOTA initially denied tax exemption for the project for the sole reason that it consisted of "rental property". Focusing upon the "exclusive use" test set out in Article 11, Section 1, BOTA held that the decision of the Kansas Supreme Court in Appeal of Wirt, supra, was applicable to this case. Since, under the Wirt analysis, the use of the property as a rental facility failed the exclusive use test under Article 11, Section 1, BOTA denied the exemption.

As set forth herein, Kansas Avenue Properties believes that the test for tax exemption under Article 11, Section 13 of the Kansas Constitution differs significantly from the test employed by Section 1; that BOTA erred in applying the holding of Appeal of Wirt to the instant case; that the test to be applied under Section 13 is the use of the property by the business involved and, that, under the applicable test, this property qualifies for tax exemption.

THE STANDARD FOR TAX EXEMPTION UNDER SECTION 13 DIFFERS SIGNIFICANTLY FROM THE STANDARD EMPLOYED BY SECTION 1; SECTION 13 DOES NOT APPLY THE EXCLUSIVE USE TEST AS APPLIED IN SECTION 1; RATHER, SECTION 13 FOCUSES ON THE ULTIMATE USE OF THE PROPERTY BY THE BUSINESS INVOLVED AND WOULD INCLUDE RENTAL PROPERTY AS EXEMPT FROM TAXATION

Kansas Avenue Properties would first ask BOTA to note that there are substantial differences in the language employed by Section 13, the provision at issue here, and Section 1, the provision at issue in Appeal of Wirt. Article 11, Section 1 provides as follows:

The legislature shall provide for a uniform and equal rate of assessment and taxation, except that the legislature may provide for the classification and the taxation uniformly as to class of motor vehicles, mineral products, money, mortgages, notes and other evidence of debt or may exempt any of such classes of property from property taxation and

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impose taxes upon another basis in lieu thereof. All property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, and all household goods and personal effects not used for the production of income, shall be exempted from property taxation. [Emphasis added].

Article 11, Section 13 provides as follows:

(a) The board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation all or any portion of the appraised valuation of (1) All buildings, together with the land upon which such buildings are located, and all tangible personal property associated therewith used exclusively by a business for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which commences operations after the date on which this amendment is approved by the electors of this state; or (2) all buildings, or added improvements to buildings constructed after the date on which this amendment is approved by the electors of this state, together with the land upon which such buildings or added improvements are located, and all tangible personal property purchased after such date and associated therewith, used exclusively for the purpose of (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which is necessary to facilitate the expansion of any such existing business if, as a result of such expansion, new employment is created.

(b) Any ad valorem tax exemption granted pursuant to subsection (a) shall be in effect for not more than 10 calendar years after the calendar year in which the business commences its operations or the calendar year in which expansion of an existing business is completed, as the case requires.

(c) The legislature may limit or prohibit the application of this section by enactment uniformly applicable to all cities or counties.

(d) The provisions of this section shall not be construed to affect exemptions of property from ad valorem taxation granted by this constitution or by enactment of the legislature, or to affect the authority of the legislature to enact additional exemptions of property from ad valorem taxation found to have a public purpose and promote the general welfare. [Emphasis added].

There are two major differences in this constitutional language which are pertinent to our analysis. First, it is readily apparent that the purpose of Section 13 differs markedly from the purpose of Section 1. Section 13 was designed to give tax exempting power to local units of government instead of restricting it to the legislature. Section 13 specifically grants this power to the board of county commissioners of any county or the governing body of any city. In that regard, Section 13 is self-executing. It requires no

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enabling act or other legislative function to allow this exemption to be granted. Rather, it requires only an act by a local city or county to grant the tax exempt status. As set forth in Section II, infra, the purpose of Section 13 was to allow Kansas communities to compete with other states for economic development. The exemption is intentionally broad; the only restriction (once the local governmental authority has approved the project) is that the property be used for one of three designated purposes to promote economic development.

Section 1, on the other hand, is a codification of long standing exemptions from taxation for charitable, religious or educational purposes. Historically, this exemption has been interpreted very narrowly. Attempts to broaden its scope have generally not been approved by the courts. In Appeal of Wirt, for example, a hospital rented property from an individual. The hospital would normally qualify for tax exemption pursuant to Section 1; the individual would not. The terms of the lease would allow any tax exemption to "flow through" to the hospital, thereby benefitting the facility. BOTA originally approved the exemption. The county, however, appealed to the Kansas Supreme Court which reversed. Holding that "renting" was a separate use, the Court found that the property was not "exclusively used" for hospital purposes and denied the exemption.

Second, a comparison of the language contained in the two sections reveals a crucial distinction -- Section 13 modifies the exclusive use test of Section 1 to apply it only to the business physically using the property. It is the inclusion of this particular phrase "by a business" modifying the "used exclusively" language which requires that a different analysis be made when considering tax exemptions under Section 13 rather than Section 1. While Section 1 requires only that the property be used exclusively for a designated purpose (educational, religious, etc.), Section 13 requires that the property be used exclusively by a business for a specific purpose to qualify: manufacturing; research and development; storing goods or commodities sold or traded in interstate commerce. It is the exclusive use made of the property

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by the business which determines the exempt status, not the exclusive use generally as required by Section 1. The importance of this distinction for the instant case is obvious. Rental property may qualify for exemption under Section 13 while it would not under Section 1. Application of the "exclusive use" test, as defined in Section 1, to Section 13 cases is erroneous; Appeal of Wirt has no precedential value to an exemption sought under Section 13 which applies a different test.

This analysis is supported by accepted rules of construction. BOTA must give some meaning to the phrase "by a business" included in Section 13. It must be assumed that the drafters included this language for some particular reason. See Section II, infra. Without this phrase "by a business", Section 13 probably should be interpreted the same as Section 1. However, as a matter of construction, it must be presumed the drafters of this amendment and, indeed, the electorate when it voted on the amendment, intended something differently from Section 1 through the inclusion of this particular phrase in Section 13. Kansas Avenue Properties believes that this phrase was added to overrule the application of Wirt to exemptions for economic development. Use of this particular phrase makes the analysis by the Supreme Court of Section 1 in the Wirt irrelevant to the current issue. While renting may be a use which is not an "exclusive use" as required by Section 1, Section 13 makes the test one of whether the property is used exclusively by a business for one of the three enumerated purposes. Under this analysis, rental property would still qualify for the exclusion since the business is using the property for the specified purpose. The property qualifies for the exemption since the property is used by the business for economic development. There is no dispute under the facts of the instant case that the businesses in question here (the lessees of the Kansas Avenue Properties) will use the business for one of the exempted purposes. That is the only test which BOTA should apply. Application of Wirt to the instant case was improper as a matter of law and Kansas Avenue Properties respectfully requests that the Court reconsider its decision on same. The Supreme Court's decision in Appeal of Board of County Comm. of

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Johnson Co., 236 Kan. 617, 794 P.2d 455 (Kan. 1985), supports this analysis. In that case, the Court acknowledged that the "exclusive use" test as defined in Wirt was not absolute and could be modified by subsequent enactments of the legislature.

That is exactly what happened here. The legislature and the voters of this state have not adopted the Wirt test to exemptions for economic development. The "exclusive use" test in Section 1 has been modified in Section 13. The test for exemption is not the overall use of the property (rental or owned), but the use the business makes of the property to promote economic development. This construction is consistent with accepted rules of construction and the overall purpose of the amendment. See Section II, infra. It is also consistent with modern business practices. Rental of premises is a common business tool. Rather than purchase property, long term leases are commonplace in today's economic climate. If Wirt is applicable to Section 13, then the broad scope of that amendment intended by the drafters and intended by the electorate in passing same will effectively be emasculated by BOTA.

Two other provisions of Section 13 support this analysis. Section (d) makes it clear that Section 13 should be construed differently than Section 1. Rather, Section 13 is unique and should be considered as such.

In addition, subsection (c) makes it clear that legislature may, should it so desire, limit or prohibit the application of this section by subsequent enactment. If the legislature truly believes that the restriction imposed by the legislature and subsequent case law on Section 1 is applicable to Section 13, it has the power to enact statutes making this explicit. It has failed to do so up until this time. BOTA should not imply to the legislature an intent to do an act which has not yet and may never be enacted into law.

THE INTENT OF SECTION 13 WAS CLEARLY TO PROVIDE CITIES AND COUNTIES BROAD AUTHORITY TO ENACT TAX EXEMPTIONS; THIS BOARD SHOULD NOT RESTRICT OR UNDERCUT THE INTENT OF THE VOTERS OF THE STATE OF KANSAS BY ARBITRARILY APPLYING A RULE OF CONSTRUCTION WHICH LIMITS THE AUTHORITY GRANTED TO CITIES AND COUNTIES UNDER SECTION 13

The primary rule in ascertaining meaning of a constitutional provision is to look to the intention of the makers and adopters of

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that provision. Behrmann v. Public Employees Relations Board, 225 Kan. 435, 591 P.2d 173 (1979); Wall v. Harrison, 201 Kan. 598, 600, 443 P.2d 266 (1968). A constitutional provision is not to be narrowly or technically construed, but its language should be interpreted to mean what the words imply to men of common understanding. State ex rel. Frizzell v. Highwood Service, Inc., 205 Kan. 821, 473 P.2d 97 (1970); Higgins v. Cardinal Manufacturing Company, 188 Kan. 11, 360 P.2d 456, cert. denied 368 U.S. 829 (1961).

An elementary rule of constitutional construction is that effect should be given to every part and every word and that no portion of the law should be treated as superfluous unless there is some clear reason to the contrary. The legal intentment is that each and every clause has been inserted for some useful purpose, and when rightfully understood, has some practical operation; each word, it has been said, must be presumed to have been carefully chosen and intentionally placed, as though it had been hammered into place. See 16 Am.Jur.2d Constitutional Law Section 101 (1979).

Attached to this memorandum as Exhibit A is a copy of the resolution proposing the amendment which resulted in current Article 11, Section 13. This resolution was duly approved by both the Kansas House and Senate. Kansas Avenue Properties would ask this Board to particularly note the explanatory statement printed on the ballot as set forth in Section 2 of this resolution. That explanatory statement did not require the exclusive use test be carried over into this amendment. As such, it is clear that the drafters (and the voters) intended to disregard the "exclusive use" test set out in Section 1, legislative amendment and case interpretations relating thereto when passing this new constitutional amendment. Indeed, Wirt was decided in 1979. It may be presumed that the legislature had Wirt in mind when it drafted Section 13 and included the "by a business" phrase in this particular provision specifically to distinguish Wirt from the exemption granted therein.

The other legislative history available supports the broad interpretation of the amendment advanced by Kansas Avenue Properties. The concept for the amendment originated with the

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Kansas Economic Development Study. Pertinent portions of that study are attached hereto as Appendix B. The purpose of the amendment was to allow Kansas to compete with other states for new business. The study draws no distinction between rental or owned property in this regard.

Similarly, the legislative history of the resolution supports an exemption for rental property. The "by the business" phrase was in the resolution from the outset. The only major modification was to specifically describe the exempted uses of the property. Pertinent portions of legislative history are attached hereto as Appendix C.

The voters of this state approved this constitutional amendment. BOTA, acting on its authority, should not go against the will of the people of the state.

Adapting the interpretation of Section 13 advanced by Kansas Avenue Properties herein will not adversely affect any governmental unit, entity or prior decision by BOTA. There are no reported Kansas cases interpreting this constitutional amendment. If the interpretation advanced by Kansas Avenue Properties is incorrect, then either the Kansas Supreme Court may reverse the ruling or the legislature that believes it to be incorrect can place limitations upon its effect. Kansas Avenue Properties believes, however, that the interpretation it advances herein is consistent with the language of the constitutional amendment. It would respectfully urge BOTA to follow the language of this constitutional amendment and adopt standard rules of constitutional construction and thereby reverse its previous decision and find that the Wirt case and the exclusive use test prohibiting rental as an exclusive use has no application to exemptions sought under Article 11, Section 13.

#### CONCLUSION

As set forth herein, Kansas Avenue Properties believes BOTA's prior decision was incorrect. Wirt and analysis using standards applicable to exemptions sought under Section 1 has no application in a Section 13 case. There is no dispute that the ultimate use of the property will qualify for the exemption. Both the city and county approve the exemption. BOTA should not substitute its

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judgment for that of the local governmental entities granted exemption power pursuant to Section 13. Accordingly, BOTA should reverse its decision and grant the exemption sought herein.

MORRIS, LARSON, KING & STAMPER

By William M. Modrcin  
William M. Modrcin - #13020  
Suite 800, 6900 College Blvd.  
Overland Park, Kansas 66210  
(913) 345-1233

By Thomas E. Carew  
Thomas E. Carew  
400 Two Crown Center  
2420 Pershing Road  
Kansas City, Missouri 64108  
(816) 421-6767  
ATTORNEYS FOR APPLICANT  
KANSAS AVENUE PROPERTIES

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## BOARD OF TAX APPEALS

*Keith Farrar, Chairman*

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

*Fred L. Weaver, Member  
Victor M. Elliott, Member  
Conrad Miller, Jr., Member  
Charles F. Laird, Member*

Memorandum

To: Rep. Keith Roe

From: Keith Farrar

Date: February 15, 1989

Re: Economic Development Exemptions

Pursuant to your request, the following is a report on the status of Economic Development Exemptions. Of the 52 applications received since June of 1986, only five (5) are still pending. Two (2) of these are to be set for hearing and three (3) are pending awaiting additional information. The Interim Committee on Taxation was advised that the Board did not believe there was any significant delay in processing these applications and nothing has changed. Some applications do require more review and thus will take more time, particularly where the Board must request additional information.

If you or other Committee members have additional questions, please let me know.

*2/15/89  
Attachment 7*

MEMORANDUM

August 10, 1988

TO: Special Committee on Assessment and Taxation

FROM: Kansas Legislative Research Department

RE: Economic Development Property Tax Abatements

Background

Article 11, Section 13 of the Kansas Constitution, approved by voters in August of 1986, allows cities and counties to exempt from all ad valorem taxation for up to ten years all or any portion of the appraised value of buildings, land, and tangible personal property used exclusively by businesses commencing operations after August 5, 1986 for the purposes of manufacturing, research and development, or storing commodities sold in interstate commerce. The abatements may also be granted for similar purposes to facilitate the expansion of existing businesses if new employment is created as a result of such expansion. The Legislature is granted the power to limit or prohibit the application of the abatements by enactment uniformly applicable to all cities and counties.

Attorney General Opinion Nos. 86-168 and 87-5 concluded that while the Board of Tax Appeals has statutory authority under K.S.A. 1986 Supp. 79-213 to examine the legal and factual basis of any exemptions granted under the constitutional amendment, the Board may not review the advisability of the exemptions, since the Constitution delegates that policy decision to the cities and counties.

History of Legislation

Several bills were introduced during the 1987 Session that contained guidelines or procedures the cities and counties would have been required to follow when granting the exemptions. S.B. 284 would have required cities and counties seeking to grant the exemptions to hold public hearings and publish notice of the hearings in the official newspapers. The bill also would have codified Attorney General Opinion No. 87-5, concerning the authority of the Board of Tax Appeals when reviewing the exemptions, and sought to address the jurisdictional question by allowing counties to grant the abatements within a city only with the approval of the city. The bill passed the Senate in 1987.

S.B. 186 would have limited the exemptions to that portion of appraised valuation equal to the increase in appraised valuation resulting from the commencement of operations of a business or expansion of an existing business after August 5, 1986.

H.B. 2076 contained the only limitations on exemptions that were passed by the 1987 Legislature. The bill prohibited cities and counties from granting the exemptions to corporations owning or operating rabbit and poultry confinement facilities on agricultural land. The prohibition was extended to swine confinement facilities in 1988 with the enactment of H.B. 3018, as amended by H.B. 3123.

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In addition to the concepts in S.B. 284 and S.B. 186, a number of other issues were discussed during hearings by the Senate Committee in 1987 relating to the administration of the abatements, including the following:

- whether minimum payments in lieu of taxes should be required;
- whether cities should be able to grant abatements up to three miles outside city limits;
- whether annual review of the abatements should be required; and
- whether transfer of ownership should require a new exemption to be granted.

Partly in response to some of these questions, the 1987 Special Committee was charged to examine the application of the constitutional amendment on property tax abatements for economic development purposes and determine whether specific legislative guidelines with respect to such abatements were necessary. That Committee recommended to the 1988 Session that S.B. 284 be enacted. The bill, however, died in the House Taxation Committee at the end of the 1988 Session.

#### Leased Property

Another policy question recently has arisen concerning the granting of abatements when the property is leased to or from a third party and whether such arrangements qualify under the "exclusive use" language in the Constitution.

The interpretation of leasing agreements by the Board of Tax Appeals has, therefore, taken on added significance, absent any direction from the Legislature.

**RE: PROPOSAL NO. 5 -- MONITOR REAPPRAISAL\***

Proposal No. 5 directed the Special Committee on Assessment and Taxation to monitor the progress of statewide reappraisal, including the data-collection phase within each county and the extent to which the state will pay its share of the cost of reappraisal to the counties; examine the discretion granted to the Director of Property Valuation Division (PVD) in setting the capitalization rate and recommend whether some guidance in the use of this discretion is needed; and consider whether irrigated land in the Conservation Reserve Program should be use-valued as dryland.

**Background**

**Recent History**

Following discussions since the late 1970s on the need for reappraisal, the Legislature responded in 1985 by enacting a bill requiring completion of a statewide reappraisal by January 1, 1989 and by passing a constitutional amendment to classify property for taxation purposes on that date. The Classification Amendment was approved by the voters in November, 1986. The Attorney General subsequently opined that the Classification Amendment would take effect on January 1, 1989, regardless of whether reappraisal was completed.

Concern over the massive and unintended shifts that would result from classification without reappraisal led to both the 1987 and 1988 Special Committees' being charged with monitoring the reappraisal effort. The 1987 Committee recommended that PVD continue to use the 105-county rating system to update the Legislature on the progress of reappraisal.

Two issues concerning the use valuation of agricultural land arose during the 1988 Session. One was the concern over the discretion granted to the Director of PVD in establishing the capitalization rate. The second was whether irrigated land enrolled in the Conservation Reserve Program (CRP) should be use-valued as irrigated land or as dryland. Legislation enacted in 1987 provided that all land enrolled in the

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\* H.B. 2003 accompanies this report



CRP would be use-valued according to its use immediately prior to entering the program.

A final issue before the Committee was the extent to which the state was making timely per-parcel reimbursement payments to the counties and the extent to which the state should be required to help the counties pay for the "ongoing" costs of the new property tax system following the completion of reappraisal.

#### **Economic Development Property Tax Abatements**

Article 11, Section 13 of the Kansas Constitution, approved by voters in August of 1986, allows cities and counties to exempt from all ad valorem taxation for up to ten years all or any portion of the appraised value of buildings, land, and tangible personal property used exclusively by businesses commencing operations after August 5, 1986 for the purposes of manufacturing, research and development, or storing commodities sold in interstate commerce. The abatements may also be granted for similar purposes to facilitate the expansion of existing businesses if new employment is created as a result of such expansion. The Legislature is granted the power to limit or prohibit the application of the abatements by enactment uniformly applicable to all cities and counties.

Attorney General Opinion Nos. 86-168 and 87-5 concluded that while the Board of Tax Appeals has statutory authority under K.S.A. 1988 Supp. 79-213 to examine the legal and factual basis of any exemptions granted under the constitutional amendment, the Board may not review the advisability of the exemptions, since the Constitution delegates that policy decision to the cities and counties.

H.B. 2076 contained the only limitations on exemptions that were passed by the 1987 Legislature. The bill prohibited cities and counties from granting the exemptions to corporations owning or operating rabbit and poultry confinement facilities on agricultural land. The prohibition was extended to swine confinement facilities in 1988 with the enactment of H.B. 3018, as amended by H.B. 3123.

With respect to the granting of abatements when the property is leased to or from a third party, another policy question recently has arisen as to whether such arrangements qualify under the "exclusive use" language in the Constitution.

## Committee Activity

The Committee received status reports from the Department of Revenue at every meeting on the progress of reappraisal. The ratings for all 105 counties were presented, and the Department outlined the steps that were being taken to expedite the reappraisal in those counties whose rankings indicated fairly serious problems. Various segments of reappraisal public-awareness courses taught by PVD also were presented to the Committee. Included in these segments were presentations on Computer-Assisted Mass Appraisal (CAMA), Appraisal Theory, Mass Appraisal in Kansas, and the Use Valuation of Agricultural Land.

The Committee held hearings on the questions concerning the valuation of irrigated land in the CRP. The Kansas Association of Wheat Growers supported treating such land as dryland for use-value purposes. An Attorney General's opinion concerning the subclassification of the CRP land made by the 1987 Legislature also was requested. Attorney General Opinion No. 88-144 was issued in response to that request.

Hearings also were held on the extent to which the state should be required to help the counties pay for the ongoing costs of reappraisal. The Kansas Association of Counties said that the state should continue to pay for half of the ongoing costs, or about \$6.5 million of the \$13 million annual costs estimated by PVD.

PVD also presented a list of issues under consideration for recommendation to the 1989 Legislature. Among these issues were the potential repeal of K.S.A. 79-1451, the statute prohibiting the implementation of reappraisal until all 105 counties are finished; revisions necessary to the assessment/sales ratio study; definitions of inventory and supplies; certificate-of-value legislation; and further revisions in the appeals process as established by 1988 H.B. 2702.

Another issue came to the Committee's attention concerning the amount of time being taken to grant economic development property tax abatements and the extent to which such abatements could be used for leased property. The Board of Tax Appeals and the Kansas Association of Small Businesses testified on the timeliness issue, and staff outlined policy options the Committee could pursue if it felt that leased property should qualify for the abatements. An Attorney General opinion also was

requested on this issue, and Attorney General Opinion No. 88-123 was issued in response to the request.

Finally, Dr. David Collins, Kansas Geological Survey, presented testimony on the property tax burden on the oil and gas industry.

### **Conclusions and Recommendations**

The Committee concludes that K.S.A. 79-1451, a statute prohibiting the implementation of the reappraised values obtained from a countywide reappraisal project until all 105 counties have been certified by PVD to have completed such reappraisal projects, was originally enacted to address a situation in Atchison County. The statute could have potentially confusing and disruptive implications in the event that several counties are unable to complete reappraisal on time. The Committee therefore recommends that K.S.A. 79-1451 be repealed. Enactment of H.B. 2003 would implement this recommendation.

The Committee also concludes that, based on the progress reports provided by PVD, Kansas appears to be nearing the successful completion of the monumental statewide reappraisal effort. The Committee wishes to commend PVD for management of a difficult process which was often complicated by reports of disagreements between counties and contractors.

As the historic reappraisal therefore nears completion, the Committee also wishes to make the strongest possible recommendation for state funding of up to 50 percent of the costs of reappraisal maintenance to be performed by the counties. The Committee requests that standing committees develop appropriations bills and any other legislation necessary to implement this recommendation during the 1989 Session.

The Committee also notes that the PVD Director has developed an appropriate methodology for setting the capitalization rate used in the use valuation of agricultural land. With respect to the use valuation of agricultural land in the CRP, the Committee concludes that the appropriate policy decision was made with the enactment of 1987 S.B. 305. The suggestion that irrigated land in the CRP be valued as dry land is therefore not recommended.

The Committee also believes that economic development property tax abatements should be granted in a timely fashion to assure optimum use as an economic development tool. Moreover, the Committee believes that leasing arrangements developed as a financing tool should not disqualify the abatements on exclusive use grounds. The Committee therefore encourages the Board of Tax Appeals to process the abatements in a timely fashion and to consider that lease arrangements developed as financing tools should be viewed as not violative of the exclusive use requirement in Article 11, Section 13.

Finally, the Committee wishes to acknowledge that the combined property and severance tax burden on the oil and gas industry in Kansas has been increasing in recent years. Because of the historic importance of the oil and gas industry for the Kansas economy, the Committee therefore encourages the 1989 Session to provide some form of relief to the industry.

Respectfully submitted,

December 1, 1988

Sen. Dan Thiessen, Chairman  
Special Committee on Assessment  
and Taxation

Rep. Keith Roe, Vice-  
Chairman

Sen. Neil Arasmith

Rep. Jayne Aylward

Sen. Paul Burke

Rep. Arthur Douville

Sen. Leroy Hayden

Rep. LeRoy Fry

Sen. Fred Kerr

Rep. Fred Gatlin

Sen. William Mulich

Rep. James Lowther

Rep. William R. Roy

Rep. Michael Tom Sawyer

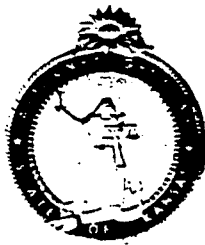
Rep. Debara K. Schauf

Rep. Joan Wagnon\*

Rep. Franklin E. Weimer

\* Ranking Minority Member

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STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

August 29, 1988

MAIN PHONE 913-296-2215  
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 88-123

The Honorable Dan Thiessen  
State Senator, Fifteenth District  
Route 1  
Independence, Kansas 67301-9801

Re: Constitution of the State of Kansas--Finance and  
Taxation--Exemption of Property for Economic  
Development Purposes; Requirement of "Exclusive Use"

Synopsis: Property which is leased for profit to a business  
for use for purposes enumerated in article 11,  
section 13 of the Kansas Constitution is not  
property used exclusively for those purposes and  
thus is not qualified for the tax exemption  
authorized by that provision. The legislature may,  
however, statutorily authorize such an exemption.  
Cited herein: K.S.A. 79-201 (1973); 79-201b  
(1979); Kan. Const., Art. 11, §§1, 13.

\* \* \*

Dear Senator Thiessen:

As Chairman of the Special Committee on Assessment and  
Taxation, you request our interpretation of the term "used  
exclusively" as used in article 11, section 13 of the Kansas  
Constitution. Specifically, you question whether property  
which is leased to a business for use for constitutionally  
exempt purposes meets the requirement that the property be  
used exclusively for such tax exempt purposes.

Article 11, section 13 provides in part:

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"(a) The board of county commissioners of any county or the governing body of any city may, by resolution or ordinance, as the case requires, exempt from all ad valorem taxation all or any portion of the appraised valuation of: (1) All buildings, together with the land upon which such buildings are located, and all tangible personal property associated therewith used exclusively by a business for the purpose of: (A) Manufacturing articles of commerce; (B) conducting research and development; or (C) storing goods or commodities which are sold or traded in interstate commerce, which commences operations after the date on which this amendment is approved by the electors of this state;

. . . .

"(d) The provisions of this section shall not be construed to affect exemptions of property from ad valorem taxation granted by this constitution or by enactment of the legislature, or to affect the authority of the legislature to enact additional exemptions of property from ad valorem taxation found to have a public purpose and promote the general welfare."

The issue is whether property is "used exclusively by a business for the purpose[s]" enumerated in the constitutional provision if the property is leased by that business from another entity.

In interpreting the provision in question, we are guided by the following:

"(1) Constitutional and statutory provisions exempting property from taxation are to be strictly construed.

"(2) The burden of establishing exemption from taxation is on the one claiming it.

"(3) The exemption from taxation depends solely upon the exclusive use made of the

property and not upon the ownership or the character, charitable or otherwise, of the owner.

. . . .

"(5) The question is not whether the property is used partly or even largely for the purposes stated in the exemption provisions, but whether it is used exclusively for those purposes.

(Clements v. Ljungdahl, 161 Kan. 274, 278, 167 P.2d 603; State, ex rel., v. Security Benefit Ass'n, 149 Kan. 384, 87 P.2d 560.)

"(6) The phrase 'used exclusively' as contained in Section 1, Article 11, of the Kansas Constitution, was intended by the framers in the sense that the use made of property sought to be exempt from taxation, must be only, solely, and purely for the purpose stated in the Constitution, and without admission to participation in any other use. (Sigma Alpha Epsilon Fraternal Ass'n v. Board of County Comm'rs, supra [207 Kan. 514, 485 P.2d 1297].)" Lutheran Homes, Inc. v. Board of County Commissioners, 211 Kan. 270, 275-276 (1973).

While the court in the Lutheran Home case was construing K.S.A. 79-201 and article 11, section 1 of the constitution, we believe the rules enunciated are similarly applicable to the exemption authorized by article 11, section 13. Thus we are constrained to a strict interpretation of the term "used exclusively."

The 1979 Kansas Supreme court considered factual situation similar to that which you present. The court was asked to determine whether property owned by a for profit corporation, but which was leased to a nonprofit corporation for use for tax exempt purposes, is property "actually and regularly used exclusively" by the nonprofit corporation so as to be exempt from property and ad valorem taxation under K.S.A. 79-201b First. The court concluded that this was a dual or simultaneous use of property and thus the property was not

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"used exclusively" for tax exempt purposes. In re Board of Johnson County Commissioners, 225 Kan. 517, 523 (1979).  
The court reasoned:

"To say that an investor who owns property, real or personal, and leases it for profit is not using his property ignores the obvious fact that the owner-lessor is exercising his right to use the property just as surely as if he were utilizing it in a physical sense for his own objectives. . . . The renting by the lessor and the physical use by the lessee constitute simultaneous uses of the property and when an owner leases his property to another, the lessee cannot be said to be the only one using the property."

Similarly, property which is leased to a business which uses the property for tax exempt purposes under article 11, section 13 is not property "used exclusively" for those purposes, i.e. it is also used for rental property. It is therefore our opinion that property owned by one entity leased for profit to a potentially tax exempt entity, is not property being used exclusively for the tax exempt purposes enunciated in article 11, section 13 and is not entitled to a tax exemption pursuant to that provision.

You further inquire whether, notwithstanding the above conclusion, the legislature may by statute grant an exemption for property leased to a business to use for the purposes listed in article 11, section 13. Subsection (d) of that constitutional provision appears to specifically condone such legislative action. Further, the courts have long recognized the legislature's inherent power to enact tax exemptions beyond those granted by the constitution and to broaden exemptions contained in the constitution when not specifically prohibited by the constitution from doing so. See, e.g., In re Tax Protest of Strayer, 239 Kan. 136, 141 (1986); State ex rel. Tomasis v. Kansas City, Kansas Port Authority, 230 Kan. 404, 411-412 (1981); Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. 39, 42 (1975).

In conclusion, property which is leased for profit to a business for use for purposes enumerated in article 11, section 13 of the Kansas Constitution is not property used exclusively for those purposes and thus is not qualified for

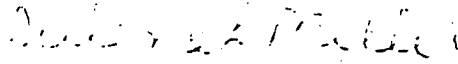


legislature may, however, statutorily authorize such an exemption.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm