

Approved TUES. 3-17-92
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by Senator Dan Thiessen at
Chairperson

8:00 a.m./~~xxx~~ on Monday, March 9, 1992 in room 527-S of the Capitol.

All members were present except:

Committee staff present:

Bill Edds, Revisor's Office
Don Hayward, Revisor's Office
Chris Courtwright, Research Department
Tom Severn, Research Department
Marion Anzek, Committee Secretary

Conferees appearing before the committee:

Mike Walter, President-First Page, Junction City, KS
Phil Woodbury, Mobilfone of KS.
Dave Brevitz, St Paging, Dodge City, KS
Ann Phillips, Mobile Radio Communications, Inc.
Bill Waters, Taxation Division-KS Department of Revenue
Jim Irish, Greater KS Chapter, Appraisal Institute

Chairman Dan Thiessen called the meeting to order at 8:15 a.m. and said SB524 was number 1 on the agenda of bills to be worked and due to a member of the committee that cannot be here this morning due to an accident in the family, The Chairman said he would ask for SB524 to be blessed and sent back to committee and work the bill when we have full committee membership. The Chairman turned attention to SB580:Property tax change of valuation notice, maintenance of valuation listings.

After a review of the bill by Tom Severn, Research staff and committee discussion;

Senator Phil Martin moved to amend to put the language back as it was originally and amend to say "when they send out a notice they would have to send, not only a notice that would give the change in assessment value for land and buildings, that they give the estimated tax change from last year's levy, the levy that would be the one presently being worked on, 2nd by Senator Lana Oleen. The motion carried.

Senator Phil Martin moved to favorably pass SB580 as amended, 2nd by Senator Lana Oleen. The motion carried.

SB581:Real Estate sales validation questionnaires open to public inspection.

After committee discussion on SB581 on who would be able to go in and see the public records, it was stated it would be available to the taxpayer after an appeal. It was stated by a committee member, that it may be published in the small weekly newspapers.

Senator Phil Martin moved to favorably pass SB581, 2nd by Senator Audrey Langworthy.

Senator Jack Steineger made a substitute motion to hold the questionnaires for a period of 5 years, from 2 years, 2nd by Senator Audrey Langworthy.

A member asked if there is a way for the taxpayer to get information only on a comparable sale before an appeal.

The above substitute motion on SB581 by Senator Steineger, 2nd by Senator Langworthy, Carried.

Senator Don Montgomery made a motion to amend SB581 by leaving the present language stay as it is, and have the information available on comparable sales only before an appeal. The motion failed for lack of 2nd.

Senator Phil Martin moved to favorably pass SB581 as amended, 2nd by Senator Jack Steineger. The motion carried.

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MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,
531-N &
room 527-S, Statehouse, at 8:00 a.m. ~~xxx~~ on Monday, March 9, 1992
Chairman Thiessen turned attention to SB582:County Boards of equalization appointment
of panels to assume duties.

After committee discussion on county commissioners being elected or appointed;

Senator Don Montgomery moved to amend by striking line 23, beginning with the word "All
and ending with the word state" on line 25, 2nd by Senator Lana Oleen. The motion carried.
ON A DIVISION CALL, IT WAS A TIE VOTE. THE CHAIRMAN VOTED AYE AND THE MOTION CARRIED.

Senator Lana Oleen made a conceputal motion to amend SB582 that appraisers and/or real
estate brokers shall hold current certification or current license from the State, 2nd
by Senator Phil Martin. The motion carried.

Senator Phil Martin made a motion to favorably pass SB582 as amended, 2nd by Senator Audrey
Langworthy. The motion carried.

Chairman Dan Thiessen turned attention to SB583:Employees of county appraisers, education
requirements.

Senator Jack Steineger moved to favorably pass SB583.

Senator Don Montgomery moved to amend SB583 on line 36 to insert the words "or approved"
between the words "conducted" and "by".

Senator Steineger withdrew his motion to pass SB583 and 2nd Senator Montgomery's motion
to amend.

Senator Jack Steineger moved to favorably pass SB583 as amended, 2nd by Senator Don
Montgomery. The motion carried

SB590:Protest of payment of property taxes.

Chairman Dan Thiessen asked staff to give a review of SB590. Chris Courtwright said under
current law when a taxpayer pays under protest, it's a two step procedure, to have a formal
hearing with the county appraiser or his agent, before going to the State Board of Tax
Appeals. He said, apparently SB590 would take a step out, as the taxpayer would go
straight to the Board of Tax Appeals.

After committee discussion; Senator Jack Steinger asked for SB590 to be passed over for
additional discussion.

SB599:Basis for computation of mortgage registration fees.

Senator Don Montgomery said the proposed amendment to the language he has for SB599,
supposedly has an agreement that has been reached by the Banker's and Register of Deeds.

After committee discussion Senator Montgomery said he would bring a copy of his amendment
to the committee after recess.

SB500:Taxation of certain motor vehicles amend 79-5105.

Senator Don Montgomery moved to favorably pass SB500, 2nd by Senator Phil Martin. The
motion carried. ON A DIVISION CALL THE MOTION CARRIED ON A VOTE OF 7 to 3.

SB618:School District property tax levies not affected by economic
development property tax exemption granted by cities and counties.

Senator Phil Martin made a motion that SB618 be blessed and rereferred back to committee,
2nd by Senator Lana Oleen. The motion carried.

Chairman Dan Thiessen recessed the meeting at 9:40 a.m. and told the members to be back
at 11:00 a.m.. Chairman Thiessen called the meeting to order at 11:03 a.m. and said we
will be hearing SB721 and he recognized Mike Walter, President of First Page, Junction
City, KS.

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MINUTES OF THE Senate COMMITTEE ON Assessment and Taxation,
531-N &
room 527-S, Statehouse, at 8:00 a.m./~~p.m.~~ on Monday, March 9, 1992

SB721: Local assessment of certain radio common carriers for property
taxation purposes.

The following conferees are proponents of SB721

Mike Walter said under the current property tax regulation, a radio common carrier is assessed as a public utility. This treatment is not consistent with KCC or other KS regulations which do not regulate, define or treat paging companies as public utilities, and this treatment places an unreasonable burden on their industry and those receiving their services. He said they felt the tax code should be modified to allow paging companies to be locally assessed.

He said they purchase telephone service in the same way and for similar purposes as any other business which uses a fax machine or a computer modem or basic telephone service.

He said, they are not government regulated in any way. They have no rate, territory or other regulatory requirements for protection. He said, there is no regulatory or practical definition that can be used to define a paging company as a public utility. He said, yet they are captured in the tax code by vague language originally written to cover telephone companies. He said this treatment results in a burden to First Page, the paging industry and to the general public served by their industry.

He asked the committee's favorable support of SB721. (ATTACHMENT 1)

Phil Woodbury, Mobilfone of Kansas said in the 1960's legislation was passed that directed the State Corporation Commission to regulate the various entities that provided electrical, radio, telephone and paging service. He said, at that time in the 1960's they were called Radio Common Carriers.

He said for many years the K.C.C. regulated the new utility service, the R.C.C.'s being them, along with the telephone company, providing paging and mobile telephone service, and he said, they both were subject to public utility regulations as administered by the K.C.C.

He said, one result is they were assessed and taxed as a utility, with all the other utilities operating in KS. by the Property Valuation Division, Dept. of Revenue.

He said, he thinks the property tax determination should be returned to the individual county where service is provided. (ATTACHMENT 2)

Dave Brevitz, St Paging, Dodge City, KS said their company is owned and operated in KS and provides paging services in Western Ks, and he said, by virtue of interconnections with other systems such paging services can be available throughout the State and the Nation.

He said, the communications network provided by KS telephone companies is necessary for them to provide paging services, and is a significant component of their cost of doing business.

He said, SB721 clarifies property tax treatment of paging companies, and they support the bill. (ATTACHMENT 3)

Ann Phillips, Mobile Radio Communications, Inc. said their Company is a pioneer in the vital and important message industry and serves customers throughout the metropolitan KC area, and was established in 1958.

She said, they agree with the other carriers who have testified and asserted "that the property assessment practices of the KS Department of Revenue are entirely inappropriate to the character of equipment and business practices in use in the paging industry.

She said, there are seven major carriers in competition with Mobile Radio Communications, Inc., and only two of them are on file with the P.V.D.

She said, the answer is to use the existing and cost effective assessment procedures long established in the counties and municipalities of KS. She said, no valid reason can be advanced for continuation of the anachronism of the present system. (ATTACHMENT 4)

After committee discussion Chairman Dan Thiessen recognized Bill Waters, Attorney with the Department of Revenue, Property Valuation Department.

Bill Waters said personal property would be assessed with machinery and equipment at 20%, and the real property would be at 30%.

He said, First Page, Inc. sued John Luttjohann former Director of Property Valuation and 17 county treasurers in 1990, and in 17 counties in KS later, the current Director,

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David Cunningham would substitute for Mr. Luttjohann as principle defendant. The Supreme Court of KS consolidated those cases for Shawnee County District Court, and initially, he said, he filed in behalf of the Director, a motion to dismiss for failure to exhaust administrative gravities.

He said, later in 1986 after looking at the history of the bill, he filed motion of resonant judgement. He said, the reason for this, is the Director in 1986 asked for the introduction of the bill, that sort of picked up the slack and 79-5801 as written at that time for common carriers, basically said "if your not regulated, your not state assessed, because your not a public utility."

He said, in 1986 the Director urged the passage of the bill and he said, the purpose of this bill is to make sure that radio common carriers continue to be state assessed.

Miles Johnson, General Manager-Airsignal turned in written testimony on **SB721**. (**ATTACHMENT 5**)

After committee discussion Chairman Thiessen concluded the hearing on **SB721** and turned attention **SB599**.

Senator Don Montgomery moved to amend **SB599** with the language in **ATTACHMENT 6**, 2nd by Senator Audrey Langworthy. The motion carried.

Senator Montgomery moved to favorably pass **SB599** as amended, 2nd by Senator Janis Lee. The motion carried.

Chairman Thiessen recessed the meeting until 1:30 p.m. and said when the committee comes back we will be in **Room 527-S**.

The Chairman called the meeting to order at 1:33 p.m. and turned attention to **SB598** recognizing Senator Janis Lee.

Senator Janis Lee moved to amend **SB598** to terminate extensions that are needed for sales validation questionnaires, 2nd by Senator Phil Martin. The motion carried.

Senator Janis Lee moved to favorably pass **SB598** as amended, 2nd by Senator Gerald Karr. The motion carried.

The Chairman turned attention to **SB414** and recognized Jim Irish, Greater KS Chapter, Appraisal Institute for a proposed amendment to **SB414**.

SB414:Property tax valuation of vacant lots.

Jim Irish said the proposed amendment was not in the form of amending the language of **SB414** in Section 2-C. He said, what this does is justify a methodology into the statute. He said, the thrust of previous testimony and requested amendment, is to amend the definition of "market value" so the uniform standards of professional appraisal practice are called into play in KS for ad valorem tax purposes, just as the Federal Congress called them into play with the Financial Institutions Reform, Recovery and Enforcement Act of 1989. (FIRREA). (**ATTACHMENT 7**)

Bill Waters, Taxation Division-Department of Revenue said **SB414** enacts the so-called developer's discount method of valuing platted lots. The developer's discount method of valuation results in a determination of the properties' value as an investment. He said, taxpayers with multilots receive a developer's discount and the taxpayer with one lot receives no discount. He said, ART.11, sect. 1 of the KS Constitution requires property to be assessed uniformly as to subclass. Vacant lots are specifically subclassed by the KS Constitution. To assign a differnt value on vacant lots which are identical, except that one lot is owned by a developer and the other lot is owned by an individual, would seem to violate the KS Constitution.

He said, courts in other states have stated that the developer's discount method of valuing lots is unconstitutional when applied to fully developed subdivisions, and he cited legal cases by the Supreme Court in Oregon and Michigan.

He said, the legislature may want to wait for a judicial resolution of the issue of whether the developer's discount method is a constitutional manner in which to value vacant lots. (**ATTACHMENT 8**)

After committe discussion on **SB414**, The Chairman asked the committee's pleasure on the bill.

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Senator Gerald Karr moved to have **SB414** blessed and referred to Ways and Means Committee, to be rereferred back to the committee, 2nd by Senator Audrey Langworthy. The motion carried.

Chairman Thiessen turned attention to **SB640**:Sales tax exemption for purchases by non-profit public health improvement agencies.

After committee discussion on **SB640** and comparisons with **SB656** and the fiscal notes of both bills being discussed, it was decided to leave **SB640** in the committee with no action taken at this time. The Chairman turned attention to **SB645**:Determination of fair market value of income producing property.

After committee review by staff on **SB645** and committee discussion.

Senator Phil Martin moved to pass-over **SB645**, 2nd by Senator Jack Steineger. The motion carried.

The Chairman turned attention to **SB568**:Real property used for day care home purposes, classified as residential.

Senator Marge Petty moved to favorably pass **SB568**, 2nd by Senator Shiela Frahm. The motion carried.

The Chairman turned attention to **SB683**:Rate of local retailers, sales taxes increments of $\frac{1}{4}\%$ authorized

Senator Lana Oleen moved to amend **SB683** to raise to $\frac{1}{2}\%$ counties or cities, with a vote of the people, in $\frac{1}{4}\%$ increments, 2nd by Senator Phil Martin. The motion failed. On a division call the motion failed on a tie vote, 5-5.

Senator Phil Martin moved to favorably pass **SB683**, 2nd by Senator Marge Petty. The motion carried.

Committee members asked the Chairman to keep **SB721** and **SB635** alive in committee.

Chairman Dan Thiessen adjourned the meeting at 2:32 p.m.

SENATE ASSESSMENT & TAXATION COMMITTEE

TESTIMONY RE: SB721

Thank you for the opportunity to address the committee regarding proposed Senate Bill 721. My name is Mike Walter. I am the President of First Page, a radio paging carrier headquartered in Junction City.

First Page is a Kansas owned and operated company, licensed by the Federal Communications Commission as a radio common carrier (RCC) to use certain radio frequencies in the Kansas area. These frequencies are licensed and operated for the purpose of providing paging services to the general public.

Under current property tax regulation, a radio common carrier is assessed as a public utility. This treatment is not consistent with KCC or other Kansas regulations which do not regulate, define or treat paging companies as public utilities, and this treatment places an unreasonable burden on our industry and those receiving our services. We feel the tax code should be modified to allow paging companies to be locally assessed.

In the current tax regulation regarding public utilities, the language that has been used in the past to capture the paging industry is vague and does not accurately reflect the nature of our business. The statute reads, "...the terms "public utility" or "public utilities" shall mean every individual, company...", etc., that "operate a business of: (3) transmitting to, from, through or in this state telephonic messages."

This language was originally intended to address companies providing telephone service. The paging industry does not provide telephone service.

First Page uses telephone lines and service to facilitate radio wave transmissions because it is the cost effective method. Alternatives, like microwave and satellite, are available to link our paging equipment but are not cost effective.

We purchase telephone service in the same way and for similar purposes as any other business which uses a fax machine or a computer modem or basic telephone service.

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3-9-92
ATT. 1-1

The communication services provided by First Page and the paging industry are radio frequency transmissions of voice and data. To provide these services, we have invested in a network of terminals and transmitters which code and transmit the signals. Paging terminals are computers which receive incoming information from the party initiating the page. Information may be in the form of either voice or digital signals. The information is translated by the computer into codes and relayed, along with additional identifying codes, to each transmitter location. Transmitters, located on towers throughout the coverage area, receive, amplify and retransmit the signal on a specific, licensed radio frequency.

All system equipment (terminals and transmitters) is tied together via telephone lines provided by local telephone companies. First Page purchases access to the phone lines by paying standard service charges like those paid by anyone utilizing telephone service. These service charges are an operating expense to First Page and are not resold or otherwise directly billed to First Page customers. First Page revenues are generated exclusively by or because of the transmission of radio signals.

To receive transmission of a signal, paging customers carry radio frequency receivers (pagers) which are either rented or purchased. There are four basic types of pagers; pagers that just sound a tone, pagers that will receive a voice message, pagers that will receive and display a telephone number and pagers that will receive and display a written message.

Our customers are largely individuals and small businesses. We serve a variety of emergency service providers, small start-up companies, single parents, and many others in need of inexpensive, reliable communications when they are away from home or office.

For the radio communications services provided to a customer, First Page charges periodic, flat rate service and equipment charges. The majority of First Page revenues come from three sources. Service fees for the paging service, equipment rental and revenue generated from equipment sales. Rates, equipment prices, service offerings, expansion considerations and all other business practices are determined exclusively by competitive factors and market demands.

Senate Assessment & Taxation Committee
Testimony Re: SB721
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First Page provides paging service in over a hundred Kansas towns - by far the largest coverage area provided by any paging company in Kansas. Most of these locations are highly competitive markets for us with a number of small and large paging carriers in each location.

The largest of the companies providing paging service in Kansas are national in size. These companies are usually the price leaders in the locations they serve. Because of the competitive factors in larger markets like Wichita and Kansas City, First Page has attempted to build a paging network that serves many smaller cities. We provide paging service in Wichita and Kansas City but also in locations like Ottawa, Concordia, Newton, Salina, Coffeyville, Junction City, Manhattan, Abilene and many other smaller Kansas towns. In addition, we are always attempting to expand coverage into new locations.

For this reason, First Page and the towns we hope to provide service to are greatly affected by the public utility tax assessment. The business decision to build a paging system in a smaller area is directly influenced by our fixed costs. The property taxes on the equipment is a large cost consideration. As we attempt to bring paging service to more of Kansas, we are making an ongoing investment in new equipment. The higher public utility tax rate coupled with the continued addition to our fixed asset base creates a competitive disadvantage for us or any paging company making an additional investment in Kansas.

First Page is a small business as are most local and regional paging companies. We are not government regulated in any way. We have no rate, territory or other regulatory requirements for protection. There is no regulatory or practical definition that can be used to define a paging company as a public utility. Yet, we are captured in the tax code by vague language originally written to cover telephone companies. This treatment results in a burden to First Page, the paging industry and to the general public served by our industry.

I ask the committee to recommend passage of SB721. I appreciate your consideration of this bill.

STATE OF KANSAS



David C. Cunningham, Director
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Department of Revenue
Division of Property Valuation

M E M O R A N D U M

TO: Tom Severn, Room 545, State Capitol Building
FROM: Robert M. Badenoch, Chief, State Appraised Property Bureau
SUBJECT: Response to Question - Who do you contact for State Appraised
Property Questions in border States.
DATE: February 5, 1992

Colorado: 303-866-5574 Colorado DOR, Accounting Department/Division.
Bart Newman says that Radio Common Carriers commonly referred to as "Paging" companies are not assessed by the state. He does not know how or if the County assesses RCC's?

Missouri: 314-751-2414 Missouri State Tax Commission.
Marilyn Boumhoer says that Radio Common Carriers are assessed locally (by the County) on a depreciated cost basis.

Oklahoma: 405-521-3178 Oklahoma Tax Commission, Ad Valorem Tax Division.
Bill Mack says that Radio Common Carriers are assessed locally (by the County) on a depreciated cost basis.

Nebraska: 402-471-5986 Nebraska DOR, Technical Services, Property Tax Div.
Elaine Thompson says that Radio Common Carriers are assessed locally (by the County) on a depreciated cost basis.

Arkansas: 501-682-1231 Arkansas Public Service Commission, Tax Div, P.S.C.
Mary Carol Poole & Steve Switzer say that Radio Common Carriers are assessed locally (by the County) on a depreciated cost basis.

Iowa: 515-281-6197 Iowa DOR & Finance, Local Gov. Serv., Assessment Sec.
Dolores Fath says that Radio Common Carriers are assessed locally (by the County) on a depreciated cost basis.

All interviews were conducted by phone on 2/5/92 by staff of Kansas DOR, PVD, SAP Bureau.

BEFORE THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

Chairperson, Sen. Dan Thiessen

Vice- Chairperson, Sen Audrey Langworthy

My name is Phil Woodbury. I live in Emporia. My company is Mobilfone of Kansas. Mobilfone provides various communication services including radio paging service in several areas in Kansas including Emporia, Manhattan, Great Bend, Hays, Hutchinson, Pratt, and Topeka.

I am here to offer a brief history of the events and legislation that caused the classification 'utility' be applied to providers -- in Kansas -- such as Mobilfone that furnish radio paging --- sometimes called "beeper" service --- to customers in Kansas.

Back in the 1960's, legislation was passed that directed the State Corporation Commission to regulate the various entities that provided electrical -- or radio -- telephone and paging service. At that time -- in the 1960's we were called Radio Common Carriers --- or R C C's.

This early service, both mobil telephone service and radio paging was -- at that time -- just emerging as a new kind of telephone service. Plainly it was telephone service without wires.

For many years the K C C regulated this new "UTILITY" service. We R C C's --- along with the telephone company --- provided paging and mobile telephone service -- and we both were subject to public utility regulations as administered by the K C C.

Of course, one result of this utility regulation that we R C C's were assessed and taxed as a utility right along with all other utilities operating in Kansas, by the Property Valuation Division of The Department of Revenue.

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This form of taxation was^A particularly burdensome cost for small service providers such as myself, especially when we had to compete shoulder to shoulder with the telephone company; the same telephone company with billions in assets, AND the company who controlled our 'bottleneck' dial tone.

In the 1980's this new telephone service that worked with radio instead of wires, began to look much different than it did in the 1960's. The industry realized that profits would be immense. With the emergence of new, smaller, and more dependable equipment, just about everyone in the industry including telephone company executives could see that the huge and long term profits to be made from this 'new' telephone service would go right off the top of the chart.

The new service is called CELLULAR telephone service.

I recall that it was in 1984 that the^{FIRST} telephone company bill to 'deregulate' the new wireless telephone service was introduced. I also recall that with only company public relation employees to push it that year, the bill went nowhere.

Next year -- in 1985 -- the telephone company hired who I perceive to be Topeka's most prestigious lobbying firm to move this legislation. After lengthy hearings the Bill come out of a House Committee 8 to 7. ^{1/} After a lengthy debate (one hour) on the floor House Bill (HB-2257) finally passed. The vote was 71 to 53. The Bill went to the Senate.

In the Senate the Bill did not fare so well. HB2257 didn't even make it out of committee. ^{2/} However, on very nearly the last day of the session (April 5, 1985), one Senator ^{3/} who in my view, was speaking for the telephone company, ammended this legislation on to a minor motor carrier bill (S2215)

1/ Communications, Computers and Technology

2/ Transportation

3/ Joe Norvell, Ellis County.

and it passed. Vote on the Senate floor was 24 - 12.

To sum up. This legislation as passed in the 1985 session effectively removed all basic regulation including that of rates to be charged, grade of service and profits for the new telephone technology. It should be pointed out that SB-2215 did leave in place regulation for the old copper wire telephone service. SB-2215 removed only the then existing regulation of cellular telephone service, and other related wireless services including radio paging.

The net result then of the telephone company sponsored 'deregulation' of its cellular telephone service was that we R C C's, who had been providing radio paging to subscribers in Kansas, were also removed from regulatory scrutiny by ~~our~~^{THE} State Corporation Commission. However, the bill did not address taxes. We continued to be taxed by the P V D even though we were no longer classified a 'utility'.

It would appear that because our small industry does not now --- and has not since Jan 1, 1986 --- realized the benefits of state regulation — IF ANY THERE BE — that it would be reasonable to remove the additional utility tax burden that come with regulation in the 1960's.

I believe this property tax determination should be returned to the individual county where service is provided.

I thank you for your time.

Phil Woodbury



Testimony of ST Paging
before the Senate Committee on Assessment and Taxation
on Senate Bill No. 721

ST Paging appreciates the opportunity to file this testimony with the Committee on SB 721. ST Paging is a Kansas owned and operated company, which provides paging services in western Kansas, and by virtue of interconnections with other systems such paging services can be available throughout the state and the nation. The larger western Kansas communities we serve are Dodge City, Garden City and Liberal. Of course smaller communities are included in our coverage areas and benefit from the availability of paging service. We serve a variety of individuals and small businesses. Competition exists in each of these market areas.

The pagers you see many people carry will typically be one of four types. There are: tone-only pagers; voice pagers; pagers displaying a telephone number; and pagers displaying a written message. The communications network provided by Kansas telephone companies is necessary for us to provide paging services, and is a significant component of our cost of doing business. We tie our system equipment together via telephone lines, and pay the rates associated with those services like all other telephone subscribers.

SB 721 clarifies property tax treatment of paging companies. We support the bill. Current property tax practices as applied to paging companies inappropriately classify these companies as a "public utility" for taxation purposes in spite of the fact that the paging industry is a competitive, deregulated industry.

Public utilities are very specifically defined under economic theory, and also in the Kansas Statutes which govern the Kansas Corporation Commission's jurisdiction over, and regulation of public utilities (KSA 66-101, et seq). A public utility is an entity which provides an essential service to the public, as a monopoly, within a specified, certified territory. The economics of providing the utility service are such that economies of scale can be achieved by a single provider of service to all in the territory--per unit costs of the service (one kilowatt, one MCF, one local telephone service access line) decline with each additional customer served. State and federal policies have long imposed rate regulation upon the utility in return for its exclusive monopoly to serve the public, in order to flow these lower costs through to ratepayers and prevent monopoly profits--and to promote efficient and sufficient service to the public. The primary examples of public utilities are well known to all--telephone service, electric service, gas service, and water service. (Other entities that have been regulated in the past include the trucking industry, cable TV, bus service, railroads, waste disposal, cabs, etc.)

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Phone 316-227-4400

Landmark Center
Liberal, KS 67901
Phone 316-624-1551

117 E. Laurel
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Phone 316-275-1134

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None of these pertain to the paging industry. Paging service while it is important to many users is not "necessary" on the same scale that heat, light and telephone service is. More than a single provider of paging services exist in many areas, because entry into the business is unrestricted, radio spectrum is available, and system costs are not so exceptionally high as to make entry cost--infeasible. Competition keeps rates at reasonable levels--no one provider can set rates unreasonably high and expect to have any customers. For example, a review of the Yellow Pages listings in Topeka under "paging services" indicates that there are five providers serving the Topeka area, competing to service the needs of customers.

Paging was regulated at one time by the Kansas Corporation Commission. In May of 1984, the KCC recognized the structural changes in the industry had removed the need and rationale for continued regulation (Docket 137, 538-U). The KCC addressed certification of paging companies, and competition in the industry. The KCC found that "such a regulatory policy (requiring a new paging company to show "need") not only fails to recognize the basic differences between this industry and traditional utility service, but is also unnecessarily protective of an industry in which healthy competition has already been shown to be in the public interest." Shortly after the KCC's action, the Kansas Legislature set policy by passing legislation to deregulate paging and cellular companies, removing the statutory language allowing such regulation in the KCC's governing statutes. Paging companies in Kansas have not been treated as a public utility since that time.

Obviously, the financial burden of taxation as a public utility is a substantial disincentive for investment in additional paging system equipment, and for expansion of paging services in Kansas. This burden and disincentive should be removed so that more and better paging services can be provided to Kansans.

Again, we appreciate this opportunity to provide testimony. We respectfully request that the Committee recommend passage of this bill.

MOBILE RADIO COMMUNICATIONS, INC.

Testimony for Consideration of the Kansas Senate

in respect to S.B. 721

9 March 1991

Mobile Radio Communications, Inc. was established as a mobile radio and message service in Kansas City, Missouri in 1958. The company is a pioneer in the vital and important message industry and serves customers throughout the metropolitan Kansas City area. From the inception of its paging service, it has provided users in Kansas, as well as Missouri, with efficient, economical, and dependable service. The company has customers in Johnson, Wyandotte, Leavenworth, Miami, and Atchison counties in Kansas.

From the beginning, Mobile Radio Communications, Inc. has endeavored to be a good citizen in the state of Kansas. It is one the first, if not the first, paging carriers registered by the Kansas Commerce Commission. It has always filed and paid Kansas income, sales, and property taxes. It provides service assistance to public agencies and law enforcement divisions of Kansas municipalities.

Just as the other carriers who testified have asserted, Mobile Radio Communications, Inc. believes that the property assessment practices of the Kansas Department of Revenue are entirely inappropriate to the character of equipment and business practices in use in the paging industry. Mobile Radio Communications, Inc. has the same competitive disadvantages inherent in the present system as all Kansas paging services; however, serious issues exist unique to Mobile Radio

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Communications, Inc.'s position as a dual citizen of Kansas and Missouri.

Mobile Radio Communications, Inc. maintains its corporate headquarters and central station equipment in Kansas City, Missouri. All personal property located there is assessed, as any other personal property would be, by appropriate City and County agencies. The state of Missouri does not regulate paging services nor does it impose any assessment on their equipment.

The effect of the income approach to paging service valuation is to capitalize and assign total company values to Kansas, which includes equipment located and assessed by Missouri agencies. There is no provision for offset; and the result is double taxation. The cost of protesting and asserting this violation of the Interstate Commerce Clause of the *U.S. Constitution* in Federal Court is prohibitive. The Kansas Department of Revenue, in refusing to allow protest based on the protection of the Interstate Commerce Clause, is engaging in economic blackmail.

Another effect of Mobile Radio Communications, Inc.'s dual state status is the lack of enforcement ability of the state Department of Revenue to assess competing carriers. Mobile Radio Communications, Inc. has always maintained a high profile in Kansas and an extensive equipment base in the state. Its Kansas City and St. Joseph competitors do not. Although there are seven major carriers in competition with Mobile Radio Communications, Inc., only two of them are on file with property valuation department. Thus, these untaxed


competitors, freed of the confiscatory taxation rate imposed on Kansas paging service and freed of any rate or regulatory control in Kansas, benefits in what is basically a practice in restraint of trade. Mobile Radio Communications, Inc. is thus denied equal protection of the law and those paging services who pay the least to Kansas are free to compete with Mobile Radio Communications, Inc. the most.

Another issue of concern clear to Mobile Radio Communications, Inc., as the major provider of life saving paging services to the Kansas University Medical Center, is the Department of Revenue's constant violation of the principal of tax relief to non-profit and public institutions. Because there is no provision in the assessment procedure for exception to valuation of property dedicated to tax exempt use, the resulting effect is that the State of Kansas is taxing the property use costs of what is perhaps its own greatest institution.

There is an answer to the problems of inequitable, inappropriate, and unconstitutional taxation facing Mobile Radio Communications, Inc. and other paging services. That answer is to use the existing and cost effective assessment procedures long established in the counties and municipalities of Kansas. No valid reason can be advanced for continuation of the anachronism of the present system.

MEMORANDUM

TO: Senate Assessment and Taxation Committee

FROM: Miles Johnson
General Manager 

SUBJECT: Senate Bill Number 721

DATE: March 6, 1992

I am writing to you to express my support for the above referenced senate bill.

Airsignal, a Radio Common Carrier in Overland Park, is not regulated as a public utility, therefore we are in favor of the above bill. We are encouraged at the possibility of reducing our property taxes as a result of such action.

SENATE BILL No. 599

By Committee on Assessment and Taxation

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8 AN ACT relating to mortgage registration fees; concerning the
9 amount thereof; amending K.S.A. 1991 Supp. 79-3102 and re-
10 pealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 1991 Supp. 79-3102 is hereby amended to read
14 as follows: 79-3102. (a) Before any mortgage of real property, or
15 renewal or extension of such a mortgage, is received and filed for
16 record, there shall be paid to the register of deeds of the county in
17 which such property or any part thereof is situated a registration
18 fee of \$.26 for each \$100 and major fraction thereof of ~~the lesser of~~
19 ~~the amount of~~ the principal debt or obligation which is secured by
20 such mortgage ~~or the maximum amount of indebtedness to be secured~~
21 ~~by the mortgage as indicated on the mortgage document~~, and upon
22 which no prior registration fee has been paid, ←

23 (b) As used herein, "principal debt or obligation" shall not include
24 any finance charges or interest.

25 (c) In any case where interest has been precomputed, the register
26 of deeds may require the person filing the mortgage to state the
27 amount of the debt or obligation owed before computation of interest.

28 (d) No registration fee whatsoever shall be paid, collected or
29 required for or on: (1) Any mortgage or other instrument given solely
30 for the purpose of correcting or perfecting a previously recorded
31 mortgage or other instrument; (2) any mortgage or other instrument
32 given for the purpose of providing additional security for the same
33 indebtedness, where the registration fee herein provided for has
34 been paid on the original mortgage or instrument; (3) any mortgage
35 or other instrument upon that portion of the consideration stated in
36 the mortgage tendered for filing which is verified by affidavit to be
37 principal indebtedness covered or included in a previously recorded
38 mortgage or other instrument with the same lender or their assigns
39 upon which the registration fee herein provided for has been paid;
40 (4) any lien, indenture, mortgage, bond or other instrument or en-
41 cumbrance nor for the note or other promise to pay thereby secured,
42 all as may be assigned, continued, transferred, reissued or otherwise
43 changed by reason of, incident to or having to do with the migration

Principal

, provided however that in the event the mortgage states that less than the entire ~~principal~~
debt or obligation will be secured thereby, the registration fee should be paid on the ~~less~~
amount. LEGER

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1 to this state of any corporation, by merger or consolidation with a
2 domestic corporation as survivor, or by other means, where the
3 original secured transaction, for which the registration fee has once
4 been paid, is thereby continued or otherwise acknowledged or val-
5 idated; (5) any mortgage or other instrument given in the form of
6 an affidavit of equitable interest solely for the purpose of providing
7 notification by the purchaser of real property of the purchaser's
8 interest therein; (6) any mortgage in which a certified development
9 corporation certified by the United States small business adminis-
10 tration participates pursuant to its community economic development
11 program; or (7) any mortgage for which the registration fee is oth-
12 erwise not required by law.

13 (e) The register of deeds shall receive no additional fees or salary
14 by reason of the receipt of fees as herein provided. After the payment
15 of the registration fees as aforesaid the mortgage and the note thereby
16 secured shall not otherwise be taxable.

17 Sec. 2. K.S.A. 1991 Supp. 79-3102 is hereby repealed.

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

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GREATER KANSAS CHAPTER of the APPRAISAL INSTITUTE

JAMES H. "JIM" IRISH, SRA, LEGISLATIVE COORDINATOR
2063 Southwest Regency Parkway Drive
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VOICE (913) 272-2647

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March 9, 1992

Senator Dan Thiessen, Chairman
Committee on Assessment and Taxation
Kansas Senate
State Capitol, Room 143-N
Topeka, Kansas 66612

Re: Senate Bill No. 414
Committee on Ways and Means

Dear Mr. Chairman:

Your committee's request for specific language to implement my testimony of Thursday, March 5, 1992, is appreciated. We offered the positive approach for beginning to rectify the problems resulting from reappraisal. The Greater Kansas Chapter of the Appraisal Institute urges the legislature to tie the state's definition of Fair Market Value (K.S.A. 1991 Supp. 79-503a) to the Uniform Standards of Professional Appraisal Practice as we have discussed.

Our proposal is for your committee to amend the Committee on Ways and Means' bill with the language found in Title XI, Real Estate Appraisal Reform Amendments, of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). The specifically applicable language is found at Sec. 1110(1) (P.L. 101-73, 103 STAT. 514, 12 USC 3339).

The entire last paragraph of existing Section One of K.S.A. 1991 Supp. 79-503a contains obsolete federal language which pertains to appraisal standards ("procedures"), rather than to the actual definition of "fair market value." This paragraph should be deleted therefrom. The paragraph begins on page 2 of HB 2944 at line 6 as "The appraisal process utilized . . .". The new instructional language proposed in both SB 645 and HB 2944 also should be deleted in accordance with our discussions.

The Greater Kansas Chapter of the Appraisal Institute proposes that Kansas adopt the new federal language, which adapted from 12 USC 3339 will read as a new Section Two:

The Property Valuation Division shall prescribe appropriate standards for the performance of appraisals in connection with ad valorem taxation in this state. These rules shall require, at a minimum-

(1) that all appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(2) that such appraisals shall be written appraisals.

The Property Valuation Division or a county appraiser may require compliance with additional standards if it/he/she makes a determination in writing that such additional standards are required in order to properly carry out its/his/her statutory responsibilities.

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A new Section Three should be inserted concerning implementation, adapted from FIRREA (P.L. 101-73 at Sec. 1111, 103 STAT. 514, 12 USC 3340):

Sec. 3. TIME FOR PROPOSAL AND ADOPTION OF STANDARDS.

Appraisal standards established under this act shall be adopted:

(1) The Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board of the Appraisal Foundation in effect on March 1, 1992, for all dates of valuation on or after January 1, 1993, are hereby adopted upon publication of this act as an interim emergency rule; and

(2) Appraisal standards established under this title shall be proposed not later than six (6) months and shall be adopted in final form and become effective not later than twelve (12) months after publication of this act.

A new Section Four should be inserted, again adapted from the FIRREA (P.L. 101-73 at Sec. 1121(9&10), 103 STAT. 518, 12 USC 3350):

Sec. 4. DEFINITIONS: For the purposes of this act:

(1) FOUNDATION.-The terms "Appraisal Foundation" and "Foundation" means the Appraisal Foundation established on November 30, 1987, as a not for profit corporation under the laws of Illinois.

(2) WRITTEN APPRAISAL.-The term "Written Appraisal" means a written statement used in connection with the activities of the Property Valuation Division or a county appraiser that is independently and impartially prepared by the Director of the Property Valuation Division, a county appraiser or by the designee of either setting forth an opinion of defined value of an adequately described property as of a specific date, supported by presentation and analysis of relevant market information.

Existing Sections 2 and 3 would be renumbered as 5 and 6.

These recommendations apply equally to Senate Bill No. 645 to which I previously testified and to its companion, House Bill No. 2944, as well as that bill's predecessor (HB 2660), together with three other bills (SB 654 by Senator Parrish, SB 566 by Senator Salisbury and HB 2303 by Representative Crowell). Sometimes through a different methodology mandate, each has the same impact of compromising the definition of "fair market value." As we have discussed, it is unwise to mandate any methodology by statute. The appraiser's ability to measure market dynamics should not be impaired.

In addition, the language which Senate Bill No. 414 proposes to add to the statutes in its new Section Two (c) is awkward from the appraisal prospective. As I testified, an appraiser should be able to sort this out but a lay person probably would not. This notwithstanding, the subdivision analysis technique called for is a theoretically valid methodology within the income approach to real property valuation. It is better, however, not to suggest that its use is mandatory to every valuation of the vacant lots remaining in a subdivision.

The proposed language blurs the distinction between "the entire tract of land as an income producing unit" and "the wholesale value of the entire tract (for which) the county appraiser shall use the market (sales comparison) approach." The instructions for each are intermixed. The prescribed methodologies are not inappropriate with proper separation. Application of the subdivision analysis technique is complicated because the methodology draws very heavily on other techniques from the cost and sales comparison approaches, as well as requiring the development of a discount rate from financial markets' data and the use of discounted cash flow analysis.

The many variables involved mean that a large error can result from the introduction of invalid data. Senate Bill No. 414 states that "the anticipated market absorption ... period shall not generally exceed 30 years." This is a bit lengthy. Embodied in the statute, it might be construed as a mandate by some and plant the seed for error.

Senate Bill No. 414 in and of itself, then, provides a vivid demonstrating of the fallacy on embodying professional methodologies in statutes. Such methodologies are dynamic and need to be able to adjust to changing market conditions. Appraisal methods are the proper responsibility of the Appraisal Standards Board, and of the appraisal education entities acting in concert with the Appraiser Qualifications Board of the Appraisal Foundation.

Senate Bill No. 414 also should be amended in its Section One to clarify the distinctions between appraised value, assessed value, and classification or taxable value. Failure to understand this distinction may be the core issue in the public's current state of confusion. Amending Senate Bill No. 414 in Sec. 1(b) to change "assessed" to "taxed" or "classified" and to insert "appraised" before "value prescribed therefore" will serve to clarify responsibilities.

"Assessed" has become obsolete because of the confusion which it generates just as the new federal language concerning appraisal standards has replaced the archaic language of former statutes. This problem is perpetuated in Senate Concurrent Resolution No. 1640 as I noted. It also should be amended accordingly.

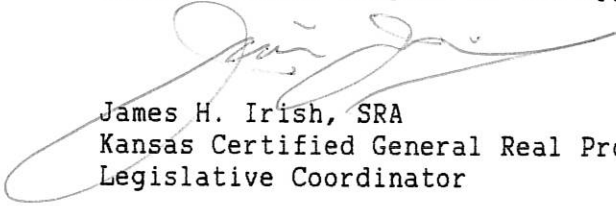
You may already have observed that the words "Property Valuation Division" might very easily read "Each state agency"; while "ad valorem taxation" might easily read "its purposes" with other corresponding changes following as appropriate. This would eliminate the confusion between various Kansas statutes. Indeed, the definition of market value contained in the USPAP might be used in K.S.A. 79-503a and throughout the Kansas statutes:

MARKET VALUE - The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- 1. buyer and seller are typically motivated;*
- 2. both parties are well informed or well advised, and acting in what they consider their best interests;*
- 3. a reasonable time is allowed for exposure in the open market;*
- 4. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and*
- 5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.*

Mr. Chairman, the adoption of our recommendations will greatly assist the legislature in dealing effectively with the current public furor concerning property valuations for ad valorem tax purposes. They will prevent the future problems which are guaranteed to arise from statutory mandates for the application of specific appraisal methodologies. The legislature will have put in place demonstrable and defined criteria by which to judge compliance of the ad valorem tax system with its wishes. We appreciate your interest in this issue.

Sincerely yours,
Greater Kansas Chapter of the Appraisal Institute


James H. Irish, SRA
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STATE OF KANSAS

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Department of Revenue
Division of Property Valuation

SENATE BILL No. 414

Senate Bill 414 enacts the so-called developer's discount method of valuing platted lots. The developer's discount method of valuation results in a determination of the properties' value as an investment. Taxpayers with multilots receive a developer's discount; taxpayer with one lot receive no discount. Art. 11, sec. 1 of the Kansas Constitution requires property to be assessed uniformly as to subclass. Vacant lots are specifically subclassed by the Kansas Constitution. To assign a different value on vacant lots which are identical, except that one lot is owned by a developer and the other lot is owned by an individual would seem to violate the Kansas Constitution.

Interestingly, Senate Bill 414 amends K.S.A. 1991 Supp. 79-1476 which prescribes the methodology for determining use value for land devoted to agricultural use. The difference, however, is art. 11, sec. 12 of the Kansas Constitution (approved by the Kansas electorate in 1976) authorizes use value for land devoted to agricultural use. No such constitutional provision exists for platted lots. Such property is required to be valued uniformly and equally by art. 11, sec. 1 of the Kansas Constitution, i.e., at its fair market value. C.f. State ex rel. Stephan v. Martin, 227 Kan. 456, 462, 608 P.2d 880 (1980). It is fundamentally unfair to distinguish assessments based on the extent of the taxpayer's holdings. Edward Rose Bldg. Co. v. Independence Tp., 462 N.W.2d 325, 329 (Mich. 1990).

Courts in other states have stated that the developer's discount method of valuing lots is unconstitutional when applied to fully developed subdivisions. In First Interstate Bank v. Dept. of Rev., 760 P.2d 880 (Or. 1988), the Supreme Court of Oregon rejected the developer's discount method of valuing lots. The Supreme Court of Oregon stated:

"Reduction by this method results in a determination of the properties' value to the current owner or their value as an investment. This is not the market value, which is the price that each property would receive on the open market."

"There is no dispute that the highest and best use of each lot is for the construction of a single-family

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residence. Only by valuing the property at its highest and best use can the true cash value of a property be determined. The developer's discount does not assess the value of the properties if put to their highest and best use, but reduces their value to arrive at the value of the properties considered as an investment. Investment is not the highest and best use of the properties."

(Citations omitted.) First Interstate Bank, 760 P.2d at 883.

In Edward Rose Bldg. Co. v. Independence Tp., 462 N.W.2d 325 (Mich. 1990), the Supreme Court of Michigan also rejected the developer's discount method of valuing lots. The Supreme Court of Michigan stated:

"'Highest and best use' is a concept fundamental to the determination of true cash value. It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. Land is appropriately valued 'as if available for development to its highest and best use, that most likely legal use which will yield the highest present worth.'"

"The application of a wholesale discount may be appropriate when measuring the investment value of raw land or unimproved subdivision lots, but not when measuring the value of improved property if put to its highest and best use."

"Reduction by this method results in a determination of the properties' value to the current owner or their value as an investment. This is not the market value, which is the price that each property would receive on the open market."

"It has also been recognized that the calculation of a discount for absorption time would be unduly speculative: 'If all the lots sold in one year, we have a value certain; if all the lots sell over a period of years, we have a value dependent upon the future whims of the market place.'"

"Awarding a discount to the multilot owner provides advantageous treatment upon the basis of a factor unrelated to the land itself. It would produce an inherent preference in favor of developers, as opposed to taxpayers who own single or scattered lots."

(Citations omitted.) Edward Rose Bldg. Co., 462 N.W.2d at 331, 332 and 333.

Presently, a case is pending before the state board of tax appeals on this issue. There is a strong likelihood that the case will be appealed regardless of its outcome. Therefore, the legislature may want to wait for a judicial resolution of the issue of whether the developer's discount method is a constitutional manner in which to value vacant lots.