CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON TAXATION, ROOM 519-S Statehouse, at 9:00 a.m. on February 14, 1996.

Approved: 2-21-96
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION..

The meeting was called to order by Chairperson Phill Kline at 9:05 a.m. on February 14, 1996 in Room 519-S of the Capitol.

All members were present except: Rep. Ed Pugh
Rep. Gene Shore

Committee staff present: Chris Courtwright, Legislative Research Department
Tom Severn, Legislative Research Department
Shirley Sicilian, Department of Revenue
Don Hayward, Revisor of Statutes
Ann McMorris, Committee Secretary

Conferees appearing before the committee:
Rep. Tom Sloan
Don Cashatt, Co-Chm. Douglas County Property Owners Assn.
Jim Jessie, Attorney, Lawrence
Rep. Ralph Tanner
Karen France, Kansas Assn. of Realtors
Gus Bogina, BOTA
Larry Clark, Kansas County Appraisers Assn.
Richard Rodewald, Eudora
Rep. Patricia Pettey
Dr. Jill Shackleford, Turner School District
Ms. Cris Anderson, Lawrence School District

Others attending: See attached list

Chair opened hearing on:
HB 2786 - Property taxation; appeals, burden of proof
Proponents:
Rep. Tom Sloan (Attachment 1)
Don Cashatt, Co-Chm. Douglas County Property Owners Assn. (Attachment 2)
Jim Jessie, Attorney, Lawrence (Attachment 3)
Rep. Ralph Tanner (Attachment 4)
Karen France, Kansas Assn. of Realtors (Attachment 5)

Opponents:
Gus Bogina, BOTA (Attachment 6)
Larry Clark, Kansas County Appraisers Assn. (Attachment 7)
Richard Rodewald, Eudora

Chair closed hearing on **HB 2786.**

Chair opened hearing on:
HB 2822 - School districts, early childhood education programs
Proponents:
Rep. Patricia Pettey (Attachment 8)
Dr. Jill Shackleford, Turner School District (Attachment 9)
Ms. Cris Anderson, Lawrence School District (Attachment 10)

Due to lack of time to hear all the conferees, Chair extended hearing on **HB 2822** to the meeting the following day on February 15, 1996.

The next meeting is scheduled for February 15, 1996.

Adjournment at 10:30 a.m.

Attachments - 10

TAXATION COMMITTEE GUEST LIST

DATE: **FEBRUARY 14, 1996**

NAME	REPRESENTING (DCPOA)
Sam V. DIXON	Douglas County Property Owners Assoc
Marian Cashatt	DCPOA
Don Cashatt	" " "
RICHARD RODEWALD	TAXPAYERS
Gene Peterson	Turner School District #202
[illegible]	Turner School District #202
[illegible]	Turner USD 202
Lynne Queen	KSBE
Rol Hay	Parents as Teachers-Northeast KS Ed Service Center
Krista Caldwell	Topeka C of C
Martha Jean Smith	KMHA
Robert Harder	Self
Shirley A Morris	Self
Chas Ross Bye	KDHE
Jean Morgan	SRS
Ken Gentry	KSBE
Tom Clark	K-12 Co Coop
Jim Jesse	self - Douglas Co. Prop. Owners Assn
Hal Hudson	NFIB/KS

TAXATION COMMITTEE GUEST LIST

DATE: **FEBRUARY 14, 1996**

NAME	REPRESENTING
Dyra Cashatt	D. C. P. O. ASS'N.
Jack Glaves	PTA of KW
Dr. Jacqueline Hays	USD 501 - LOWMAN HILL ELEM.
Dr. Glennie Buckley	USD 501 - Adm. Ctr.
FRENCH HEY	USD 445 / LEADERSHIP COFFEYVILLE
Helen Hayzlett	spouse
Caryn Gugelmeyer	VISATOR
Barbara Goss	Visitor
Joe Lieber	KS Coop Council
Josh Groce	KSNKE
Dave Matthews	Western Resources
Jess Bogue	BOTA
Jenifer L. Brandeberry	City of Overland Park

STATE OF KANSAS

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REPRESENTATIVE, 45TH DISTRICT
DOUGLAS COUNTY

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TOPEKA

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
LOCAL GOVERNMENT
ENERGY & NATURAL RESOURCES

HOUSE OF
REPRESENTATIVES

TESTIMONY ON HB 2786

February 14, 1996

Thank you Mr. Chairman, Members of the Committee. HB 2786 is based on a simple premise - that the burden of proof in any property valuation appeal should rest on the person/agency making the appraisal, not the property owner.

Under current law, when a property owner appeals the appraised valuation of his or her property, it is the property owner's responsibility to prove the valuation is incorrect. HB 2786 reverses this procedure and establishes that the burden of proof resides with the appraiser's office, not the property owner.

This is another common sense approach to making the property appraisal and tax process more fair. Placing the burden of proof on those evaluating the property instead of on the property owner may minimally increase the amount of work the appraisers must do, and hence the office's costs, but all of the necessary information should be on their computer - the formula used to determine valuations and the comparable properties. The appraisers already must have both an accurate and logical process by which they determine a property's valuation. HB 2786 simply requires them to bear the burden of proving their numbers and procedures are correct.

Opponents have suggested to me that citizens do bear the responsibility of establishing the truth, for example at I.R.S. audits. However, this is not an analogous situation. The citizen originally provides the numbers that the I.R.S. questions and, accordingly, should be required to justify them. I believe that the person or agency responsible for developing the numbers, taxpayer or appraiser, should be held accountable for justifying them.

In American jurisprudence and administrative proceedings, there is a presumption that the defendant is innocent until proven guilty. Even at so simple a level as a speeding ticket and subsequent trial, the State must prove the driver was speeding. The defendant need not prove he or she was not speeding. The "prosecutor" or government agency bears the burden of proof. However, in the tax appraisal process, we administratively assume that the defendant property owner is "guilty" until he or she proves otherwise. This is a perversion of American values and political culture.

The chairman of the Board of Tax Appeals has indicated a clarification of language on page 1 at line 36 is needed. I agree that the committee should add, "unless such stipulation violates the laws of the State of Kansas," after the word determination.

HB 2786 does not change the appraisal appeals process, it just shifts the burden of proof from the property owner to the appraiser. Most appraisals are accurate and reasonable. I expect the appraiser to "win" most of the valuation appeals. But, I believe that government should give citizens the benefit of the doubt, instead of doubting the citizens.

I ask the committee to correct this aberration of due process and recommend HB 2786 favorably for passage.

House Taxation
2-14-96
Attachment 1

Testimony on HB 2786

Committee

by

Don Cashatt

February 14, 1996

My name is Don Cashatt, I live at 2714 Iowa St., Lawrence, KS. I wish to thank you, Mr. Chairman and members of the Tax Committee for hearing my statements.

I am co-chairman of the Douglas County Property Owners Association, which was formed in April 1995. We have a nine member Board of Directors and a dues-paying membership of about 230. We meet on a monthly basis and have had as our featured speakers such persons as Rep. Phill Kline, Rep. Tim Shallenburger, Rep. Tom Sloan, Rep. Troy Findley and Rep. Tanner. Our mission is to monitor the taxing and spending of the three units of local government

I am testifying today in favor of HB 2786 which shifts the burden of proof regarding property valuation from the property owner to the County Appraiser.

My testimony is based on my personal experiences with the Douglas County appraisers' office along with signed statements from Douglas County property owners regarding their experiences.

For an ordinary property owner to effectively defend himself before a hearing officer would require the combined skills of (1) a real estate salesperson, (2) a building contractor, (3) a financial officer of a lending institution and (4) an attorney.

To begin with a property owner is given a list of comparables and told to check them out. Most people do not understand many of the descriptive terms listed on the left hand side of this document - such as item 21, (grade/CDU) and item 29 (total OB and Y)

The next step often involves taking pictures of and looking at the other properties with which your home is being compared. This I believe is a basic violation of privacy.

Finally, you have done your best to collect information. It is the day of your hearing, you are now seated at the hearing officer's desk, you are asked to present your evidence. Too often the officer responds with: "Well, what would you take for it?" or "I'll just buy it for your appraised value if I can get the finances." More than once a Douglas County Hearing Officer has said "you're just wasting my time and the taxpayers' money." A few days later you may get a form letter which simply states, "information submitted was considered, after review it was found insufficient to change the value of this parcel."

I will read two brief signed statements from Douglas County property owners.

1. After giving her our reasons why we thought our house should be appraised lower, our appraiser told us that we were "wasting her time and the taxpayer's money."

House Taxation
2-14-96
Attachment 2-1

2. When I appealed my taxes in the Spring of 1994, I took with me an assessment from a local commercial appraiser. As soon as I presented this to the County representative from the Appraiser's Office, it was looked at with disdain. The man interviewing me made a remark indicating that 100 people making an appraisal would all differ, so the County's appraisal was the only one objective and accurate."

All too often at every level of the local hearing process - even to the County Attorney, the attitude seems to be,"we are right and you are wrong".

Thank you for hearing my statements. I ask the Committee to favorably recommend HB 2786 and help property taxpayers receive fair treatment.

JAMES M. JESSE

Attorney and Counselor at Law

10 East 9th Street, Suite C
Lawrence, Kansas 66044
Telephone (913) 865-LAWS (5297)
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Testimony of James M. Jesse Regarding H.B. 2786

My name is Jim Jesse and I am a property tax attorney in Lawrence. Before opening my practice in Lawrence, I was an attorney at the Board of Tax Appeals for over two and a half years. Thus, I have experience in the area of property taxation and the appraisal process. On February 1, 1996, I testified before this committee in favor of H.B. 2625.

H.B. 2786 reverses the legal presumption employed by the Board of Tax Appeals (BOTA) and some district courts that a taxpayer has the burden of proof in tax appeal process. This bill rightly places the burden of proof upon the county which has far superior resources, better knowledge of the procedures, and a greater amount of information upon which to draw. Thus, the county is better able to shoulder this burden than ordinary taxpayers who neither have the time nor the expertise to challenge a county's valuation of property.

It has been the practice of the BOTA to place the burden of proof on the taxpayer because Kansas case law indicates that it is presumed that public officials will faithfully perform their duties. Quivira Falls Community Ass'n v. Johnson County, 230 Kan. 350, Syl. ¶ 4, 634 P.2d 1115 (1981); Garvey Grain Inc. v. MacDonald, 203 Kan. 1, 13, 453 P.2d 59 (1969); and Anderson v.

House Taxation
2-14-96
Attachment 3-1

Dunn, 189 Kan. 227, 228, 368 P.2d 6 (1962). From this proposition it was a small step to conclude that a taxpayer had the burden of proof in seeking to overturn a county's valuation. It should be noted that none of the cases cited above specifically states that a taxpayer has a burden of proof, but rather that a county's actions are presumed to be correct. Simply because a county official faithfully performs his duty, however, does not mean that their actions are presumed to be correct.

While statistics on this matter are hard to gather, it is fair to say from my experience of working and appearing before BOTA that in a majority of cases taxpayers lose their appeal because they have not met their burden of proof. I do not know if this bill will reverse this trend, but it will at least put the onus on the county to support the value placed on the home. As I read this bill, the initial burden of proof is on the county to demonstrate the validity of their appraised value. If they meet this initial burden, then it is up to the taxpayer to eventually refute the county's initial evidence. In the end, if the county cannot produce its initial burden or the taxpayer's evidence is stronger, then the taxpayer will prevail.

This legislation will also make it easier for taxpayers on appeal. It is called a negative finding of fact if it is found that a party that does not meet its burden of proof. A negative finding of fact can only be reversed if there was an arbitrary disregard of undisputed evidence or some extrinsic consideration

such as bias, passion or prejudice. Mohr v. State Bank of Stanley, 244 Kan. 555, 567-68, 770 P.2d 466 (1989). This is a substantial burden of proof on appeal. Thus, under H.B. 2786, the county must meet this burden on appeal, not the taxpayers. Again, the county is in a much better position to meet this burden of proof given their resources and knowledge of the appraisal process.

The only potential pitfall regarding switching the burden of proof is that taxpayers may initiate frivolous appeals that may simply because the county has the burden of proof. This problem, however, is not likely. If the county has sufficient evidence to back up their value, then that value will stand no matter who has the burden of proof.

I also wanted to comment on section one that precludes BOTA from questioning a stipulation by the parties as to the value of a piece of property. In section one it is stated that the validity and correctness of a stipulation is a question of fact. I cannot agree with this statement given that fair market value is defined by statute, K.S.A. 79-503a. In reality, the question of fair market value is a mixed question of fact and law, and ultimately, I believe a question of law since it is defined by statute.

There is also a danger in giving county appraisers power to enter into stipulations which no one has any review over. Appraisers making deals with taxpayers, usually powerful ones, wherein no party has any review power may lead to abuses. Such

stipulations may be below fair market value. While appraisers are bound to value and stipulate to property at its fair market value, I believe there needs to be some review mechanism of stipulations by some entity. The Board of Tax Appeals, as well as county assessors, are under a duty to value property at its fair market value and face criminal penalties if they fail to do so. K.S.A. 79-1426. The legislature needs to take this statute into account in enacting this provision.

As an attorney who practices and reaches stipulations before the board, it would personally benefit me to submit stipulations that the board would be bound to accept; however, I believe that some oversight authority is necessary in this area. Perhaps there could be language to the effect that a stipulation must be accepted if there is any basis in the evidence for it. This would limit the scope of the board's review, yet still address the dangers of an appraiser entering into "sweetheart deals" with taxpayers to avoid the rigors close scrutiny or a hearing before the board. The simple statement that the Board of Tax Appeals must accept stipulations would overturn a vast amount of case law which states that you cannot stipulate to a question of law, may undermine the board's authority as the State Board of Equalization, and contradicts K.S.A. 77-527(c), which states that BOTA orders shall include findings of fact that have a basis in the record.

Overall, I believe that House Bill 2786, probably more than any bill of late, will help ordinary taxpayers in the appeals

process. This bill places the burden of proof where it rightly belongs--the county. I believe that this bill will allow for more just and equitable appraisals and for a fairer and more balanced appeals process. If you have any questions, I would be happy to entertain them at this time. Thank you for this opportunity to testify in front of this committee.

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HOUSE OF
REPRESENTATIVES

RALPH M. TANNER
DISTRICT 10

TESTIMONY ON HB 2786

House Committee on Taxation

February 14, 1996

Mr. Chairman and Members of the Committee:

I am pleased to come here today to speak to you on behalf of HB 2786.

Writing for the Court in 1819, Mr. Chief Justice John Marshall opined, "The power to tax involves the power to destroy." McColloch v. Maryland, 4 Wheaton 316, 431.

More than a century later, a great dissenter on the Supreme Court bench, Oliver Wendell Holmes, Jr., wrote, "The power to tax is not the power to destroy while this Court sits." [Emphasis mine.] Panhandle Oil Co. v. Knox, 277 U.S. 223.

At first impression, it might seem that diametrically opposing positions were taken by these giants of American jurisprudence. I trust that you will soon recognize that they were speaking with one voice to a point of peculiar importance to us, today, in the legislature of the State of Kansas.

The notion that should be attributed to them is very simple.

While is within the province of government to lay and collect taxes, constraints are ever necessary components of the process. There may be those who will come before this panel to deplore the burden that this bill would seem to place upon appraisers and the appraisal process. To them I would say, it ought to be difficult to set and collect taxes. The proofs that are required for the appraisal process in this bill are not to be viewed as extraordinary or destructive of the process.

"The power to tax <u>involves</u> the power to destroy," John Marshall said. Have you heard -- in this very hearing room -- of overly zealous appraisers who have come close to the level of confiscatory taxation? Can you imagine what these individuals might do, or the burdens they might impose were you and I not vigilant as members of the legislature?

Let us therefore join Holmes and say to those who have ears to hear "not . . . 'while this Court sits.'"

I thank you for your indulgence of my professorial nature, Mr. Chairman, and I will stand for questions.

KANSAS ASSOCIATION OF REALTORS®

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Fax 913/267-1867

TO: HOUSE TAXATION COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: FEBRUARY 14, 1996

SUBJECT: HB 2786 PROPERTY TAXATION; APPEALS, BURDEN OF PROOF

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today to support the concepts of HB 2786.

We have always supported attempts to streamline the Board of Tax Appeals (BOTA) process and increase the quality of its decisions, without unnecessarily complicating the process. Last year, in the Senate Assessment and Taxation Committee, we testified in support of a longer, more complex bill on this subject. While this does not go as far as the 1995 bill did, we think it does offer some viable solutions.

The BOTA has traditionally been the poor man's tax court. A taxpayer did not need an attorney to plead their case to the board, nor were they forced to make their appeals to a bank of attorneys who know little or nothing about the valuation of property.

We agree with the amendment placing the burden of proof on the county appraiser to initiate the production of evidence supporting their determination, rather than having the burden be on the taxpayer. Some may argue that it is always the plaintiff's or appellant's burden of proof to prove their case in regular court cases, therefore the taxpayer who is appealing should have the burden of proving their case. However, a BOTA appeal is a much different animal, because the whole process is started by the county appraiser, when they arrive at their value. It seems much more logical then, that they should have to substantiate their value throughout the process. They have the economic resources to meet the burden of proof, rather than the average taxpayer who, oftentimes has to hire professional appraisers in order to match the county resources.

We also agree with the "preponderance of evidence" standard for proving their case, and the specific language stating that there is no presumption in favor of the county appraiser with respect to the validity and correctness of their determination. The "preponderance of evidence" standard only requires that 51% of the evidence supports the county appraiser's position. This does not seem to be an unreasonable standard.

This whole package creates a much more level playing field for the taxpayers who, in the past, have felt the system is set against them. This seemed to be the perception, in particular, by taxpayers who have attempted to represent themselves before the board.

Thank you again for the opportunity to testify. I will be happy to answer any questions.

TESTIMONY - HB 2786
HOUSE TAXATION COMMITTEE
FEBRUARY 14, 1996
9:00 AM

Mr. Chairman and members of the Committee, I do appreciate the opportunity of appearing before you to provide information and my opinion of the statutory amendments that are proposed in HB 2786.

Having served in the capacity of Chairman of the Board of Tax Appeals for the past six months, I have seen the system operate in hearings throughout our state.

Notwithstanding the sincere intentions of the sponsors of this bill, I respectfully disagree with the amendments as I understand them. The first part of the amendments would shift the burden of proof from the taxpayer to the County. This change is contrary to the bedrock legal principle of "he who brings the action carries the burden of proof." For example, the burden is on the prosecutor in a criminal case and the burden is on the plaintiff in a civil action, so the burden is on the taxpayer in a tax appeal case according to current law. This amendment would be applicable on the local hearing officer level as well as the Board of Tax Appeals. It is elemental but I believe obvious, that those people who create the appeals have a desire to shift the burden of proof.

Another proposed change, which is most important to me personally, would require the Board of Tax Appeals to accept stipulations (agreements) that were prepared and presented by the parties involved in the appeal. I have attached a copy of a district court case from Shawnee County that sustained the Board in their authority to reject stipulations. We review stipulations as thoroughly as any document or testimony that is presented during the course of a hearing. I believe it is our responsibility to adhere to the statutory definition of "fair market value" and our determination whether certain facts are covered by statute, and our statutory interpretations which are questions of law. The amendment would define a stipulation of value to be a question of fact. On page 5 of the district court case it is stated, "Neither the courts or the BOTA are bound by stipulations of value made between a taxpayer and the county appraiser because the question of whether

House Taxation
2-14-96
Attachment 6-1

the property is lawfully appraised is a question of law." The Court further opined that "The Bota need not be a helpless bystander to agreements or remain mute when the parties to a change in valuation are not adversarial. It has specific statutory duties to uphold in addition to its quasi-judicial functions to adjudicate. The BOTA's broad powers, K.S.A. 74-2437a and K.S.A. 74-2437b, permit it to bring evidence to hearings relevant to the valuation of the subject property in carrying out the uniform and equal valuation and fair taxation mandates of the constitution and statutes." The Court also stated that "if the plaintiffs' arguments are carried to their logical conclusion, a stipulation would not only deny BOTA the opportunity to review the basis for an agreed value but the district and appellate courts would also be deprived of reviewing the lawfulness of such action." I do not believe that I should be forced to accept a stipulation of value between the taxpayer and the county that I believe violates the Constitution and statutes of the State of Kansas. I would personally refuse to endorse what I perceive to be unlawful, illegal and violates the oath of office that I swore to uphold.

I would respectfully request that you very carefully consider the ramifications of HB 2786. I believe that when you do, you will agree with me that this bill is not in the best interests of our citizens and does create a precedent regarding the burden of proof which would not be desirable.

Thank you for allowing me the opportunity of presenting my opinions about this bill that does affect your constituents.

Respectfully submitted,

BOARD OF TAX APPEALS

BY _____
August Bogina, Jr., Chairman

Attachment: Case No. 93-CV-822
Division 12
Shawnee County District Court

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION TWELVE

FIDELITY DEVELOPMENT, INC. (MEADOWOOD),

Plaintiff,

vs.

SHAWNEE COUNTY APPRAISER,

Defendant.

Case No. 93-CV-822

FIDELITY DEVELOPMENT, INC. (MISTY GLEN),

Plaintiff,

vs.

SHAWNEE COUNTY APPRAISER,

Defendant.

Case No. 93-CV-823

THORMAN & WRIGHT CORPORATION (MEADOW ACRES),

Plaintiff,

vs.

SHAWNEE COUNTY APPRAISER,

Defendant.

Case No. 93-CV-824

MEMORANDUM DECISION AND ORDER

The above-captioned cases are before the Court on appeals filed by the land owner/taxpayers from decisions and orders of the Board of Tax Appeals (hereinafter BOTA). The Court finds that the matters are properly before the Court on Petition for Judicial

Review. The Court finds that the (BOTA) decisions in these cases should be reversed and remanded to BOTA for hearing in accordance with this opinion.

The common questions which bring these cases before the Court are whether or not BOTA erred in denying a stipulation entered into by the appellant taxpayers and the Shawnee County Appraiser as to the value of the subject properties and whether or not BOTA erred by entering orders denying the change in valuation without a full evidentiary hearing.

CONCLUSIONS OF LAW

1. The Court finds the standard of review in these cases to be controlled by K.S.A. 77-621. The relevant parts state as follows:

> (c). The Court shall grant relief only if it determines any one or more of the following:
>
> (4) the agency has erroneously interpreted or applied the law;
>
> (7) the agency action is based on a determination of fact, made or implied by the agency, that is not supported by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the Court under this act; or
>
> (8) the agency action is otherwise unreasonable, arbitrary or capricious.

2. The Kansas Supreme Court, in several cases, has noted supervisory responsibility and the administration of the appraisal and taxation laws of the state of Kansas is vested in state officials, e.g., the Director of Property Valuation (hereinafter D.P.V.) or the BOTA. See Stephan v. Kansas Department of Revenue,

253 Kan. 412, 856 P.2d 151 (1993), State ex. rel. Smith V. Miller, 239 Kan. 187, 718 P.2d 1298 (1986), Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 453 P.2d 59 (1969).

3. Several statutes, including K.S.A. 79-2005, K.S.A. 79-1401 et seq. and K.S.A. 79-1610, contemplate that the valuations of real property shall be uniform and equal throughout the state. The D.V.P. and/or BOTA are vested with authority to establish and maintain such a statewide system.

4. Kansas property tax laws require uniform and equal property values. Once they are established, the values of property should not be changed unadvisedly. K.S.A. 79-2005 provides that the BOTA shall have the opportunity to scrutinize changes made to appraised values made by local officials. This oversight is necessary to maintaining the uniform and equal statewide system of property valuation required by Article 11, Section 1 of the Kansas Constitution and K.S.A. 79-501, et seq. A rule which would permit local officials in consort with taxpayers to establish the value of individual tracts of real property without oversight by state tax officials and the courts would destroy whatever uniformity that has been achieved through the reappraisal process.

5. Ordinarily, courts and agencies are bound by stipulations of litigants. An exception exists when there is an attempt to bind the court or agency on questions of law and jurisdiction. See Wentz Equipment Co. v. Missouri Pacific R.R. Co., 9 Kan. App. 2d 141, 142, 673 P.2d 1193 (1983).

5. Valuing real estate involves more than mathematical

calculations. It involves an exercise of judgment and a choice on which approaches to value best represent true value. The factual basis for these decisions may be both specific to the subject property and the valuation of comparable property in the jurisdiction. The appraisal process involves deciding what facts are relevant. However, since the appraised value is defined by statute, the ultimate question of whether or not a property has been valued according to law is a question of law.

7. A taxpayer and the county appraiser or Board of County Commissioners may not by stipulation divest the D.P.V. or the BOTA of their jurisdiction and statutory authority to review changes in the classification and the appraised valuation of real property in Kansas. Stipulations of fact may be binding on the parties who make them, but, taxpayers and local officials may not stipulate to deprive a state agency or a court of its statutory authority and duties.

If the plaintiffs' arguments are carried to their logical conclusion, a stipulation would not only deny BOTA the opportunity to review the basis for an agreed value but the district and appellate courts would also be deprived of reviewing the lawfulness of such action.

> "...parties may not by stipulation invest a court with jurisdiction over the subject matter of a cause which it would not otherwise have had. And clearly, the parties to an action may not stipulate for the determination thereof by the trial court in a manner contrary to the statutes or rules of court. It is also established that matters affecting the public interest cannot be made the subject

of stipulations so as to control the court's action in respect of such matters."

See In Re: Petition of City Shawnee for Annexation of Land, 236 Kan. 1, 16-17,687 P.2d 603 (1984), citing 73 Am. Jur. 2d, Stipulations, secs. 1, 4 and 5.

Neither the courts or the BOTA are bound by stipulations of value made between a taxpayer and the county appraiser because the question of whether the property is lawfully appraised is a question of law.

8. The BOTA must base its decisions upon evidence produced at a hearing in a manner that affords the party's fundamental due process and produces a record so a meaningful review can be made by the courts. In this case, BOTA denied the taxpayers a full evidentiary hearing and made findings based upon evidence not presented at a hearing. The Court cannot, from the record, determine whether or not the BOTA order should be upheld.

9. When the BOTA determines it should reject a stipulation, it should give timely notice to the taxpayer and county officials of their objections, questions and any evidence known to them that mitigates against the stipulated value. The case should then be set for hearing to permit the parties the opportunity to present evidence in support of their respective positions.

The Kansas Administrative Procedure Act, K.S.A. 77-501 et seq., provides for hearing procedures which should be followed by BOTA to insure fundamental fairness and to build an adequate record for review. K.S.A. 77-523 provides in pertinent part:

"(b) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination and submit rebuttal evidence...

(c) The presiding officer may, and when required by statute shall, give nonparties an opportunity to present oral or written statements. If the presiding officer proposes to consider a statement by a nonparty, the presiding officer shall give all parties an opportunity to challenge or rebut it and, on motion of any party, the presiding officer shall require the statement to be given under oath or affirmation."

10. The BOTA need not be a helpless bystander to agreements or remain mute when the parties to a change in valuation are not adversarial. It has specific statutory duties to uphold in addition to its quasi-judicial functions to adjudicate. The BOTA's broad powers, K.S.A. 74-2437a and K.S.A. 74-2437b, permit it to bring evidence to hearings relevant to the valuation of the subject property in carrying out the uniform and equal valuation and fair taxation mandates of the constitution and statutes.

IT IS THEREFORE ORDERED that the decisions of the BOTA in the above-captioned cases are reversed and they are remanded to the BOTA for rehearing in accordance with this decision and order. This memorandum decision and order constitute the Court's entry of judgment. No further Journal Entry is required.

IT IS SO ORDERED.

Dated this 14th day of October, 1993, at Topeka, Kansas.

James P. Buchele
District Judge

6-8

KANSAS COUNTY APPRAISERS ASSOCIATION

P.O. Box 1714
Topeka, Kansas 66601

To: House Committee on Assessment and Taxation
From: Larry Clark, CAE
Subject: House Bill 2786
Date: February 14, 1996

My name is Larry Clark and I am appearing on behalf of the Kansas County Appraisers Association in opposition to House Bill 2786.

There are several points of concern with this legislation.

On page one, beginning at line 34 the bill states "the question of the validity and correctness of a determination of valuation of property is a question of fact". Fact is defined in Black's Law Dictionary as "an actual and absolute reality, as distinguished from mere supposition or opinion". An appraisal is defined in the Dictionary of Real Estate Appraisal as "an opinion of the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate." An appraisal is an opinion of the value on which reasonable people can and do differ. There is no reasonable way it can be considered a fact.

Section 3 discusses county boards of equalization which have not existed for a number of years.

The greatest concern is created by the shifting of the burden of proof and the specific removal of the presumption of correctness of the county's value. I am not aware of a single instance in which the party against whom a suit or action is taken is required to prove at the outset that the claim being brought is without merit. This change in the law would be analogous to a customer slipping and falling in a place of business, suing the owner and the owner having the initial burden of proving that the claim is groundless. One of the primary reasons for the burden being placed on the appellant is that it is impossible to prove a negative. The owner in my analogy cannot prove that he or she is not negligent. All that can be proven is that due care was taken.

That problem is compounded by the reality of an appraisal being an opinion of value. The standards set in law and sound mass appraisal practice require that the median level of appraisal be in a range from 90% to 110% of market value and that appraisals within a specific class not vary more than 20% from that median. Practically speaking that means two competent appraisers could be considered accurate if one appraised a parcel at $91,000 and another appraised the same parcel at $99,000. At an assessment rate of 11.5% and a tax rate of 35 mills the tax difference equates to $32.20. At an assessment rate of 25% and the same tax rate the difference increases to $70.00. Under accepted appraisal standards, neither appraiser in this case would be able to prove that their appraisal was more correct than the other, or that the other appraisal was less correct. If the $91,000 appraisal were to be presented on appeal there would be virtually no way for the county to prove that the $99,000 appraisal was any better than the $91,000 appraisal. Because of the interpretation given the term "substantial and compelling" in K.S.A. 79-1460, the county would then carry the reduced value of $91,000 at least two tax years.

Allow me to present a practical example from the county where I work. We have a mall currently appraised by the county at $115,000,000 with a resulting general property tax bill of $3,180,296.25. Under this proposed legislation, the property owner could propose a value of $105,000,000 and the county, or anyone else for that matter, would be hard pressed to prove that was not a reasonable value. Keep in mind that the county's value is also reasonable, but the burden has now shifted so that the county must show both that its value is reasonable and the proposed value is not. The $10 million reduction in appraised value will cause $276,547.50 in taxes to be shifted, more than likely to surrounding residential

property owners. This will be accomplished not because the county appraiser is incompetent but because market value is best represented by a range of possibilities and the taxpayer chose a possibility at the low end of the range.

The state abstract for Kansas shows that in 1994 the combined assessed value of residential and commercial real estate was $1,247,831,968 which generated $132,864,137.60 in property taxes. Under this proposal up to $124,000,000 of that value and $13,200,000 in property tax revenue will be in constant jeopardy for loss or shift. That will not move the state toward a more stable tax base.

There is also no practical way for appraisers to prevent this shift. The logical approach would be to appraise all properties at the bottom of the range of possible values. Unfortunately the properties with the most dramatic impact on the tax base are also some of the most unique, making it extremely difficult to establish any estimate. The value of a home which sits in the middle of an active subdivision of similar homes where there are ample sales, is relatively easy to establish. On the other hand, some of the most valuable parcels in each county are also the most unique, with few sales state wide or even nationwide. In those instances the county appraiser's estimate may be viewed as always establishing the upper end of value, no matter where it is placed.

If this proposal merely required county appraisers to provide support for their values I would not be here speaking against this bill. The practical effect of this bill will not be to force county appraisal staff to work harder. The practical effect of this bill will be to force every property owner in the state to annually appeal their value as a means of self defense against the inevitable shifts created by those property owners or agents who will be given a new lever against the system.

STATE OF KANSAS

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
TAXATION
JOINT COMMITTEE ON CHILDREN AND FAMILIES
DEMOCRATIC LEADERSHIP
CAUCUS CHAIR

TESTIMONY ON HB 2822
HOUSE TAXATION COMMITTEE
February 14, 1996

Mr. Chairman and members of the committee. I am Representative Pat Huggins Pettey and I appreciate the opportunity to speak in support of HB 2822.

A. Why we need Early Childhood Education Support

Public concern about how youth are faring in school is at an all time high. In 1991, the high school dropout rate was 14.3% with around 32% of young people failing to graduate on time, nation-wide. For high risk populations, dropout rates are even higher, ranging from 35.9% for Hispanics to 16.9% for African-Americans.

Kansas Information: In Kansas, the graduation rate has dropped below the 80% rate for the first time in five years.

Although the American public has traditionally supported free universal education for children from Kindergarten through Grade 12, the public schools are in trouble. Educators claim that it is becoming more and more difficult for schools to succeed with increasing numbers of ill-prepared or troubled children coming to school.

Carnegie Foundation for Advancement of Teaching:

Kindergarten teachers reported dramatic increase in the numbers of children unprepared for the school environment. Survey results: 43% of teachers said that their students are not as well prepared for school as their earlier counterparts. Both children and the educational institutions are thus at a disadvantage for achieving success.

What are the benefits of Early Childhood Programs.

Survey results: 43% of teachers said that their students are not as well prepared for school as their earlier counterparts. Both children and the educational institutions are thus at a disadvantage for achieving success.

What are the benefits of Early Childhood Programs.

Research indicates that low income children who attend early childhood education programs score higher on achievement tests, earn higher grade point averages and are more likely to complete high school. According to a federal report on Head Start, "The bulk of the research shows that children who participate in early childhood education programs exhibit greater motivation toward learning, achievement and higher regard for themselves than similar children who do not."

These programs:

- Strengthens community networks
- Promote healthy child development
- Strengthens families
- Prevent child abuse
- Parental education support with raising young children
- Prepare the workforce of the future by having well educated people graduating from high schools
- Children's language skills, conceptual abilities, motor skills and receptive vocabulary has improved dramatically.

Research from major longitudinal studies on the impact of quality early childhood programs on highrisk populations confirms a remarkable ameliorative effect, particularly with respect to enhancing children's

ability to succeed in school.

II. High/Scope Perry Preschool Study

One of the most frequently cited longitudinal studies followed children for over 20 years. The most recent assessment, titled Significant Benefits, concluded that adults born in poverty who attended a high quality active learning preschool program at ages three and four have fewer criminal arrests, higher earnings, property wealth, greater commitment to marriage. Educational achievement was significantly differ with 71% completing the 12th grade or higher.

Savings.

Over participant's lifetime, an estimated $7.16 was saved in the long-term costs of welfare, remedial education, teen pregnancy and crime for every dollar invested.

The most recent High/Scope Perry Preschool research estimated that the program saved $6,872 per participant in elementary and secondary education costs alone. Savings include lower costs of special education and remedial services and reductions in the number of students repeating grades. This same type of program has reduced costs of crime by nearly $150,000 per participant over a lifetime. Armed with such research findings, State Legislatures have taken the initiative to create and fund state preschool programs or to supplement federal Head Start programs with state money. According to the Children's Defense Fund, 25 states and D.C. have funded state preschool programs, State funding for the 1991-92 school year amounted to $665 million with $611 million devoted to state preschool.

Delaware, Georgia, North Carolina, Kentucky and Tennessee have all increased state expenditures since 1991. Kentucky 's funding for preschool

programs has increased from $14.5 million in state expenditures in 1990-91 to close to $100 million in 1993-94. Ohio has made an ambitious move by appropriating about $100 million to supplement Head Start programs over a two year period. They have committed to serve 100% of Head Start eligible by 1996. The State of Washington is providing early childhood education to nearly all eligible four year olds in the state. Comprehensive preschool programs for at-risk four year olds was created primarily as a specific economic development strategy.

According to the 1996 Kansas Kids Count Book, juvenile arrests have climbed to 40 arrests per 1000 children in 1994 and child abuse/neglect confirmed cases has increased 25% in the last five years.

The teen birth rates continues to increase with 9.2% of all births in 1994 to unmarried women under the age of twenty.

In order to decrease the financial impact that these social issues demand we need to concentrate on managing limited resources and educating the public to the financial saving that can be realized through early childhood programs.

The current bill as proposed provides a funding stream for early childhood programs. A 2% excise tax would be paid on each monthly cable bill. The fiscal impact of this bill would be $4.3 million which would go into the School District - Early Childhood Education Incentive Fund. These funds would be distributed to school districts by the State Board of Education through a grant program and may be used to expand Parents as Teachers, four year old programs and full-day kindergarten.

Testimony for House Bill No. 2822
House Taxation Committee

Early Childhood Education Programs: A Necessity for Kansas Public Schools

Dr. Jill Shackelford
Executive Director of Student Learning
Turner Unified School District #202

February 14, 1996

I. Need

A. Early childhood programs increase likelihood of students' early success in school

1. Societal expectation of first grade reading acquisition (Sheperd and Smith, 1988)
    a. Unsuccessful readers at first grade, unlikely to ever catch up
    b. In schools serving large numbers of disadvantaged students, lowest one-quarter of first grade students could hardly read at all (Slaven, Madden, Karweit, Dolan and Waskik, 1992)

        I have a little black dog. He has a pink nose. He has a little tail. He can jump and run (1.2 level)

2. Disadvantaged 3rd graders who have failed one of more grades and are reading below level and unlikely to complete high school (Lloyd, 1978)

3. Remedial programs (Title I) have few, if any, effects on students above third grade (Kennedy, et al. 1986)

4. Majority of students placed in special education classes for reading disability are rarely released and rarely catch up with peers (Haynes, Jenkins, 1986)

5. Unsuccessful first grade students demonstrate loss of motivation, self confidence.

6. Cumulative deficits are observed
    Children behind age peers learn less and less over the years while more academically successful peers lean more and more, and so the gap widens (Carter, 1984)

7. Success in early grades does not guarantee success throughout school years and beyond, but failure in early grades does virtually guarantee failure in later schooling.

B. Preschool advantage widens gap between upper middle class and disadvantaged

1. Rates of participation in pre-Kindergarten programs is a function of family income (Lezotte, 1996)
    a. 60% of first grade had some form of early childhood program prior to Kindergarten
    b. 75% of children from high family income had two years of preschool
    c. 35% of children from lowest family income had two years of preschool

2. Goals 2000
   All students enter first grade ready to learn

C. Kansas Assessments are tied to specific grades - Reading grade three
   1. Upper middle class assessed after five or six years of formal schooling
   2. Poor children assessed after four years of schooling

D. National consensus of importance of early childhood progress is growing
   1. Headstart funding increased
   2. Fifteen states and District of Columbia fund pre-Kindergarten programs for four year olds (Morado, 1985)

E. Consistent Comprehensive Intervention needing from birth to school age.
   1. Enter first grade with good language skills, cognitive skills and self-concepts no matter what their family background or personal characteristics
      a. Parents as Teachers 0-3 years
      b. four years ??
      c. Kindergarten to five years (full day Kindergarten for At-Risk students)

   2. Provide At-Risk (not just Multi-Risk) children with services needed at a particular age or developmental stage.

   3. Link prevention, early intervention and continuing instructional improvement

II. Effectiveness
   A. Prevention and early intervention are preferable to remediation

   B. Attendance at a high quality preschool has long term benefits (Karweit, 1985)

   C. Perry Preschool Study provides 20 years of research on positive impact of preschool
      Benefits - higher high school completion rates, lower unemployment, lower teen pregnancy (Karweit, 1985)

   D. Improved early childhood programs are cost effective
      1. Improved later achievement
      2. Reduced remedial placement
      3. Reduced special education placement
      4. Reduced retention
      5. Reduced dropouts
      6. Reduced delinquency
         Payoff = reduced need for later and continuing remedial and special education services

   E. One dollar invested in preschool education saves $4.75 in subsequent spending (Hoskins, 1989)

III. Implementation Obstacles

A. Reconfigure funding resources to "front-load" services for comprehensive At-Risk programs.

1. At-Risk state funding - four year early childhood programs

2. Title I funding
   a. focus on early childhood - first grade
   b. reduce Title budget 18% for 96-97

3. Ed-Flex - deregulations to pool funding

4. Excellence Grants
   a. one year
   b. matching funding

5. Title VI B Grants for special education

6. Parents as Teachers
   a. Four years programming gap
   b. Matching funding

B. Dilemma: Strip existing programs to front-load or develop programs with "soft" money

1. Not enough funding to provide comprehensive consistent intervention birth to school age

2. Understand funding early childhood is cost effective and will eventually result in reduced special education placement and funding

3. Turner realizes need for early childhood program.
   a. Majority of first grade student are "not ready" to learn
   b. Below state average on Kansas assessments
   c. 46% poverty rate

IV. Advantages of HB 2822

A. Flexible solutions to comprehensive early childhood program development

B. Funding available to initiate early childhood programs while maintaining existing programs that can later be reduced

C. Unobtrusive tax - cost to consumer is minimal

D. Consumption tax targeted to cable TV and radio that profits from and caters to school age population (and often serves as a baby sitter for many children)

E. Built in accountability and control of grants to districts

Questions directed to:

Dr. Jill Shackelford

Ms. Rogene McPherson - Director of Special Services - involved with Parents As Teachers

Miss Teresa Tulipana - Principal of Morris Elementary School - houses the only developmental Preschool of Turner USD #202

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LAWRENCE PUBLIC SCHOOLS

Henry Levine from Stanford University reminds educators the importance of acceleration versus remediation in school programming.

High risk children come from poor and under-educated families; families who do not view school as important and do not see the opportunities that education can provide their families. We need to break the cycle of poverty by enhancing educational programs.

Within Lawrence Public Schools efforts have been make to offer full-day kindergarten programs to address the needs of these high risk children. Because of the direct relationship between education and income the full-day programs were initiated at schools which provided a free or reduced lunch to 70% or more of the student body. 5 schools currently operate with the full-day kindergarten program. The children at these schools are given educational opportunities they otherwise would have missed. These opportunities and experiences are the foundation-building school success.

A state of Delaware study gave the following results on the impact pre-school had on students' future development versus those who didn't:

- fewer special education placements
- fewer adolescent pregnancy rates
- reduced juvenile corrections rates
- higher employment levels
- greater high school graduation rates

These study figures, while related to a pre-school program, in Delaware, have relevance in Lawrence and show that we need to emphasize early childhood educational programs.

House Taxation
2-14-96
Attachment 10-1

Below are some alarming statistics taken from the 1996 Kansas Kids Count Data Book, Kansas Action of Children, Incorporated:

CHILDREN IN DOUGLAS COUNTY :

- A 5% increase in the number of children receiving economic assistance from 1994 to 1995
- A 2 % increase in the number of students receiving free lunches
- A 15% increase in births to single teens from 1993 to 1994
- Because of the increasing number of students growing up in poverty, the Douglas Head Start Program now is able to serve 5% fewer students.
- From 1991 to 1994 there was a 54% increase in reported cases of child abuse and neglect
- Reported alcohol and drug abuse in among the worst in the state
- From 1993 to 1994 there was a 85% increase in juvenile arrests

We believe the full-day kindergarten program and efforts on behalf of pre-school children will have a direct and positive impact on the above mentioned data.

We are fortunate to have a strong Business/Education Partnership in Lawrence, but we can not rely on local businesses to fund our educational programs. It is our belief that House Bill 28-22 would give us additional financial support in providing opportunities for our high risk 4 and 5 year olds. Translated to investment dollars, The High/Scope Perry Study concluded that for every $1.00 invested in quality preschool programs, $7.12 is saved in remediation cost, welfare cost, and crime reduction cost. This is cost savings over 23 years. It will continue to multiply as the young adult gets older.