

Approved: Feb 1, 1996
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:00 a.m. on January 30, 1996 in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Martin, Senator Bond, Senator Clark, Senator Feleciano, Jr., Senator Hardenburger, Senator Lee, Senator Ranson, Senator Sallee and Senator Wisdom.

Committee staff present: Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Don Hayward, Revisor of Statutes
Elizabeth Carlson, Secretary to the Committee

Conferees appearing before the committee: Senator Alicia Salisbury
David Carpenter, Attorney
Karen France, Kansas Association of Realtors
Gus Bogina, Chairman, Board of Tax Appeals
Larry Clark, Kansas County Appraisers Association

Others attending: See attached list

APPROVAL OF MINUTES

Senator Corbin made a motion to approve the minutes of January 25, 1996. The motion was seconded by Senator Clark. The motion passed.

INTRODUCTION OF BILLS

Senator Hardenburger made a motion to introduce a bill relating to exemptions from the property tax lid. The motion was seconded by Senator Martin. The motion passed.

SB 455--PROCEDURES AND PRACTICES OF THE BOARD OF TAX APPEALS

Staff explained an amendment to **SB 455** which was introduced by Senator Salisbury. (Attachment 1) Mr. Hayward said it was the same language in the bill but it was placed in a different section of the statutes due to a drafting error.

Senator Corbin made a motion to adopt the amendment. The motion was seconded by Senator Wisdom. The motion passed.

Proponents

Senator Alicia Salisbury introduced this bill and addressed some of the procedural problems that taxpayers have experienced in attempting to appeal to the Board of Tax Appeals valuations set by the county appraiser on their properties. (Attachment 2) She listed five changes to the Board of Tax Appeals that are being proposed in **SB 455**. (1) Specific qualifications on the Board of Tax Appeals membership; (2) Presumption of correctness of valuations; (3) Providing that valuation of property be a question of fact, not a question of law; (4) Rules of evidence; and (5) Expanding the scope of review on appeal from the Board of Tax Appeals to one of de novo review.

David Carpenter, attorney, spoke in support of **SB 455**. (Attachment 3) He listed the changes proposed to the statutes and discussed them, one by one. He talked about the qualifications, training and experience of individual board members. He also asked that the Senate thoroughly evaluate and confirm qualified and experienced people beyond the minimal requirements. Mr. Carpenter said it was an erroneous perception that the taxpayer had to not only prove the value of his property, but also to disprove the value of the County Appraiser. He stated that case law would indicate the valuation of property is a question of fact, not a question of law. The fourth proposed change he said is because the Board of Tax Appeals does not follow the rules of

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:00 a.m. on January 30, 1996.

evidence and permits unqualified individuals to testify concerning value. **SB 455** would require the rules of evidence be applied to the proceedings. Mr. Carpenter also said it was his recommendation that the legislature look at expanding the scope of review on appeal from the Board of Tax Appeals to one of de novo review. Allowing the taxpayer to take the matter directly to the District Court, bypassing the Board of Tax Appeals, would result in a faster determination.

Mr. Carpenter said he was not being paid to provide this letter to the committee but he was doing this because he felt it was in the best interest of the taxpayers that these issues be resolved.

There were questions from the members of the committee asking Mr. Carpenter to explain his statement regarding the erroneous perception that the taxpayer had to prove the value of his property, rather than the County Appraiser prove his assessed value. Mr. Carpenter said he could show orders where the Board of Tax Appeals acts under this presumption. He said this would level the playing field for both the taxpayer and the county appraiser.

Karen France, Kansas Association of Realtors, also spoke in support of **SB 455**. (Attachment 4) She said she thought this bill does offer some viable solutions to problems which have occurred. They particularly supported the change in the qualifications for the members of the Board of Tax Appeals. This would be a good mix and taxpayers would face individuals who have experience in these areas. She expressed a concern about Section 3 which would require a taxpayer to hire an attorney in order to follow the rules of evidence in their appeal. The Kansas Association of Realtors also agreed with the amendment placing the burden of proof on the county appraiser to demonstrate evidence supporting their determination.

Opponents

Gus Bogina, Chairman, Board of Tax Appeals, spoke as an opponent to **SB 455**. (Attachment 5) He said he thought this was an attorney's bill rather than a taxpayers bill. He explained his opinions regarding each of the proposed amendments. He felt the change in the de novo appeals would place an additional burden upon the District Courts. Chairman Bogina said the requirements for the qualifications for membership on the Board of Tax Appeals would limit the pool of qualified individuals who could be appointed to the Board. He said the Board does much more than decide cases involving the valuation of property. He also said the Board does not appraise property. Requiring the Board to follow the formal Rules of Evidence would be contrary to the Kansas Administrative Procedures Act. This would be different from the way all other state agencies hold hearings. Mr. Bogina also said the change in the shift of the burden of proof from the taxpayer to the county would be contrary to the principal of "he who brings the action carries the burden of proof." He spoke of the change in the stipulations. He said he did not think the Board of Tax Appeals should be required to accept a stipulation which they believe is contrary to the constitution and the statutes of the state of Kansas. He asked the committee to carefully consider the ramifications of **SB 455**.

Chairman Bogina was questioned about the Board of Tax Appeals' presumption of the burden of proof. He said whomever brings the action must provide the proof. He was also questioned about the stipulations and he said if the Board does reject a stipulation, a hearing must be held by the Board. Also he said, if the taxpayer does hire an appraiser to appraise their property, they do not need an attorney to appear in the appeal before the Board.

Larry Clark, Kansas County Appraisers Association, also testified as an opponent to **SB 455**. (Attachment 6) Mr. Clark said their biggest concern was the having to prove their property values. He said county appraisers have always had to defend their value decisions before the Board of Tax Appeals. The taxpayer has always carried the burden of supporting their appeal.

In answer to questions, Mr. Clark said he agreed the Board of Tax Appeals should review any stipulation which has been agreed to by the county and the taxpayer. Questions also concerned the continuing raising of property valuations for which they could see no end. Mr. Clark said in the area where he works they are trying to slow down the increases in valuations. This bill would increase the cost for the county and also for the taxpayer.

The meeting adjourned at 12:05 p.m.

The next meeting is scheduled for Wednesday, January 31, 1996.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: Jan 30, 1986

NAME	REPRESENTING
<i>Tony Clark</i>	<i>Ko County Commissioners</i>
<i>David Cantor</i>	<i>Attorney</i>
<i>James Murch</i>	<i>Quinn. Park Chamber of Commerce</i>
<i>Rebecca Sanders</i>	<i>Board of Tax Appeals</i>
<i>Kathy Kirk</i>	<i>OSA</i>
<i>RICHARD RODEWALD</i>	<i>TAXPAYERS</i>
<i>Bill James</i>	<i>BOEING</i>
<i>ALAN STEPHAN</i>	<i>PETE McGUIRE & Assoc.</i>
<i>Walter Lee Smith</i>	<i>KMHA</i>
<i>Charley Yarb</i>	<i>Via Christi Regional Med Ctr</i>
<i>JASON PITSEMBERGER</i>	<i>KGC</i>
<i>MARIL BECIL</i>	<i>KDOR</i>
<i>Bill Waters</i>	<i>KDOR-PVD</i>
<i>Harry Ray</i>	<i>Jo. Co. Board of Comm.</i>
<i>Bob Smith</i>	<i>ICBA</i>
<i>John Clark</i>	<i>Wellmark</i>
<i>David Holthaus</i>	<i>Western Resources</i>
<i>Bob Perkins</i>	<i>KCCI</i>

Proposed Amendment to SB 455

On page 3, by striking all in lines 29 through 43;

On page 4, by striking all in lines 1 through 17; after line 17, by inserting three new sections to read as follows:

"Sec. 3. K.S.A. 1995 Supp. 79-1609 is hereby amended to read as follows: 79-1609. Any person aggrieved by any order of the hearing officer or panel may appeal to the state board of tax appeals by filing a written notice of appeal, on forms approved by the state board of tax appeals and provided by the county clerk for such purpose, stating the grounds thereof and a description of any comparable property or properties and the appraisal thereof upon which they rely as evidence of inequality of the appraisal of their property, if that be a ground of the appeal, with the board of tax appeals and by filing a copy thereof with the county clerk within 30 days after the date of the order from which the appeal is taken. A county or district appraiser may appeal to the state board of tax appeals from any order of the hearing officer or panel. Upon receipt of a timely appeal, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act, except that the rules of evidence prescribed by K.S.A. 60-243, and amendments thereto, and by article 4 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, shall be applicable. The hearing before the board shall be a de novo hearing unless the parties agree to submit the case on the record made before the director. With regard to any matter properly submitted to the board relating to the determination of valuation of property for taxation purposes, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness

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attach 1-1

of such determination. The question of the validity and correctness of a determination of valuation of property is a question of fact, and any stipulation by the parties as to any such determination shall be binding upon the board.

Sec. 4. K.S.A. 1995 Supp. 79-2005 is hereby amended to read as follows: 79-2005. (a) Any taxpayer, before protesting the payment of such taxpayer's taxes, shall be required, either at the time of paying such taxes, or, if the whole or part of the taxes are paid prior to December 20, no later than December 20, or, with respect to taxes paid in whole on or before December 20 by an escrow or tax service agent, no later than January 31 of the next year, to file a written statement with the county treasurer, on forms approved by the state board of tax appeals and provided by the county treasurer, clearly stating the grounds on which the whole or any part of such taxes are protested and citing any law, statute or facts on which such taxpayer relies in protesting the whole or any part of such taxes. When the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the county treasurer shall forward a copy of the written statement of protest to the county appraiser who shall within 15 days of the receipt thereof, schedule an informal meeting with the taxpayer or such taxpayer's agent or attorney with reference to the property in question. The county appraiser shall review the appraisal of the taxpayer's property with the taxpayer or such taxpayer's agent or attorney and may change the valuation of the taxpayer's property, if in the county appraiser's opinion a change in the valuation of the taxpayer's property is required to assure that the taxpayer's property is valued according to law, and shall, within 15 business days thereof, notify the taxpayer in the event the valuation of the taxpayer's property is changed, in writing of the results of the meeting. In the event the valuation of the taxpayer's property is changed and such change requires a refund of taxes, the county treasurer shall process the refund in the manner provided by subsection (1).

(b) No protest appealing the valuation or assessment of property shall be filed pertaining to any year's valuation or assessment when an appeal of such valuation or assessment was commenced pursuant to K.S.A. 79-1448, and amendments thereto, nor shall the second half payment of taxes be protested when the first half payment of taxes has been protested. Notwithstanding the foregoing, this provision shall not prevent any subsequent owner from protesting taxes levied for the year in which such property was acquired, nor shall it prevent any taxpayer from protesting taxes when the valuation or assessment of such taxpayer's property has been changed pursuant to an order of the director of property valuation.

(c) A protest shall not be necessary to protect the right to a refund of taxes in the event a refund is required because the final resolution of an appeal commenced pursuant to K.S.A. 79-1448, and amendments thereto, occurs after the final date prescribed for the protest of taxes.

(d) If the grounds of such protest shall be that the valuation or assessment of the property upon which the taxes so protested are levied is illegal or void, such statement shall further state the exact amount of valuation or assessment which the taxpayer admits to be valid and the exact portion of such taxes which is being protested.

(e) If the grounds of such protest shall be that any tax levy, or any part thereof, is illegal, such statement shall further state the exact portion of such tax which is being protested.

(f) Upon the filing of a written statement of protest, the grounds of which shall be that any tax levied, or any part thereof, is illegal, the county treasurer shall mail a copy of such written statement of protest to the state board of tax appeals and the governing body of the taxing district making the levy being protested.

(g) Within 30 days after notification of the results of the informal meeting with the county appraiser pursuant to subsection

(a), the protesting taxpayer may, if aggrieved by the results of the informal meeting with the county appraiser, appeal such results to the state board of tax appeals.

(h) After examination of the copy of the written statement of protest and a copy of the written notification of the results of the informal meeting with the county appraiser in cases where the grounds of such protest is that the valuation or assessment of the property upon which the taxes are levied is illegal or void, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act, except that the rules of evidence prescribed by K.S.A. 60-243, and amendments thereto, and by article 4 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, shall be applicable, unless such conduct is waived by the interested parties in writing. If the grounds of such protest is that the valuation or assessment of the property is illegal or void the board shall notify the county appraiser thereof.

(i) In the event of a hearing, the same shall be originally set not later than 90 days after the filing of the copy of the written statement of protest and a copy, when applicable, of the written notification of the results of the informal meeting with the county appraiser with the board. With regard to any matter properly submitted to the board relating to the determination of valuation of property for taxation purposes, it shall be the duty of the county appraiser to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity and correctness of such determination. No presumption shall exist in favor of the county appraiser with respect to the validity and correctness of such determination. The question of the validity and correctness of a determination of valuation of property is a question of fact, and any stipulation by the parties as to any such determination shall be binding upon the board. In all instances where the board sets a request for hearing and requires the representation of the county by its attorney or counselor at such hearing, the county shall be represented by its county

attorney or counselor.

(j) When a determination is made as to the merits of the tax protest, the board shall render and serve its order thereon. The county treasurer shall notify all affected taxing districts of the amount by which tax revenues will be reduced as a result of a refund.

(k) If a protesting taxpayer fails to file a copy of the written statement of protest and a copy, when applicable, of the written notification of the results of the informal meeting with the county appraiser with the board within the time limit prescribed, such protest shall become null and void and of no effect whatsoever.

(l) In the event the board orders that a refund be made and no appeal is taken from such order, the county treasurer shall, as soon thereafter as reasonably practicable, refund to the taxpayer such protested taxes from tax moneys collected but not distributed. Upon making such refund, the county treasurer shall charge the fund or funds having received such protested taxes.

(m) Whenever, by reason of the refund of taxes previously received or the reduction of taxes levied but not received as a result of decreases in assessed valuation, it will be impossible to pay for imperative functions for the current budget year, the governing body of the taxing district affected may issue no-fund warrants in the amount necessary. Such warrants shall conform to the requirements prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by such section and may be issued without the approval of the state board of tax appeals. The governing body of such taxing district shall make a tax levy at the time fixed for the certification of tax levies to the county clerk next following the issuance of such warrants sufficient to pay such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized by law.

(n) The county treasurer shall disburse to the proper funds all portions of taxes paid under protest and shall maintain a

record of all portions of such taxes which are so protested and shall notify the governing body of the taxing district levying such taxes thereof and the director of accounts and reports if any tax protested was levied by the state.

(o) This statute shall not apply to the valuation and assessment of property assessed by the director of property valuation and it shall not be necessary for any owner of state assessed property, who has an appeal pending before the board of tax appeals, to protest the payment of taxes under this statute solely for the purpose of protecting the right to a refund of taxes paid under protest should that owner be successful in that appeal.

Sec. 5. K.S.A. 74-2426 and K.S.A. 1995 Supp. 79-1609 and 79-2005 are hereby repealed.";

By renumbering existing section 5 as section 6;

In the title, in line 11, by striking "and 74-2438"; also, in line 11, after "74-2433" by inserting ", 79-1609 and 79-2005"

TESTIMONY OF SENATOR ALICIA SALISBURY
BEFORE THE
SENATE ASSESSMENT AND TAXATION COMMITTEE
JANUARY 30, 1996

SENATE BILL 455 IS A TAXPAYERS BILL. IT IS INTENDED TO ADDRESS SOME OF THE PROCEDURAL PROBLEMS THAT TAXPAYERS HAVE EXPERIENCED IN ATTEMPTING TO APPEAL VALUATIONS SET BY THE COUNTY APPRAISER ON THEIR PROPERTIES. UNDOUBTEDLY, YOU HAVE BEEN MADE AWARE OF SOME OF THESE PROCEDURAL ISSUES BY TAXPAYERS IN YOUR DISTRICT.

LAST YEAR YOU CONSIDERED A BILL THAT WOULD TRANSFORM THE CURRENT APPEALS STRUCTURE INTO A TAX COURT. HOWEVER, FOR A VARIETY OF REASONS THIS PROPOSAL WAS NOT ADVANCED. AN ALTERNATIVE TO A TAX COURT WHICH WOULD GO A LONG WAY IN SOLVING CURRENT PROBLEMS IS INCORPORATED IN SB 455.

1. PLACES SPECIFIC QUALIFICATIONS ON THE BOTA MEMBERSHIP.

WHILE THERE WAS SOME RESISTANCE TO AN APPEALS STRUCTURE MADE UP TOTALLY OF ATTORNEYS, I SENSE THERE IS A CONTINUED INTEREST IN BEEFING UP THE QUALIFICATIONS FOR SERVICE ON THE BOARD OF TAX APPEALS. THIS IS EASY TO ACCOMPLISH WHEN THE MEMBERSHIP IS POOR, BUT IT IS DIFFICULT TO BE PERSUASIVE WHEN WE FEEL THERE ARE MEMBERS WHO ARE HIGHLY QUALIFIED. THE FACT IS THAT MOST OF THE BOARD IS MADE UP OF LAY PEOPLE WITH THE EXCEPTION OF ONE ATTORNEY. I UNDERSTAND THAT THIS IS CHALLENGING WHEN THE BOARD'S AGENDA INCLUDES ADMINISTRATIVE PROCEDURE APPEALS AND EVIDENTIARY RULES.

SB 455 PLACES SPECIFIC QUALIFICATIONS ON BOARD MEMBERS AS OF JULY 1, 1996, IN THAT THE BOARD MEMBERS SHOULD EITHER BE ATTORNEYS AT LAW, CERTIFIED PUBLIC ACCOUNTS, OR GENERAL CERTIFIED APPRAISERS AND INDIVIDUALS WHO HAVE ACTIVELY PRACTICED IN KANSAS IN AT LEAST ONE OF THESE CAPACITIES FOR FIVE (5) YEARS. IT IS NOT MY INTENTION THAT ALL OF THE BOARD MEMBERS BE ATTORNEYS, AND THE BILL WOULD NEED TO BE CLARIFIED TO REFLECT THIS.

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2. PRESUMPTION OF CORRECTNESS OF VALUATIONS

CURRENTLY OUR APPEALS PROCESS PRESUMES THAT THE COUNTY APPRAISER'S VALUES ARE CORRECT. CONSEQUENTLY THE TAXPAYER MUST NOT ONLY PROVE HIS VALUE, BUT ALSO DISPROVE THE VALUE OF THE COUNTY APPRAISER. SB 455 WOULD REQUIRE COUNTY APPRAISERS TO PROVE THEIR VALUATIONS BY A PREPONDERANCE OF EVIDENCE. I AM TOLD THAT AN EXISTING PARALLEL IS KANSAS LAW THAT REQUIRES THE PLAINTIFF IN A CIVIL ACTION TO PROVE HIS CASE BY A PREPONDERANCE.

3. PROVIDES THAT VALUATION OF PROPERTY BE A QUESTION OF FACT NOT A QUESTION OF LAW

THIS WOULD PERMIT THE COUNTY APPRAISERS AND TAXPAYERS TO ENTER INTO STIPULATION AGREEMENTS AND AVOID UNNECESSARY HEARINGS THAT NEITHER PARTY SEEKS. I AM TOLD THAT THE BOARD REQUIRES IN MANY INSTANCES ADDITIONAL EVIDENCE TO SUPPORT A STIPULATION. THIS PROCEDURAL CHANGE IS PROPOSED AS AN ADMINISTRATIVE EFFICIENCY.

4. RULES OF EVIDENCE

I HAVE BEEN TOLD THAT FROM TIME TO TIME INDIVIDUALS WHO ARE NEITHER QUALIFIED OR HAVE APPROPRIATE CREDENTIALS ARE ALLOWED TO TESTIFY CONCERNING THE COUNTY APPRAISER'S VALUATION. SOMETIMES THESE INDIVIDUALS HAVE NO APPRAISAL EXPERIENCE, ARE NOT CERTIFIED GENERAL APPRAISERS, AND MAY SIMPLY ARTICULATE THE VALUE THAT COME FROM THE CAMA SYSTEM. IS IT FAIR TO TAXPAYERS TO GIVE CREDIBILITY TO TESTIMONY WHEN THERE IS NO EVIDENTIARY BASIS FOR THAT TESTIMONY? THE AMENDMENT CONTAINED IN SB 455 WOULD REQUIRE THE RULES OF EVIDENCE TO BE APPLIED IN THESE PROCEEDINGS.

5. EXPANDS THE SCOPE OF REVIEW ON APPEAL FROM THE BOARD OF TAX APPEALS TO ONE OF DE NOVO REVIEW, ON THE RECORD

CURRENTLY, FOR TAXPAYERS TO BE SUCCESSFUL AT THE DISTRICT COURT LEVEL, IT IS NECESSARY FOR THE TAXPAYER (OR THE COUNTY, AS THE CASE MAY BE) TO PROVE THE BOARD ACTED CONTRARY TO THE LAW, THAT THERE WAS SUBSTANTIAL EVIDENCE, LOOKING AT THE RECORD AS A WHOLE, TO SUPPORT THE CONCLUSION, OR THAT THE BOARD ACTED ARBITRARILY AND CAPRICIOUSLY. THE DISTRICT COURT JUDGES REVIEW IS LIMITED TO THOSE

SPECIFIC ELEMENTS. I AM ASKING YOU TO GIVE CONSIDERATION TO PERMITTING THE TAXPAYER OR THE COUNTY APPRAISER TO HAVE THE OPTION OF TAKING THE MATTER DIRECTLY TO THE DISTRICT COURT, AND BY-PASSING THE BOARD OF TAX APPEALS, WHICH COULD RESULT IN A FASTER DETERMINATION OF VALUE.



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January 30, 1996

SENATE TAXATION COMMITTEE

State Capitol Building
Topeka, KS 66612

RE: Senate Bill 455

Dear Senators:

Please accept this letter as my oral testimony this morning in support of Senate Bill 455, which in my opinion will go a long way to solve the existing problems that the taxpayers now face with the Board of Tax Appeals and the ad valorem tax appeal process, in general.

First, the central issue is the qualification, training, and experience of individual board members. At present, there is one lawyer on the board, and the balance of the board members are lay people. None of these people, in my opinion, had substantial experience with respect to the valuation of real or personal property prior to being appointed to the board. Likewise, none of these people had substantial experience in dispute resolution issues, and as a result, proceedings before the board have been un-structured, and very loose. This bill places specific qualifications on board members, in that board members either be attorney's at law, certified public accountants, or general certified appraisers and individuals who have actively practiced in the state of Kansas in one or more such capacities for at least five years. It is important that the Senate thoroughly evaluate and confirm qualified and experienced people to the board, even beyond those minimal qualifications.

Next, the Board of Tax Appeals has an erroneous perception that there exists in Kansas law the presumption of correctness that the County Appraiser's values are correct. As a result of that erroneous perception, it is necessary for the taxpayer to not only prove his value, but also to disprove the value of the County Appraiser. In my opinion, Kansas law does not support such a presumption, and the simple way to solve that problem is to provide, statutorily, that there is not presumption of correctness, and that it is the burden of the County Appraiser to prove his value, by a preponderance of evidence. That is no different than the duty of any plaintiff in a civil action to prove his case by a preponderance. Experience tells me that, if anything, there should be a presumption of incorrectness with respect to County Appraiser values, and that is evident by the present predicament that the state faces relative to reappraisal of real property in various counties throughout the state.

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Third, the Board of Tax Appeals also has an erroneous perception that the issue of valuation is a question of law versus a question of fact. The case law of this state, and the general case law throughout the United States would indicate to the contrary, as valuation of property customarily is a question of fact. By way of analogy, the valuation of property for ad valorem purposes is no different than the valuation of property for condemnation purposes. Juries customarily deal with those fact issues, and resolve them by balancing the equities between the state and the land owner values. This Bill lets the legislature specifically provide, by statute, that the valuation of property for ad valorem purposes is a question of fact, and not a question of law. That would then permit the County Appraiser's and taxpayers, to the extent that they could agree upon value, to stipulate to values, and avoid the necessity of hearings that neither party wants. At present, the Board erroneously concludes that any stipulation is suspect, and requires in many instances, additional evidence to support a stipulation. That is an absurd waste of administrative resources, which can be stopped as a result of a simple clarification of the law.

Fourth, there are significant evidentiary problems that arise in relationship to records that are made before the Board of Tax Appeals. The Board does not follow the rules of evidence, permits individuals who are neither qualified, nor have appropriate foundation and credentials to testify concerning that value. That is particularly true with respect to County Appraiser representatives, who generally have no appraisal experience, are not certified general appraisers in the state of Kansas, and are simply articulating the values that are pumped from the CAMA system. For the most part, those individuals do not even know how the CAMA system works, nor can they explain detailed entries in inventory content sheets, and calibration tables, or income and expense printouts. The application of rules of evidence to BOTA proceedings would go along ways to stop the Board from giving credibility to these individuals when there is no evidentiary basis for their testimony. This Bill amends the Board's jurisdiction statutes to require the rules of evidence being applied in these proceedings.



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PROFESSIONAL
ASSOCIATION

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Finally, recognizing the personnel problems that exist before the Board of Tax Appeals, it is my recommendation that the legislature look at expanding the scope of review on appeal from the Board of Tax Appeals to one of the de novo view, on the record as presented before the Board of Tax Appeals. That provides an additional judicial check on decisions of the Board of Tax Appeals, when at present, in order to be successful at the District Court level, it is necessary for the taxpayer (or the County, as the case may be) to prove that the Board acted contrary to the law, that there was no substantial evidence, looking at the record as a whole, to support the conclusion, or that the Board acted arbitrarily and capriciously. That scope of review is so limited that District Court Judges, even though they are of the opinion that the BOTA determination of value is not justified, are limited to those specific elements of review. Under those circumstances, the prevailing party before the Board of Tax Appeals is affirmed at the District Court level ninety-nine percent of the time, and in all probability board decisions are erroneous half the time. Alternatively, we have suggested this before, the legislature should give consideration to permitting the taxpayer or the county appraiser to have the option of taking the matter directly to the District Court, and bypassing the Board of Tax Appeals, which will result in a faster determination of value.

Parenthetically, I want to make it clear to you that I am not a lobbyist with respect to these matters, and I am only a concerned citizen with substantial knowledge of the working of this Board. I am not being paid to provide this letter to you, and am doing so because I believe it is in the best interest of the taxpayers that these issues get resolved.

In the event you need further clarification of the suggestions, or desire further information, please feel free to contact me.

Thank you again for the opportunity to discuss these matters with you, and we stand ready to assist you in the development of appropriate legislation that will address these concerns.

Yours truly,

CARPENTER PROFESSIONAL ASSOCIATION

David C. Carpenter
DCC:bal



Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611
Telephone 913/267-3610

TO: SENATE ASSESSMENT AND TAXATION COMMITTEE
FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS
DATE: JANUARY 30, 1996
SUBJECT: SB 455 MEMBERSHIP, PRACTICES AND PROCEDURES OF BOTA

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today to support the concepts of SB 455.

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

In particular, we support the qualifications for the members of the BOTA. It is vitally important that the individuals who serve on this board have had some professional training and practice in the subject matters which the board deals with on a regular basis. We can only hope that, by putting these types of professionals, (ideally a good mix of these professionals) on the board, taxpayers will be facing individuals who have experience in these areas in the real world. This Committee might consider amending the bill to provide for a good mix, so that we do not end up with 5 attorneys, or 5 CPA's or 5 appraisers.

We have a concern about Section 3, which provides that the rules of evidence will be applied in hearings before the BOTA when the appeal is from a finding, ruling, order, decision or other final action from the director of taxation or director of property valuation. 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. The requirement that the rules of evidence will be utilized in a proceeding such as this means taxpayers will, more than likely, need to hire an attorney in order to follow the rules of evidence in their appeal.

We agree with the amendment placing the burden of proof on the county appraiser to demonstrate evidence supporting their determination, rather than having the burden be on the taxpayer. 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. 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 represented themselves before the board.

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

TESTIMONY - SENATE BILL 455

SENATE ASSESSMENT AND TAXATION COMMITTEE

JANUARY 30, 1996 - 11:00 A.M.

Madam Chair and Members of the Committee. I appreciate the opportunity of appearing before you to provide information, and my opinion, of the statutory amendments proposed in SB 455.

Having served in the capacity of Chairman of the Board of Tax Appeals for the past six months, I have had the opportunity to participate in hearings that included presentations by attorney representatives of taxpayers. It is my opinion that SB 455 was requested by an attorney or attorneys who have not received favorable decisions to their pleadings. It would appear that the Legislature is being asked to make major modifications to administrative procedures in order to accommodate what I perceive to be "a sour grapes" attitude because of lost causes.

I will explain my rationale for these opinions by discussing each of the proposed amendments. The amendatory language on page 2 lines 4 & 5 would allow de novo appeals to the District Court. For those of us who are non-lawyers de novo means new. In this context this amendment would mean that an appeal from an order of the Board of Tax Appeals would no longer be on the record and the parties would not be bound by the record made at the Board. It would therefore be a brand new case, where the parties would call witnesses and present evidence to the courts. Since this would be a civil matter the parties could also request a jury trial. Notwithstanding this major change in procedure, this statutory change would probably place an

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additional burden on the District Courts. In 1994 sixty-five BOTA cases were appealed to the District Court. Eighty-five cases were appealed in 1995 and in 1996 five cases have already been appealed to the courts. At present, generally, most of our cases that are appealed to the District Court are handled by submitting briefs to the court with limited hearing time for oral arguments. This bill would cause the District Courts to schedule considerably more hearing time to these cases and devote additional court personnel to appeals of the Board orders.

The amendments on page 3 lines 1 thru 10 inclusive would require that members of the Board be either appraisers, attorneys or accountants. This language would of course limit the pool of qualified individuals who can be appointed to the Board. This amendment would infer that the bulk of our decisions involve the valuation of property. This is not the case. The Board must act upon requests for exemptions from taxation of real and personal property, no-fund warrants, abatement of tax penalties, drug tax levies, special assessments, economic development exemptions and tax grievances. As you can see, the perception that we only review appraisals of property is not correct. Therefore, I firmly believe that first and foremost common sense and the desire to diligently serve should be the prime prerequisite of Board members.

The Board of Tax Appeals is a quasi-judicial agency and their function is to hear and decide tax appeals based on the evidence presented to them at a hearing. The Board's responsibilities do not include appraising property. Basically all of our cases that are represented have at least two experts fulfilling this function. In those appeals the taxpayer and the county have qualified appraisers and attorneys presenting their respective cases. I am at a loss to

understand why there should be a third appraiser entering another opinion of value. The Board members should hear all of the evidence, evaluate the credibility of that evidence and make a decision that is in compliance with statutory limitations. Our staff currently contains six qualified members of the legal profession and three law clerks (2nd and 3rd year law students) who are available to furnish legal interpretation and consultations of statutory structure and language.

The amendments on page 3 lines 38 thru 40 which we believe are applied to the wrong statute, would require the Board to follow the formal Rules of Evidence. This change would be contrary to the provisions of the Kansas Administrative Procedure Act. This change would cause the hearing process of the Board of Tax Appeals to function in a different manner than all other state agencies. Also, most of our appeal hearings are conducted with the taxpayer appearing pro se (representing themselves). This amendment would require that the "mom and pop" homeowner would be required to be knowledgeable of and proficient in the requirements of the Rules of Evidence.

The amendments beginning at the bottom of page 3 and ending on page 4 in line 5 with the word "determination", would shift the burden of proof from the taxpayer to the county. This proposed 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 and so the burden is on the taxpayer in a tax appeal case according to current law. This of course is a major change of the procedures that we have always followed.

Another important change is found in the sentence beginning at the end of line 5 and continuing thru the period in line 8. This change would require the Board 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 are statutory interpretations which are questions of law. The amendment would define a stipulation of value to be a question of fact. On page 5 the District Court of Shawnee County 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 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 this 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 of 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 violated the Constitution and the statutes of the State of Kansas. I would refuse to endorse what I perceived to be unlawful and illegal.

I would respectfully request that you very carefully consider the ramifications of SB 455. I believe that when you do you will agree with me that this bill is probably self serving and not in the best interest of our taxpayers and should therefore not be passed.

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

August "Gus" Bogina, Jr., Chairman

Attachment: Case No. 93-CV-822

Division 12 of Shawnee County, Ks.

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:

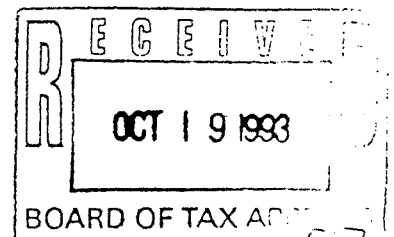
(c). The Court shall grant relief only if it determines any one or more of the following:

(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,



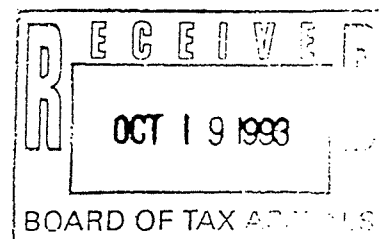
253 Kan. 412, 856 P.2d 151 (1993), State ex. rel. Smith V. Miller, 239 Kan. 187, 718 P.2d 1298 (1986), Garvey Grain, Inc. v. MacDonald, 203 Kan. 1, 453 P.2d 59 (1969).

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

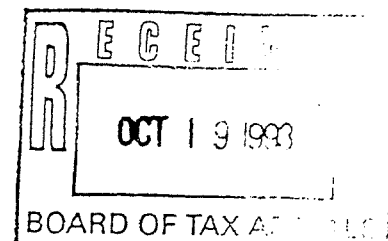


calculations. It involves an exercise of judgment and a choice on which approaches to value best represent true value. The factual basis for these decisions may be both specific to the subject property and the valuation of comparable property in the jurisdiction. The appraisal process involves deciding 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."

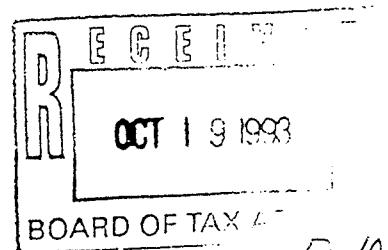
See In Re: Petition of City Shawnee for Annexation of Land, 236 Kan. 1, 16-17,687 P.2d 603 (1984), citing 73 Am. Jur. 2d, Stipulations, secs. 1, 4 and 5.

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...

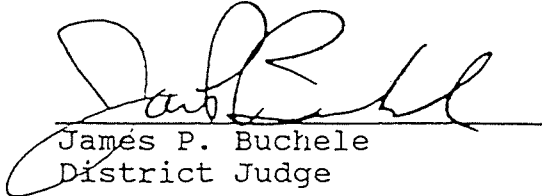
(c) The presiding officer may, and when required by statute shall, give nonparties an opportunity to present oral or written statements. If the presiding officer proposes to consider a statement by a nonparty, the presiding officer shall give all parties an opportunity to challenge or rebut it and, on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

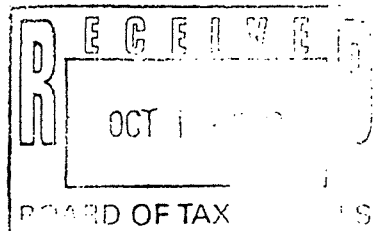
10. The BOTA need not be a helpless bystander to agreements or remain mute when the parties to a change in valuation are not adversarial. It has specific statutory duties to uphold in addition to its quasi-judicial functions to adjudicate. The BOTA's broad powers, K.S.A. 74-2437a and K.S.A. 74-2437b, 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



KANSAS COUNTY APPRAISERS ASSOCIATION

P.O. Box 1714
Topeka, Kansas 66601

To: Senate Assessment and Taxation Committee
From: Larry Clark, CAE
Subject: Senate Bill 455
Date: January 30, 1996

My name is Larry Clark and I appear today on behalf of the Kansas County Appraisers Association in opposition to passage of Senate Bill 455, specifically Section 3 of that bill.

County appraisers have always had to defend their value decisions before the Board of Tax Appeals. It has been the standard operating procedure of this and every Board preceding it to allow the taxpayer the opportunity to present their case and then to ask the county appraiser to present the basis for the disputed value. Therefore I am not here to ask that appraisers not be forced to defend their values.

The concern of the County Appraisers Association is that this bill eliminates any presumption. Currently the property owner who appeals carries the burden of supporting that appeal. That taxpayer is effectively asking the Board to redistribute the tax burden to other property owners in that jurisdiction and existing rules require there to be a very good reason for doing so. This is the same for anyone who has a complaint against government. It is the responsibility of that individual to prove that the complaint is valid. That does not relieve the government of its responsibility to respond with justification for accepting or denying the complaint. On the other hand it provides a basis for status quo. In other words, it provides a default position when the case is too close to call.

If the appraiser's value estimate is not presumed to be correct, what will the logical result be of a case where the taxpayer and county present equally good or poor cases? Does the Board simply split the difference between whatever value the taxpayer proposes and that of the county? What protection do the remainder of the property tax payers have against unscrupulous tax representatives if they don't have to present a case? If there is not presumption, there is no need to present a case at all. The taxpayer can simply hope that the appraiser's argument is not convincing.

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