



Testimony by the Kansas Association of Counties
to the House Committee on Taxation for March 8, 2016
Opposing Testimony on House Bill 2714 (BOTA Procedures and Policies)

Mr. Chairman and Members of the Committee:

The Kansas Association of Counties has worked closely with county counselors, appraisers, and the Kansas Department of Revenue to analyze the policy changes in House Bill 2714. Much like the sweeping legislation that emerged from this committee in 2014, HB 2714 proposes a significant number of changes that affect many steps in the tax-appeals process. But unlike the 2014 legislation, we are starting this discussion far later in the session with even less collaboration on creating sound policies. As always, our members are happy to discuss these matters to develop the best process for Kansas. But as HB 2714 stands, we oppose a number of the policies that are ill-conceived, undeveloped, and riddled with misunderstanding of the tax-appeals process.

Section 1 Concerns: Statutory and Policy

Our foremost concern begins with Section 1, as the law affects a number of other statutes dealing with property taxation and valuation. We have begun looking at this, but the breadth of the bill places the conferees in a poor position to offer counsel on the matter. Beyond the statutory construction, the Kansas Appraisers Association has identified a number of policy concerns over the proposal to implement a biennium valuation. New Section 1 proposes to begin valuing property every two years, which has the effect of pushing the assessment price further away from the market price. This increases the likelihood of unhappiness by the tax payer when recessions leave taxes higher than the markets dictate. It also creates artificial happiness when the market drives real prices higher while the law keeps assessment prices lagging behind. For the majority citizens who do not save, there will be unhappy taxpayers who suddenly experience a sizable jump in the assessment price to reflect growth over a two-year period. The current system most closely connects the market price to the assessment price, and we support maintaining this standard.

But even if this committee determines the biennium system is a good fit for Kansas, it will be necessary to develop language that provides clarity on how implementation will operate. The

current bill is unclear, and we encourage this committee to consider a later enacting date to develop a workable biennium law.

Expense of Trial

Section 2 seems to address a result in *Frick v. City of Salina*¹ that has guided courts since the Kansas Legislature passed the 2014 COTA/BOTA bill.² In *Frick*, the Court held that a “trial de novo” means—when reviewing an agency record—a court must “conduct an independent and thorough examination of the record and make independent findings of fact and conclusions of law based on the record.”³ In fact, the Supreme Court has never interpreted a statute to allow de novo review in a sense of a new trial on facts and issues as though they had never been tried.⁴ By changing the process to allow for a completely new trial with new evidence and witnesses, we would see an incredible increase in the cost of trials, along with serious delays. A full trial includes discovery with depositions, pre-trial hearings, orders, and status conferences—all as an appetizer for the full trial. The expense and uncertainty of trial is exactly what has created an environment that trends away from trial, but HB 2714 drives the process against that trend to add time and expense to tax appeals.

Due Process Considerations

Section 2 also raises due-process concerns. In Section 2(4), the legislation provides that the taxpayer may appeal to district court but the county may not. This limits the county to the Court of Appeals for review, which means the parties have two different standards of review—a potential due-process violation. Beyond that, there is a basic equity issue that runs counter to sensibilities.

Discovery Limitations

In Section 12, HB 2714 specifies that appraisers may not request certain documents relating to the property including: (1) any appraisal of the property used for obtaining mortgage financing; (2) any fee appraisals older than 12 months; (3) details of individual lease agreements; or (4) architectural drawings. Again, this runs counter to all legal trends of accessing information to make the best possible decision. Further, it makes sense for the actual trier of fact to determine what

¹ *Frick v. City of Salina*, 289 Kan. 1 (2009).

² Kansas House Bill 2614 (2014).

³ *Frick*, 289 Kan. 18-19.

⁴ *Id.*

information to consider. BOTA can determine what weight—if any—an older appraisal or an appraisal done for financing might carry. But that does not mean the Legislature should bar the counties from even seeing those documents.

Further, the current language in HB 2714 might prevent the county from even requesting fee appraisals as of the valuation date. It states that counties cannot request “any fee appraisal that was conducted more than 12 months *from the date of the taxpayer’s complaint or appeal.*”⁵ If a taxpayer pays the second half of their 2015 taxes under protest in May of 2016, then a fee appraisal dated January 1, 2015 would not be discoverable. This is a imprudent elimination of pertinent information.

Requesting leases from the taxpayer also serves a purpose: determining whether the subject leases are consistent with the fair market for leases. This allows the counties to determine whether they are comparing similarly situated properties—an evaluation between the market and the subject. There are many different ways to write a lease, and the rent rolls may not adequately provide the necessary information.

Conclusion

House Bill 2714 undermines many of the principles that enable counties to value property at fair market value. The legislation risks injecting inconsistency into the system, and it increases the likelihood that two similarly situated properties will not be similarly valued. This runs afoul of principles of fairness and the Constitution. There may be worthwhile objectives behind this bill, but we hope this committee will recognize the flaws that accompany the legislation. KAC opposes HB 2714, and we ask you to do the same.

Sincerely,



Nathan Eberline
Legal Counsel

⁵ House Bill 2714, Sec. 12(2) (2016).