

Division Of Property Valuation
Docking State Office Building
915 SW Harrison St., Room 400N
Topeka, KS 66612-1588



phone: 785-296-2365
fax: 785-296-2320
www.ksrevenue.org

Nick Jordan, Secretary
David N. Harper, Acting Director

Sam Brownback, Governor

To: Richard Carlson
Chairman, House Taxation Committee

FROM: Bill Waters
Division Attorney
Division of Property Valuation

Date: January 18, 2012

SUBJECT: Severed Minerals, Attorney General Opinion

On December 14, 2011, Nick Jordan, Secretary of Revenue, requested an attorney general opinion on the constitutionality of K.S.A. 79-420, which requires the market value of several minerals to be determined separately from the fee of the land.

K.S.A. 79-420 was originally enacted in 1897 (L. 1897, ch. 244, § 1). In 1905, the Kansas Supreme Court upheld its constitutionality. *Mining Co. v. Crawford County*, 71 Kan. 276, 80 Pac. 601 (1905). The law, at that time, required all property subject to taxation to be valued at its true value in money. G.S. 1905, ch. 107, § 8258 (L. 1876, ch. 34, § 12 (1876)). The Court reasoned that there was no equal protection problem because the law at that time required land to be valued at its full value and that value would include the value of the minerals where they have not been severed.

Since January 1, 1989, land devoted to agricultural use has been valued based on its income and productivity. Kan. Const., art. 11, § 1 (1986); Kan. Const., art. 11, § 12 (1976); K.S.A. 2010 Supp. 79-2010 79-1476. Since then, the value of land devoted to agricultural use has not included the value of the minerals where they have not been severed.

Recently, as noted by the secretary of revenue in his letter to the attorney general, the department has notice increased market activity in the sale and purchase of severed minerals. At least one county – Comanche County – has revalued severed minerals in light of that market activity. All counties are required to value severed minerals at fair market value; however, the determination of the fair market value of minerals is expensive and time-consuming. Market data regarding the sale and purchase of mineral interest is difficult to obtain since sales price is not required to be disclosed when a mineral deed is recorded. K.S.A. 2010 Supp. 79-1437c(6). In light of those facts, the department believed an opinion of constitutionality was important and it was decided an attorney general's opinion should be sought.

Mr. Chairman, I'd be happy to attempt to answer any question you or the committee may have.