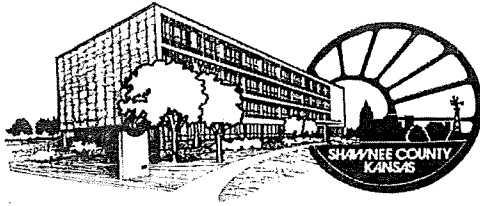


Shawnee County  
Office of the County Counselor



JAMES M. CROWL  
County Counselor

Shawnee County Courthouse  
200 SE 7<sup>th</sup> Street, Ste. 100  
Topeka, Kansas 66603-3932  
Office: (785) 251-4042  
Fax: (785) 251-4902  
Email: [counselors@snco.us](mailto:counselors@snco.us)

TESTIMONY ON BEHALF OF THE BOARD OF COUNTY COMMISSIONERS  
OF SHAWNEE COUNTY, KANSAS TO THE HOUSE COMMITTEE ON TAXATION  
PROPONENT FOR HB 2367

February 12, 2018

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to provide testimony on House Bill 2367. Shawnee County is a proponent of the bill in its entirety, but I will focus my comments specifically on the proposed amendments to K.S.A. 79-1460.

- The county opines the current language of K.S.A. 79-1460, as amended in 2016, is unconstitutional for the same reasons our Supreme Court found the previous language in K.S.A. 2014 Supp. 79-1460 unconstitutional in *Board of County Com'rs of Johnson County v. Jordan*, 303 Kan. 844, 370 P.3d 1170 (2016).
- The previous language of the statute required that for two years after a successful valuation appeal at the Board of Tax Appeals (BOTA), the county was prohibited from increasing the value absent documented substantial and compelling reasons to do so (i.e. change in character of the use or substantial addition or improvement).
- The 2016 amendments require that for two years after a successful valuation appeal at BOTA, the county may not increase the value of the property by more than 5%, unless there is new construction, a change in use of the property, a change in classification, or if the County commissions an outside fee appraisal. Thus, under the language of K.S.A. 2016 Supp. 79-1460, the county still must meet one of four conditions to increase the valuation, a scheme found to violate the Constitution in *Jordan*. Adding more conditions to the list of options for increasing the valuation does nothing to cure the unconstitutional scheme.
- The *Jordan* Court held that K.S.A. 2014 Supp. 79-1460 was unconstitutional in that it violated a uniform and equal basis of valuation by treating a particular group of taxpayers differently from the rest and that such preference is constitutionally prohibited. All taxable real property is to be appraised annually as of January 1 at fair market value. The 2014 version of the statute effectively prevented appraisers from valuing taxable real property at its fair market value in that it required the appraisers to set a specific value on the property for the next two taxable years only for properties that were successfully appealed at BOTA. *Jordan* at 845-846.

- The former language of K.S.A. 2014 Supp. 79-1460 effectively relieved a select group of taxpayers from the annual valuation process to which every other real property owner is subjected, the current language does the exact same thing. For this select group of taxpayers, the county must not consider the market value factors as laid out in K.S.A. 79-503a like they do for every other taxpayer, but instead is held to an arbitrary percentage increase cap. As a result, the values on properties owned by taxpayers who fall into the K.S.A. 79-1460 exception may be arbitrarily and artificially low, as compared with the market, thereby still shifting the tax burden to other property owners.
- Beyond the concerns that the current statute is unconstitutional, it has also proven to be unfavorable to the very taxpayers it seeks to protect. When a valuation appeal is pending before BOTAs, the parties can stipulate to a value for many different reasons. Many times, just like in general litigation, a settlement value can be reached between the parties thereby saving both parties the costs associated with proceeding with an evidentiary hearing before the Board and potential appeals to District Court and beyond (i.e. expert witness fees). If the stipulated value reached by the parties is lower than the county's valuation, it is deemed a successful valuation appeal and is subjected to the current 5% cap requirement in K.S.A. 2016 Supp. 79-1460. *However*, if the County is restricted from increasing the valuation the next year, it is hindered in its ability to agree to these stipulations, given the 5% cap:
  - Example: Owner/Taxpayer of a commercial multi-tenant property appealed the valuation for 2016 and through discovery, the County learned from the Taxpayer's operating statements that this property has experienced significant vacancy issues for a number of years and therefore determined that applying a lease up period may be appropriate. In making those adjustments, the County was willing to reduce the valuation for 2016. However, both the County and the Taxpayer agreed that by 2017, the property was under new management, was fully leased, and no longer required an adjustment for lease up. All of the property's actual operating statements supported the County's valuation for 2017. However, if the 2017 value exceeds a 5% increase from the 2016 stipulated value, the must rethink its ability to stipulate in 2016 and things begin to fall apart, to the detriment of the Taxpayer. (A very similar scenario occurred in Shawnee County).

For each of the aforementioned reasons, Shawnee County respectfully asks this committee to support striking the unconstitutional language in K.S.A. 2016 Supp. 79-1460, as reflected in HB 2367.

Respectfully,



Ashley Biegert

Shawnee County Assistant County Counselor