

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman David Corbin at 10:45 a.m. on February 19, 2004, in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

John Smith, Pixius Communications, LLC
Robert J. O'Connor, Stinson, Morrison, and Hecker LLP
Harriet Lange, Kansas Association of Broadcasters
Terry Atherton, KSGL/KMYR Radio (Agape Communications)
Gerald C. Frantz, Sedgwick County Appraiser
Patricia J. Parker, Assistant Sedgwick County Counselor
Mark Beck, Director, Division of Property Valuation

Others attending:

See Attached List.

Senator Corbin called the Committee's attention to the minutes of the February 17 meeting.

Senator Buhler moved to approve the minutes of the February 17, 2004, meeting, seconded by Senator Donovan. The motion carried.

SB 478—Personal property classification for wireless communication towers, antenna, and relay sites

John Smith, Pixius Communications, LLC, testified in support of **SB 478**. He explained that Pixius Communications provides broadband service to customers in under served areas in Kansas over a wireless data communications network. Pixius leases space on cell towers to broadcast to their customers; therefore, the classification of wireless communication towers, antennas, and relay sites has a critical role in the cost structure of Pixius' business. Any tax increase to the landowner or tower owner will be passed through to the tenants of the towers. He went on to explain that Sedgwick County landowners having cell towers on their property saw their tax bill increase to more than 20 times last year's amount after the Sedgwick County Appraiser's Office reclassified cell towers from personal property to commercial real property. Mr. Smith emphasized that no other Kansas county has reclassified cell towers. He explained that wireless customers have fixed price contracts; therefore, the service provider cannot recover the tax increase from the current subscriber base. He urged the Committee to support the passage of **SB 478** so that Pixius and other wireless service providers can continue to provide economical service to future subscribers. (Attachment 1)

Robert J. O'Connor, testified in support of **SB 478** as counsel for cell tower owners in cases arising out of Sedgwick County which are currently pending before the Board of Tax Appeals. He pointed out that all Kansas counties classified and valued cell towers as personal property prior to 2003. However, after Sedgwick County reclassified cell towers, other counties have indicated that they are planning to reclassify cell towers as real property and then value them as commercial real property for 2004. He went on to say that, since 1989, the Property Valuation Department's personal property guide has specifically classified radio station, television, citizens band, and cable television towers as personal property. He noted that cell towers are structurally identical to those towers. He was advised that PVD does not intend to change the classification of those towers or make a specific classification provision for cell towers, pending the current BOTA hearings. Mr. O'Connor said that a January 1, 2002, effective date for **SB 478** would terminate all pending Sedgwick County BOTA cases. To ensure that conflicting results do not occur in the assessment of such towers as commercial and industrial machinery and equipment, he suggested that the bill be amended on line 19 by deleting "K.S.A. 79-503a" and inserting K.S.A. 79-1439(b). (Attachment 2)

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Harriet Lange, Kansas Association of Broadcasters, testified in support of **SB 478**. She requested that the bill be amended to include broadcast towers in the definition of commercial and industrial machinery and equipment. She complained that radio and television stations in Wichita have been impacted by the Sedgwick County Appraiser's unilateral decision to appraise all towers as real property rather than personal property. She contended that broadcast towers should continue to be appraised as personal property because radio and television towers are not permanent fixtures but rather are movable or removable. ([Attachment 3](#))

Terry Atherton, manager of KSGL and KMYR radio in Wichita, testified in support of **SB 478**. He explained that, after the classification of his seven towers was changed from personal property to real property, property valuations went from \$2,000 to over \$50,000 for a single tower, and the KMYR property assessment dramatically raised from \$50,000 to \$600,000. The resulting tax bill for the first half was more than double the whole year's payment for last year. He pointed out that his radio stations do not make money from the towers but from advertising. The dramatic increase in taxation is serious for his radio stations and could mean the difference in whether he stays in business or not. ([Attachment 4](#))

Senator Corbin called the Committee's attention to written testimony in support of **SB 478** submitted by John R. Cmelak, Verizon Wireless. ([Attachment 5](#))

Gerald C. Frantz, Sedgwick County Appraiser, testified in opposition to **SB 478**. He noted that Article 11 of the State Constitution states, "The legislature shall provide a uniform and equal rate of assessment and taxation." In this regard, he called attention to a picture of cell tower located in Wichita. He noted that the tower has three co-locators, each of which generates \$1,000 per month to the tower owner for the rental of space, or a gross income of \$36,000 per year. The tower owner will receive \$30,600 net income per year. As personal property, the cell tower would generate \$1,350 per year in taxes. As real property, it would generate \$8,500 in taxes. By comparison, the owner of a single family residence valued at \$71,500 pictured in his testimony pays \$1,300 per year in taxes, but the property generates no income. Mr. Frantz contended that it is unfair for property which does not generate any income to be taxed approximately the same as the cell tower which does generate income. He then called attention to a picture of an office building in which the owner invested for the same reason as the cell tower owner—to generate income. The office building, which generates about the same amount of income as the cell tower, is taxed \$8,035 a year. ([Attachment 6](#))

Patricia J. Parker, Assistant County Counselor for Sedgwick County, testified in opposition to **SB 478** on behalf of the Sedgwick County Appraiser's Office. She noted that there are 29 tower related cases pending at the Board of Tax Appeals, 22 of which are set for trial in August 2004. The issue is the same in all cases, i.e., whether the wireless communication towers are real property and valued at fair market value or personal property and valued at retail cost when new, less depreciation. Ms. Parker explained that the Sedgwick County Appraisal Office maintains that the towers are real property because they are fixtures and because K.S.A. 79-430 defines them as real property. In her opinion, specific statutes lead one to conclude that the legislature has declared wireless communication towers to be valued and assessed as commercial real property at the same assessment rate at which the land supporting the towers are assessed. She requested that the Committee not recommend **SB 478** favorably but rather allow pending litigation to run its course. ([Attachment 7](#))

As to broadcast towers, Ms. Parker confirmed that they are not valued on the income approach because they do not generate income. Unlike other towers, they are valued on the cost approach. She also clarified that K.S.A. 79-430 has not been interpreted by a court. She explained that the International Association of Assessing Officers, which is the organization that regulates county appraisers, developed a course on the valuation of cell towers. When Mr. Frantz taught that course, there was significant discussion regarding cell towers as real property. She noted that the wireless communication industry is a very fast growing industry not only in Kansas but in other states, and many appraisal offices in other states have noticed inequities which they feel need to be addressed. She contended that each case must be weighted in light of the fixture test applied by the Kansas Court of Appeals in a dispute concerning oil refinery tanks and towers.

Senator Lee noted that the intent of K.S.A. 79-430 was to address the issue of a commercial tower being located on tax exempt church property. The statute was an attempt to allow tax exempt property to keep its exemption, but the tower would be taxed. The land would be assessed if it was not exempt.

Senator Lee noted that K.S.A. 79-430 is being used as a defense for the Sedgwick County Appraiser's action,

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yet the Department of Revenue's personal property valuation guide suggests that regular television towers should be appraised as personal property. She requested that the Division of Property Valuation provide the Committee with copies of that guideline. Mark Beck, Director of Property Valuation, noted that the guideline uses "suggests" but does not dictate. He explained that appraisers are expected to look at the property from the standpoint of a three-pronged test beyond that suggestion. He agreed with Senator Lee that K.S.A. 79-430, as drafted, is extremely difficult to interpret. He recalled that, when originally drafted in 1997, it was an attempt deal with the issue of not losing the exclusive use of a church building because a tower was built on the building. Ms. Lange stood to inform the Committee that she found that testimony and legislative records show that one intent of the legislation was to send separate tax bills to the tower owner and to the landowner. The other intent was to address the exempt status of municipalities, churches, and nonexempt organizations that wanted to lease land or property to commercial tower owners. She emphasized that broadcast towers were never part of the discussion. Senator Lee commented that she was part of the group that developed K.S.A. 79-430 in 1997. She noted that the intent of the legislation was to deal with the nonexempt building issue and to not change the valuation process of the towers in order to protect an exempt church. She observed that the argument on which the Sedgwick County Appraisal Office based its action definitely was not the intent of those drafting the law. In response, Ms. Parker clarified that K.S.A. 79-430 was not the initial reason used by Sedgwick County to determine whether or not this property should be classified and valued as real property.

There being no others wishing to testify, the hearing on **SB 478** was closed.

Mr. Beck noted that **SB 478** defines all wireless communications towers, antenna, and relay sites as commercial and industrial machinery and equipment and as tangible personal property for property tax purposes. He explained that the Division of Property Valuation values and assesses public utilities, many of which have radio and microwave towers that may be defined as wireless communications, while others have satellite dishes that may be defined as antennas. Public utilities are valued using the unit valuation method, and commercial and industrial property is valued at retail cost when new and depreciated over its economic life. With the bill, the unit value must be broken up. Because public utilities operate as a unit, it is virtually impossible to ascertain the value of its parts. In order to exclude public utilities from the bill, Mr. Beck requested that **SB 478** be amended on line 15 after "sites" by inserting, "except public utility property valued and assessed pursuant to K.S.A. 79-5a01 *et. seq.*, and amendments thereto." (Attachment 8)

Senator Lee moved to amend **SB 478** as requested by Mr. Beck, seconded by Senator Taddiken. The motion carried.

Gordon Self, Revisor of Statutes, distributed copies of a balloon of **SB 478** with technical amendments on line 19. (Attachment 9)

Senator Journey moved to technically amend **SB 478** as shown in the balloon and that it be amended to include broadcast towers, seconded by Senator Buhler. The motion carried.

Senator Donovan moved to recommend **SB 478** favorably for passage as amended, seconded by Senator Journey. The motion carried.

Senator Corbin opened a discussion on bills previously heard, **SB 415** concerning classification of property for property tax purposes and **SB 370** concerning an income tax deduction for long-term care insurance premium costs.

Senator Lee moved to recommend **SB 415** favorably for passage, seconded by Senator Goodwin. The motion carried.

With regard to **SB 370**, Senator Corbin recalled that the Legislative Research Department distributed additional information to the Committee on the fiscal note. Committee discussion followed regarding the imposition of a limit on the amount of income in order to qualify for the deduction. Senator Corbin reminded the Committee that Mr. Self indicated that the bill needs to be technically amended on page 4, line 32 by inserting "year" after "tax.

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Senator Pugh moved that **SB 370** be technically amended as suggested and to recommend it favorably for passage as amended, seconded by Senator Buhler. The motion carried.

Senator Haley expressed his opinion that, as an incentive for low-income persons to purchase long-term health care insurance, the bill should include a provision for a refundable credit for low-income persons. Staff indicated that the concept would need to be researched in order to determine what the fiscal note would be.

Senator Corbin informed the Committee that he plans to request that **SB 468** concerning the revocation or nonrenewal of professional licenses for delinquent taxes or returns and a companion bill, **SB 414**, be assigned to a summer tax interim committee for further study.

The meeting was adjourned at 11:55 a.m.

The next meeting is scheduled for February 20, 2004.