

## Property Taxes in Kansas

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The following is my narrative of the development and progress of the property tax in Kansas.

**Carlin and the Severance Tax** - Having defeated incumbent Republican Robert Bennett in 1978, Democrat John Carlin took office in 1979 and by the end of his second year in office, a dismaying cycle of swings between unemployment and inflation had pushed across America and into Kansas. Interest rates soared into double digits; banks were paying 15% interest on certificates of deposit and charging 18% or more for consumer loans. Prices heaved upward for everything – gasoline, groceries, home loans, automobiles, clothing, consumables, durable goods, oil and gas. A national recession had begun.

In Kansas, the legislature faced special, heavy pressures on programs for schools and Carlin wanted to avoid adding new burdens to the property tax, already overloaded as a revenue source for all things local, starting with operating budgets for cities, counties, and school districts. Carlin instead proposed an 8% severance tax on oil, gas, and coal, estimated then to raise \$200 million in new revenues for education and highway construction and maintenance.

This issue prompted a bitter, grinding debate that consumed the major part of three consecutive legislative sessions. It was resolved with the 1982 general election, in which Carlin was challenged by Republican Sam Hardage. The contest was seen clearly as a referendum on the severance tax. Legislators who opposed relief through a severance tax proposed to raise the state sales tax from 3% to 5%, and the eight cent gasoline tax to 11 cents a gallon. Carlin saw the issue a different way. “We’re either going to have property taxes go through the roof, or we’re going to have increases in sales and gasoline taxes,” said Carlin. “Or we’re going to have the mineral production (severance) tax.” When you compare it to the Legislature’s tax proposals, or to do nothing, which put it all on the property tax, voters agreed with Carlin and he won re-election by a wide margin and the severance tax was approved by the 1983 legislature. The severance tax is one example of reform prompted by pressures on the property tax.

**Why do we have a property tax?** – Of all the countless words and prudent phrases woven into the Kansas Constitution, none have caused more pain and frustration than the string of them that empowers the property tax. The phrase “. . . shall provide for a uniform and equal rate of taxation. . .” challenges Kansas to this day. On July 29, 1859 at Wyandotte, the territorial Legislature enacted the Constitution and with it Article 11, Section 1 – in one paragraph, the birth of our property tax. So important was this principle that it had been chiseled into

territorial law 18 months before Kansas joined the union of states. Such as levy was seen as essential, envisioned as the fuel for public services in growing settlements across the plains. It was the way to make roads of the trails and bridges over creeks and rivers. It would pay the sheriff and the school master. It kept the fire wagon ready. The assessment of a “uniform and equal” levy was supposed to spread the cost of community improvements. It was thought fair, then, because the extent of the tax reflected the productivity of the land, not its market value, real or imagined. And the productivity of the land was, after all, the promise of Kansas. It is an irony of time and events that a tax once written into our Constitution to make town and township life more livable has, by the beginning of the Carlin era, become so exasperating – the scorn of the owner, renter, merchant, farmer, banker, etc.

In the decades since the Homestead Act, land was shaped by farmers, ranchers, developers, citizen leaders, town boosters and civil servants; they would increase the value of property by “improving” it. Farms became productive and ranches fattened cattle. Townships sprouted towns, settlements grew into cities that later would gobble nearby communities or grow whole new ones to be called suburbs.

And land was valuable for what was under it as well as what could be grown in it or built on top of it. Oil and gas had been discovered in the late 1800s in eastern Kansas; oil and gas were not commercial in the west until the 1930s.

Over the years, the value of land has fluctuated against demands and uses so unpredictable that no law of appraisal approached reality. Even the keenest assessors were overwhelmed by the bewildering thicket of land use and value.

The property tax had become the anguish of politicians and constituents. Its practical application defied law, flying in the face of the Constitution of which it was part.

It would be the railroads, who profited most from the development and settlement of Kansas land in the 1870s and 1880s, who would, a century later, lead a charge against the tax. The railroads – which once had acquired more than 10 million Kansas acres, much of it free from the government – would claim the tax on land defied the law of that land. The railroads would usher yet another issue into the Carlin era for resolution.

In 1980, a year into John Carlin’s first term, the Santa Fe Railway sued the Kansas Department of Revenue, claiming that for property taxes, the railroad was assessed rates higher than other businesses in Kansas. At the time, property was to be appraised at “fair market value” and assessed for taxing at 30% of that value. It never really happened. Only utilities in Kansas were paying taxes on property assessed at 30% because in their case, the state – not counties – did the assessing. County appraisers were never able to keep up with the 30% law. The result was that the ratio of sale prices (market value) to appraised value – known as the sales-assessment ratio – rarely if ever approached even a double digit, much less 30% in

any city, township or county. Now and then the state would embark on a massive reappraisal ordered by the courts or the legislature. This prompted little change and lots of protest.

Four years after the suit had been filed, the railroads and the state division of property valuation arranged through federal court a process by which the railroads were taxed at rates lower than proscribed by law. The courts ruled that railroads were entitled to lower rates because county assessments were far below state levels. Strict assessment against railroads alone was not “uniform and equal” treatment, and not constitutional. That seemed to settle the trouble between railroads and the state. But what of the others with cause for complaint?

In 1986, the last year of his two terms as governor, Carlin spent much of his time campaigning for six amendments to the Kansas Constitution. One of them ordered (rather than permitted) the Legislature to rewrite farmland assessment laws and enact use-value farmland appraisals; thus, farmland would be appraised by its ability to produce income. The amendment also provided for classification of real and personal property with assessment at different percentages of value, but exempted farm machinery and equipment, merchants’ and manufacturers’ inventories, and livestock. The voters approved.

The trouble with taxes, in general, lay in human nature, and how people tend to view government funding: Impose taxes so the other person pays them. The trouble was compounded with property taxes because the system seemed to lack all fairness.

Thirty-plus years ago, Governor John Carlin and the Kansas Legislature placed a big part of the problem in the appraisal and assessment of property. The plan, through a constitutional amendment, was to classify property by use, assign it a value, and limit assessment rates in various categories – utilities, agriculture, residential, businesses and so forth. At that time, property was to be appraised at “fair market value” and assessed for taxing at 30% of that value. But it had never really worked that way. Only utilities were paying taxes based on 30% assessments because the state was charged with utility assessments. For other property, assessments were for county appraisers. Appraisers were never able to keep up with the 30% law. The ratio of sale price (market value) to appraised value – the sales-assessment ratio – rarely if ever approached 30% in any city, township or county.

Carlin convinced lawmakers of the need for a constitutional amendment to accomplish two things: a massive, statewide reappraisal of all property; and listing various classifications of property for a range of assessment rates.

At that time, one classification was critical: farmland would be appraised by its ability to produce income and assessed at 30%. The political and economic impact of this section was so significant that the entire amendment, covering a dozen classifications, came to be known simply as the “use-value amendment.” This is because the amendment, approved by Kansas voters in November 1986, protects farmland assessments through use-value property appraisal;

taxes were (and are) determined by the income derived from the land, not by its market value. The amendment was to prevent owners from being forced to sell land simply to pay the taxes on it. It was a critical reform, exposing a glaring issue with property taxes, the chief component in the system for funding local schools.

**Property Tax** – The property tax is viewed by some as a leftover from the Pony Express days, the early years of Kansas settlement, when property and the assessment of a “uniform and equal” levy were to spread the cost of community services and improvements. It was thought fair, then, because the extent of the tax reflected the productivity of the land, not its market value, real or imagined. All this changed as settlements became towns, and then cities, and agriculture prospered. And good schools became important for communities.

Although the property tax was written into the territorial constitution ten years before Kansas became a state, the state income tax was not adopted until the early 1930s. Since then, property taxes have come to be seen as dated, a relic of the Homestead Act. The tax is expensive to collect and, as history notes, it is hardly uniform and rarely equal. It has been revealed to have a negative social impact. Property maintained and improved is taxed more; the inefficient and the negligent are rewarded with lower taxes.

One premise in the issue of government finance is that the property tax now is valid only in relation to property, not people. That is, taxes on property might pay for rural roads and bridges, for rural fire and water systems; in town, the property tax would finance non-arterial streets, storm sewers, parking, even subsidize low-income housing. Taxes for people functions are in another class. These should come from income and sales taxes and user fees collected chiefly on a statewide basis.

The cost of public schools, as suggested in early reform debates, should relate not to the value of land in a district but to the number of students to be educated. A state-run and state-financed school system might not be a popular idea, but it seemed logical. The state was paying, on average, nearly 70% of the cost in local districts, with local boards in charge of operations.

Property Taxes have been tied tightly to the premise of local control, although the income tax as a far better, more equitable source of state revenue for local government. This suggestion runs contrary to the feeling that local control is better, that friends and neighbors can manage their towns more reasonably than costly and troublesome bureaucracies. Usually they do. But today’s friends and neighbors are no longer apt to be tomorrow’s considering the transience of Kansans today. History has shown that a system relying on property taxes tends to easily get out of control. And the price of that system too often has been inequitable and discriminatory taxation with equally unfair results. Local control often becomes local rule with the state relegated to the status of bystander.

**Property Tax and Schools** - In early 2004, not long after a Shawnee County District Court judge had lashed the Kansas Legislature for underfunding local schools, urban lawmakers began to put a sharper eye on rural schools. The judge, Terry Bullock, had twice prompted dramatic changes in school finance – the first time in October 1991, when he suggested strongly that the state’s local schools were unconstitutionally under-funded and invited Governor Joan Finney and the legislature to enact change. The result was historic reform in 1992. A decade later, trouble again. In December 2003, Bullock issued a 104-page “preliminary interim order” scolding the Legislature for treating state school finance as a “political auction” and reproaching the State Board of Education for failing to manage the school system. He suggested that for ten years, the state had been so lax in funding that it might take as much as \$1 billion to make the system whole as proscribed in the original reform law. Central in this controversy were two items: property taxes, and the cost of rural schools.

For years, since the state’s first step toward providing significant, long-term aid to local schools, it was clear that property taxes could not pay the entire cost. Income and sales tax revenues would be added to the sources for state aid, with allotments determined by the wealth (or lack of it) of each school district. This would mean that income and sales taxes collected in cities and suburbs would help fund aid to small schools in sparsely settled communities. Under the reform law, this was called “low-enrollment aid.”

Among the early and persistent critics of low-enrollment aid was former Senate Minority Leader, Jack Steineger, of Kansas City. Steineger’s district included urban neighborhoods with crowded and under-funded schools. Aid for tiny country schools and their few students, scattered about the vast open plains, was a waste of precious resources, he said. Urban and suburban legislators, Democrat and Republican, began to join Steineger’s chorus in the late 1980s and early ‘90s.

Legislator’s reaction to Bullock’s order in 2003 was mostly a shrug. A billion-dollar fix, many said, would require an unrealistic and unthinkable measure of tax increases and revenue shifts. Besides, a joint legislative committee had been appointed to recommend by December 2005 changes in the school finance law.

The concern got a nudge when Governor Kathleen Sebelius strongly suggested that consolidation of small school districts was an option for lawmakers who were looking for revenue. The focus of this suggestion was a big number – more than \$300 million at the time – the special, additional allocation of state aid based on district enrollments. Of this, about \$226 million was “low-enrollment” aid for districts with head counts at 1,725 students or less; \$76 million was sent to districts with enrollments of more than 1,725. Put another way, 75% of the money went to districts with a third of the state’s students. The numbers today are larger but message hasn’t changed.

Of the state's 286 school districts, more than 200 have enrollments of 1,000 or less. (Nearly three years after Bullock's order, the Legislature, in May 2006, approved a three-year, \$541 million package of state aid increases for local funding – about half the amount that Shawnee County District Judge Terry Bullock had estimated as necessary to resolve disparities between the state's rich and poor school districts.)

Low-enrollment aid was written into the school finance reforms of 1992 to secure the support of rural legislators for passage of the new law. The belief was that without this aid, scores of sparsely populated districts would be forced to close or merge, with devastating economic and social impact on their communities. In the years since, Bullock noted, this system of enrollment-based aid had become fundamental in the "political auction" for deals needed to pass school funding bills. "... the current financing scheme was never based upon costs or even estimated costs to educate children," Bullock said in his order, " but was in fact the result of a 'political auction' (where various funding levels were proposed until, finally, a political majority could be achieved in the Legislature.)"

By 1996, urban lawmakers had demanded – and won – subsidies for "high enrollment" districts above the line for low-enrollment subsidies. This was called "correlation" aid, and (as noted) was worth \$76 million a year for 53 districts. This was necessary for any school finance legislation, since more than half the House and Senate were now elected by voters in only six urban counties, five of them in the northeast.

In 2015, Governor Sam Brownback directed the Kansas Legislature to abolish the state's current school finance law. To replace it, he offered a two-year plan to send block grants to each school district in amounts equal to their current state aid allotment. Depending on the school district, the grants would cover 65% to 80% of the school's operating costs. To pay the remainder, districts would have to rely on local property taxes.

Two factors have slowed the urban passion for more school district consolidation. First, it has happened anyway. The continued withering of rural economies and populations (and tax bases) coerced consolidation of 18 school districts in central and western Kansas from 2002 through 2011. This happened with no nudging from legislators. Second, the power of the Legislature's urban and suburban districts has grown sharply in the past dozen years. Six of the state's 105 counties – Johnson, Shawnee, Wyandotte, Douglas, Leavenworth and Sedgwick – now elect more than 60% of the Kansas Senate and House of Representatives.

Property taxes and state school finance are solidly connected, critical in the balance of funding in the operating budget for state government. In 2005, the Kansas Chamber of Commerce lobbied successfully in Topeka for expanding property tax exemptions for business. The Chamber insisted on broader machinery and equipment property tax exemptions for large commercial properties. The first exemptions were granted in 2006.

All of this happened at a time of increasing farmland values, although farm taxes have remained relatively unchanged. This is because a constitutional amendment, approved by Kansas voters in 1986, protects farmland assessments through use-value property appraisal; taxes are determined by the income derived from the land, not by its market value. But governors and urban legislators, searching for ways to resolve historic budget deficits caused by dramatic tax cuts, and new ways to pay for local schools, now consider farmland a kind of low-hanging fruit. Easy pickings, for a couple of reasons. First, farmland is relatively low-taxed, given its value in proportion to current tax rates, and the tax breaks and government subsidies secured over the years by the farm lobby. Second, rural Kansas no longer has the legislative power to prevent raids on their assets.

Urban and suburban legislators, with the governor's blessing, have the votes and the muscle to pass an amendment that repeals the Constitution's use-value protection for farmland. Constituents and school patrons in five or six counties alone comprise the majority needed to approve it at the polls. Urbanites may see farmland as a new source of revenue for their schools and tax relief for their CEOs, office parks, subdivisions, and their schools.

The issue tells us that Kansas may be headed for a two-tier economy – the haves, and the have-mores. The rest of us will get the invoice.