

Kansas Property Tax Appeals: An Adversarial System Without Adversaries

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I. INTRODUCTION

Ad valorem property tax¹ is the source of approximately one-third of all tax revenue in Kansas.² Excluding taxes on motor vehicles, Kansas property owners pay more than \$3.5 billion in property taxes each year—primarily to support local governments.³ Property tax administration is largely a local concern. For the majority of properties, local officials perform appraisals, calculate target revenues, set local tax rates, and supervise tax collection.⁴ Although local governments are generally responsible for its administration, the property tax implicates important statewide policies. Foremost among these is the constitutional mandate of uniform and equal taxation.⁵

To maintain fairness, uniformity, and equality, the Kansas Constitution and Legislature have created a complex property tax scheme.⁶

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1. “Ad valorem” is Latin for “according to the value.” BLACK’S LAW DICTIONARY 60 (9th ed. 2009). Ad valorem property tax is a tax of a portion of property’s value. *Id.* at 1594 (defining “ad valorem tax”).

2. *See, e.g.*, KAN. DEP’T OF REVENUE, PROPERTY, SALES, AND INCOME TAXES AS A PERCENT OF TOTAL KANSAS STATE AND LOCAL TAXES 1 (2005), available at www.ksrevenue.org/pdf/PercentKSTaxes.pdf. In 2007, property tax accounted for 31% of all Kansas tax revenue; sales tax accounted for 28.6%, and income tax accounted for 22.2%. *Id.* The amount of revenue generated by property tax in proportion to other forms of taxation has remained fairly constant over recent years. *See id.* (stating property tax accounted for 31.57% of tax revenue in 2003 and 28.58% in 2000); *see also* GLENN W. FISHER, THE WORST TAX? A HISTORY OF THE PROPERTY TAX IN AMERICA 163 (1996) (stating that property tax accounted for 38.2% of revenue in 1990). However, the property tax historically played a much larger role in financing state and local government. *See id.* (stating that property tax generated 82% of state tax revenue in 1930 and about 63% in 1940).

3. KAN. DEP’T OF REVENUE, ANNUAL STATISTICAL REPORT 71 (2009), available at <http://www.ksrevenue.org/pdf/forms/08arcomplete.pdf>. Of this amount, 46.7%, or \$1,681,297,137, funded schools; 28.4%, or \$1,021,913,624, funded counties; 16.4%, or \$591,798,016, funded cities; 1.5%, or \$53,940,997, funded townships; 1.3%, or \$45,130,418, funded the state; and 5.7%, or \$205,964,416, was allocated to other entities. *Id.* Those who own motor vehicles pay an additional \$321 million. *Id.* at 77.

4. *See* discussion *infra* Part II.B.

5. KAN. CONST. art XI, § 1. Article XI of the Kansas Constitution sets forth the basic property tax framework. The legislature has statutorily codified the constitutional framework. *See* KAN. STAT. ANN. § 79-101 (1997) (creating the property tax); KAN. STAT. ANN. § 79-1439 (Supp. 2009) (providing for a system of classification); KAN. STAT. ANN. §§ 79-201 to 79-259 (1997 & Supp. 2009) (providing for the exemption of certain property from taxation).

6. *See* discussion *infra* Part II.

The tax appeals process is an essential component of this scheme. Tax appeals generally begin with informal local-level dispute resolution.⁷ If the informal process fails, taxpayers, local governments, or both, may appeal to the Kansas Court of Tax Appeals (COTA) for more formal adjudication.⁸ COTA, the state's highest tax tribunal, is an independent administrative tax court within the executive branch and is a key component in the property tax appeals process.⁹ COTA's "mission is to resolve disputes between taxpayers and taxing authorities promptly and impartially and to help maintain public confidence in the state and local tax system."¹⁰

In the property tax realm, COTA resolves disputes over the assessment and exempt status of property throughout Kansas.¹¹ Its decisions directly affect the distribution of the tax burden among taxpayers. For an illustration of this point, consider the following hypothetical. Imagine a county composed entirely of ten parcels of real property. The county has assigned a value of \$100,000 to each parcel. The total taxable value, or assessed value, of the parcels is \$115,000.¹² Because the county requires \$50,000 to fund its annual operations, it must collect \$434.78 in taxes for each taxable \$1,000 of property in the county.¹³ Each of the ten taxpayers must, therefore, pay \$5,000 in property taxes.¹⁴

Now suppose that one of the ten property owners has challenged the value of her property, and the matter is eventually set for a hearing before COTA. After hearing evidence from the property owner and the taxing authority, COTA sets the value of the property at \$90,000. The total appraised value of property in the county is now \$990,000, and the assessed value of that property is \$113,850.¹⁵ Still needing \$50,000, the county must collect \$439.18 per taxable \$1,000. In this case, nine property owners pay \$5,050.57 each while the tenth property owner pays only \$4,545.51. The nine property owners who did not challenge their

7. See discussion *infra* Part II.C.4.b (discussing the taxpayer appeal process).

8. See discussion *infra* Part II.C.4.b.

9. Kansas Court of Tax Appeals—About the Court of Tax Appeals, http://www.kansas.gov/cota/About_COTA/ (last visited Apr. 22, 2010); see KAN. STAT. ANN. § 74-2426(c)(2) (Supp. 2009) (providing that the Kansas Court of Appeals has jurisdiction of appeals from orders of the Kansas Court of Tax Appeals (COTA)).

10. Kansas Court of Tax Appeals, <http://www.kansas.gov/cota/> (last visited Apr. 22, 2010).

11. See discussion *infra* Part II.C.4 (discussing COTA's functions).

12. See *infra* notes 48-49, and accompanying text (discussing calculation of assessed values of property). The taxable value of property is known as its "assessed value." See KAN. CONST. art. XI, § 1(a) (stating that taxes are levied on a percentage of property value). The assessed value of property "is the value on which the [property] tax burden to support local government services, special assessments and public schools is allocated among property owners." KAN. DEP'T OF REVENUE, *supra* note 3, at 69. Assume that each parcel is assessed at 4.5% of its value.

13. See *infra* notes 55-56 and accompanying text (discussing calculation of mill levies).

14. See *infra* note 57 and accompanying text (discussing calculation of tax liability).

15. See *infra* notes 48-49, and accompanying text (discussing calculation of assessed values of property).

property valuations must pay a greater sum as a result of the tenth taxpayer's reduced property value. Through this illustration, it is evident that changes in the value of property alter the makeup of the tax base, thus, altering the share of governmental expenses paid by each taxpayer.¹⁶

As illustrated above, property tax is a zero-sum system. When a taxpayer receives a downward adjustment in the value of her property, the system simply spreads the burden relieved among other taxable properties. It is, therefore, important that COTA, the body that resolves property tax disputes, is able to adjudicate those disputes in a manner that is fair—not only to the parties to the dispute, but also to all Kansas taxpayers. The fairness and uniformity of the property tax system depends upon an effective appeals process in which all participants fulfill their respective roles and are accountable for their decisions. Because property tax dispute resolution occurs within an adversarial framework, the appeals system must foster decision making based on fully developed evidentiary records, consistent legal principles, and zealous advocacy. Currently, the system fails in several ways to guarantee the levels of accountability and participation necessary to achieve these goals.

The focus of this Note is not COTA, but the roles that state and local agencies must fulfill to allow effective adjudication of tax disputes. First, this Note provides an overview of the various administrative mechanisms of the property tax system. Second, it provides an overview and analysis of the property tax appeals system. Finally, it suggests changes intended to improve the efficacy of the appeals process.

II. BACKGROUND

The Kansas property tax system has three basic components. The state constitution and statutes provide the legal authority and framework for the system. Local officials generally administer the system by appraising property, setting target revenue, and allocating the tax burden among taxpayers. Finally, the state and federal constitutions, state law, state oversight, and an appeals process protect taxpayers from abuse or mismanagement of the system by local officials.

16. The effect of COTA decisions on other taxpayers is even more apparent in exemption cases. Suppose the tenth taxpayer is a religious organization that rightfully obtains an exemption from COTA for a church it owns. *CF. KAN. STAT. ANN. § 79-201 Second* (Supp. 2009) (providing for the exemption of property used exclusively for religious purposes). The value of the other nine taxable parcels now totals \$900,000, and their taxable value is \$103,500. The county still needs \$50,000. However, because the tax exemption in this case reduced the tax base from \$115,000 to \$103,500, (assuming again that each parcel is assessed at 11.5% of its value) the county must collect approximately \$5,556 from each of the nine taxpayers—instead of \$5,000 from ten. The nine non-exempt taxpayers must pay the taxes that the newly exempt taxpayer would have paid.

A. Constitutional and Legislative Authority for the Property Tax System

All real and personal property in Kansas is subject to taxation on a uniform and equal basis unless specifically exempted.¹⁷ Kansas law, however, does not provide for a pure system of uniform and equal taxation. The Kansas Constitution provides for three qualifications of the basic guarantee of uniformity and equality. The first is a system of differing assessment rates.¹⁸ The second is the exemption of certain property from taxation.¹⁹ The third is the implicit grant of authority to the legislature to create additional exemptions.²⁰

In its first departure from pure uniformity and equality, the constitution establishes a classification system that sets assessment rates for all taxable property. For assessment, all property falls within one of two classes: real property or tangible personal property.²¹ Both classes contain several subclasses, each with their own assessment rates.²² The classification system is a qualification of the uniform tax system because it results in different tax liabilities for equally valuable properties.²³

Tax exemptions represent a further deviation from an entirely uniform system.²⁴ Both the constitution and the legislature create exemp-

17. KAN. CONST. art. XI, § 1(a); KAN. STAT. ANN. § 79-101 (1997); see discussion *infra* Part II.C.1 (discussing the uniform and equal taxation requirement).

18. KAN. CONST. art. XI, § 1(a).

19. *Id.* § 1(b).

20. See *infra* notes 27-28 (discussing the legislature's authority to exempt property from taxation).

21. KAN. CONST. art. XI, § 1(a). The legislature has codified the classification system at section 1439 of chapter 79 of the Kansas Statutes Annotated. See KAN. STAT. ANN. § 79-1439 (Supp. 2009).

22. KAN. CONST. art. XI, § 1(a). The rate established for a subclass is applicable to all property falling within that subclass. See *id.* The following are the applicable assessment rates:

There are seven subclasses of real property: (1) residential property, which is assessed at 11.5% of its appraised value; (2) agricultural property, which is assessed at 30% of its value based on the agricultural income or production of the property; (3) vacant lots, which are assessed at 12% of their appraised values; (4) real property owned and operated by not-for-profit organizations, which is assessed at 12% of its appraised value; (5) public utility real property, which is assessed at 33% of its appraised value; (6) commercial property, which is assessed at 25% of its appraised value; and (7) all property not provided for in the other subclasses, which is assessed at 30% of its appraised value. *Id.*; KAN. STAT. ANN. § 79-1439(b)(1).

There are six subclasses of personal property: (1) residential mobile homes, which are assessed at 11.5% of their appraised values; (2) mineral leasehold interests, which are assessed at 30% of their appraised values—except low producing leases, which are assessed at 25% of their appraised values; (3) public utility personal property, which is assessed at 33% of its appraised value; (4) motor vehicles, which are assessed at 30% of their appraised values; (5) commercial and industrial machinery and equipment, which is assessed at 25% of its appraised value; and (6) all property not provided for in the other subclasses, which is assessed at 30% of its appraised value. KAN. CONST. art. XI, § 1(a); KAN. STAT. ANN. § 79-1439(b)(2).

23. See *Von Ruden v. Miller*, 642 P.2d 91, 98 (Kan. 1982) (discussing tax classification systems, stating that “[i]t is inherent in the term ‘separately classify’ that the separately classified property be dealt with in a manner different from other property. Different treatment means nonuniform and permissibly unequal treatment.”); cf. *infra* note 24 (discussing tax exemptions as a qualification of the rule of uniform and equal taxation). However, assessment of all property within a subclass must be uniform. KAN. CONST. art. XI, § 1(a); *Von Ruden*, 642 P.2d at 98. The assessment rate is an essential component of calculating the taxable value of property. See *infra* notes 48-49 (discussing calculation of the assessed value of property).

24. See *State ex rel. Tomasic v. Kansas City*, 636 P.2d 760, 767-68 (Kan. 1981) (indicating that

tions. The constitution provides for the exemption of:

[a]ll property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes, farm machinery and equipment, merchants' and manufacturers' inventories, . . . livestock, and all household goods and personal effects not used for the production of income.²⁵

It also allows counties and cities to exempt property used for economic development purposes.²⁶

By not expressly prohibiting the legislature from creating new exemptions,²⁷ the constitution implicitly allows legislative exemptions that serve public purposes.²⁸ And the legislature has exercised this authority.²⁹ Beyond codifying the constitutional exemptions,³⁰ it has enacted more than forty-five additional exemption statutes.³¹ Currently, more than eighty statutory provisions entitle property owners to tax exemptions.³²

B. Local Administration of the Property-Tax System

The property tax system is a statewide system generally administered by local governments.³³ There are three fundamental stages of local-level property tax administration: (1) assessing property; (2) determining revenue needs; and (3) calculating the tax due on each

tax exemptions are a constitutionally permissible exception to the rule that the State must uniformly and equally tax property); *Wheeler v. Weightman*, 149 P. 977, 981 (Kan. 1915) (“The exemption provision of the Constitution is a qualification of the rule of uniformity and equality.”).

25. KAN. CONST. art. XI, § 1(b).

26. *Id.* § 13.

27. *Id.* § 1; *Tomasic*, 636 P.2d at 768 (“The constitution does not provide . . . that other exemptions may not be made.”); *City of Harper v. Fink*, 80 P.2d 1080, 1081 (Kan. 1938) (“[I]t has been repeatedly held that while the constitution provides that certain property shall be exempt from taxation, it does not declare that the legislature may not provide for other exemptions.”).

28. See *Wheeler*, 149 P. at 981 (“[T]he Constitution prescribe[s] a minimum exemption which may be enlarged according to the wisdom and discretion of the Legislature.”) (citations omitted). Exemptions created by the legislature must serve a public purpose. See *In re Protest of Strayer*, 716 P.2d 588, 593 (Kan. 1986) (“Generally, the legislature has the authority to provide that property other than that named in the Kansas Constitution may be exempt from taxation, but this exemption must have a public purpose and be designed to promote the public welfare.”) (citing *Topeka Cemetery Ass’n v. Schnellbacher*, 542 P.2d 278 (Kan. 1975)).

29. Cf. KAN. STAT. ANN. §§ 79-201 to 79-259 (1997 & Supp. 2009).

30. Compare KAN. CONST. art. XI, § 1(b) (providing for the exemption of “property used exclusively for state, county, municipal, literary, educational, scientific, religious, benevolent and charitable purposes”), with KAN. STAT. ANN. § 79-201 *Second* (Supp. 2009) (providing for the exemption of property “used exclusively for literary, educational, scientific, religious, benevolent or charitable purposes”).

31. See KAN. STAT. ANN. §§ 79-201 to 79-259. These range from an exemption for property used predominantly for humanitarian services to an exemption for antique aircraft used for recreational purposes. See KAN. STAT. ANN. § 79-201 *Ninth* (providing for the exemption of property used for humanitarian purposes); KAN. STAT. ANN. § 79-220 (1997) (exempting “antique aircraft used exclusively for recreational or display purposes”).

32. See KAN. STAT. ANN. §§ 79-201 to 79-259.

33. The constitution and state statutes provide the rules that govern the system, and counties must administer the tax uniformly among all taxpayers in the state. See, e.g., KAN. CONST. art. XI, § 1 (establishing the property tax and stating that property must be uniformly and equally taxed); KAN. STAT. ANN. § 79-101 (1997) (establishing the property tax).

property.³⁴ Each stage requires specialized personnel to perform numerous functions.³⁵

The first stage in property tax administration is assessing property. Assessment is comprised of four steps: (1) definition of geographical assessment areas; (2) identification and cataloguing of property within the assessment areas;³⁶ (3) valuation of the property; and (4) calculation of the taxable value of the property.³⁷ The legislature has performed the first step; each county, as defined by state law, comprises an assessment area called an “appraisal district.”³⁸ Local governments and taxpayers implement the remaining steps.³⁹

Within each appraisal district, county clerks and taxpayers identify and catalogue taxable property. Who performs this function depends on whether the property is real or personal.⁴⁰ County clerks must complete assessment rolls describing each parcel of real property in their counties and must deliver the assessment rolls to county appraisers.⁴¹ In contrast, property owners must annually list all of their taxable tangible personal property for assessment in the county where it is located.⁴²

Once identified, county appraisers must ascertain the “fair market value,” or “appraised value,” of taxable property.⁴³ Fair market value is “the amount in terms of money that a well informed seller is justified in

34. Lori M. Callahan & Linda Parks, Note, *The Kansas Property Tax: Mischievous, Misunderstood, and Mishandled*, 22 WASHBURN L.J. 318, 320 (1983). The authors describe the property tax system as consisting of five components: “the assessment of property . . . , the interdistrict equalization of property assessment, the levy of the tax upon the property, the extension and the collection and distribution of the tax.” *Id.* (footnotes omitted). The actual collection and distribution of the tax are outside the scope of this Note.

35. See *infra* notes 40-57 and accompanying text.

36. Identifying and cataloguing simply consists of compiling a list of taxable property. See KAN. STAT. ANN. § 79-408 (1997) (establishing a procedure for compiling a list of taxable real property); KAN. STAT. ANN. § 79-301 (1997) (establishing a procedure for compiling a list of taxable personal property).

37. See *infra* notes 40-57 and accompanying text.

38. KAN. STAT. ANN. § 79-1455 (1997). The county is the governmental unit “charged with the primary responsibility for the administration of all laws relating to the assessment, review, equalization, extension and collection of real and personal property taxes.” KAN. STAT. ANN. § 79-1411a (1997). However, two or more counties may unite to form one appraisal district. KAN. STAT. ANN. § 19-428 (2007).

39. See *infra* notes 40-57 and accompanying text.

40. Compare KAN. STAT. ANN. §§ 79-301 to 79-344 (1997 & Supp. 2009) (addressing the listing and valuing of personal property), with KAN. STAT. ANN. §§ 79-401 to 79-430 (1997 and Supp. 2009) (addressing the listing and valuing of real estate).

41. KAN. STAT. ANN. § 79-408.

42. KAN. STAT. ANN. § 79-304 (1997). Individuals and entities required to list personal property must do so by submitting a personally signed statement to the county appraiser of the county entitled to tax the property. KAN. STAT. ANN. § 79-306 (1997). The statement must contain a description of all property subject to the listing requirement. *Id.* The person listing the property must file the statement by March 15 of each year. *Id.* The owner, guardian of the owner, or trustee of the taxable property is responsible for listing the property for assessment. KAN. STAT. ANN. § 79-303 (1997); KAN. STAT. ANN. § 79-304 (requiring listing of property in the jurisdiction where it is located).

43. KAN. STAT. ANN. § 79-1439(a) (Supp. 2009). For tax purposes, a property’s value is its value on January 1 of the tax year. KAN. STAT. ANN. § 79-1455. Although county appraisers are generally responsible for appraising property, state officials must appraise property owned by public utility companies. See KAN. STAT. ANN. §§ 79-5a03, 79-5a04 (1997).

accepting for property in an open and competitive market.”⁴⁴ An appraiser must consider several factors when determining fair market value, such as the known value of comparable property, the property’s capitalized rental value, and its replacement cost.⁴⁵ She must also determine the assessment class to which each property belongs.⁴⁶ Once determined, the appraiser must record appraised values and assessment classes on the assessment roll.⁴⁷ She then calculates each property’s “assessed value”⁴⁸ by multiplying its appraised value by the applicable assessment rate.⁴⁹

Ascertaining the taxable value of all property in the tax base is only part of the process of determining each taxpayer’s liability. Local governments also must set the amount of revenue they will raise.⁵⁰ Each county’s board of county commissioners annually determines the

44. KAN. STAT. ANN. § 79-503a (Supp. 2009).

45. *Id.* § 79-503a(a) to (k). These three approaches are known as the “sales comparison approach,” the “income approach,” and the “cost approach.” See THE APPRAISAL FOUND., APPRAISAL STANDARDS BOARD, UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, at U-18 (2008), available at <http://www.vanderwerffandassociates.com/USPAP.pdf>. Appraisals must conform to generally accepted appraisal procedures. KAN. STAT. ANN. § 79-503a(k). The factors that an appraiser may consider are: (1) the proper classification of land and improvements; (2) the size of land and improvements; (3) depreciation of the property; (4) cost of reproducing the property; (5) productivity of the property; (6) earning capacity of the property, rental value, or reasonable rental value of the property; (7) sale value on the open market; (8) restrictions or requirements regarding the use of the property imposed by local, state, or federal governments; and (9) comparison with other properties of known or recognized value. *Id.* § 503a(a) to (k).

Appraisers must determine the value of real estate by view and inspection of the property, consultation with its owner, statistical methods, and “such other sources of information as are within the appraiser’s reach.” KAN. STAT. ANN. § 79-411 (1997); KAN. STAT. ANN. § 79-501 (1997). The sale price of a given property is not dispositive of its fair market value. KAN. STAT. ANN. § 79-503a (“Sales in and of themselves shall not be the sole criteria of fair market value but shall be used in connection with [other factors].”).

In addition to these statutorily enumerated requirements governing appraisal methods, a state statute requires the state Director of property valuation (Director) to adopt rules and regulations providing standards on how appraisers must perform appraisals for ad valorem taxation purposes. KAN. STAT. ANN. § 79-505(a) (1997). At a minimum, the Director must require that all appraisals are in writing and in accordance with generally accepted appraisal standards. *Id.* § 79-505(a)(1) to (2). The Director may require compliance with additional standards. *Id.* § 79-505(b).

46. See KAN. STAT. ANN. § 79-1439(b) (providing that, for assessment, property must be classified to obtain the applicable assessment rate).

47. KAN. STAT. ANN. § 79-412 (Supp. 2009).

48. See KAN. DEP’T OF REVENUE, *supra* note 3, at 69. The assessed value of all taxable property in Kansas is \$30,087,769,809. *Id.* at 68. The 2007 assessed value of taxable property in Kansas was up 3.8% from the assessed value of property in 2006 (\$28,973,127,178) and 25.53% from the assessed value of property in 2003 (\$23,966,804,608). *Id.*

49. The calculations are as follows. Take, for example, a residential-use property valued at \$100,000 and a commercial-use property valued at \$100,000. Calculating the assessed value of the residential property requires multiplying the appraised value, \$100,000, by the assessment rate applicable to residential real estate, 11.5%. *Cf.* KAN. CONST. art. XI, § 1(a) (providing the assessment rate for residential real property). Thus, the assessed value of the residential property is \$11,500 (\$100,000 x 0.115). The commercial property, assessed at 25% of its appraised value, has an assessed value of \$25,000 (\$100,000 x 0.25). *Cf. id.* (providing the assessment rate for commercial real estate). Note that for residential property, the first \$20,000 of the property’s fair market value is exempt from the twenty-mill statewide school levy. KAN. STAT. ANN. § 79-201x (Supp. 2009). Thus, determining the amount of taxes a homeowner owes to a school district requires subtracting \$20,000 from the home’s appraised value, multiplying that amount by the assessment rate, and then multiplying that amount by the mill levy: [taxes = (assessed value - \$20,000) x 0.115 x school district mill levy].

50. See KAN. STAT. ANN. § 79-1801 (Supp. 2009) (providing for the levy of taxes by local governments); KAN. STAT. ANN. § 79-1802 (1997) (providing for the levy of taxes by counties).

amount of revenue required for county purposes.⁵¹ Other “tax districts”⁵² located in a county—such as cities, trustees, and school districts—also annually certify to their county clerks the amount of taxes they seek to collect.⁵³

After all tax districts in a county have certified the amount of property tax revenue, the clerk computes the tax rate applicable to taxable property in each taxing district.⁵⁴ The resulting computations, known as mill levies, represent the dollars per \$1,000 of all assessed property in a given taxing district necessary to satisfy the district’s budgetary needs.⁵⁵ The clerk computes the taxes owed on each property by multiplying the mill levy by the taxable value of the property⁵⁶ and records the resulting

51. KAN. STAT. ANN. § 79-1802. The amount must be determined by a meeting of the board of county commissioners on the first Monday of August of each year. *Id.* This determination must include the amount needed for “all county purposes, and all other taxes which [the county] shall be required by law to levy.” *Id.* County purposes include general operating expenses incurred by the county. *See* KAN. STAT. ANN. § 79-1946 (Supp. 2009) (authorizing counties to fix an annual levy rate for general expenses).

52. Each unit of local government, cities, school districts, and other special assessment districts comprises tax districts, or “taxing subdivisions,” that draw their revenue from property taxes in the counties in which they are located. *See* KAN. STAT. ANN. § 79-1801(a) (providing that the governing bodies of all taxing subdivisions must certify the amount of property tax that they will levy to their county clerks). For example, property located in Unified School District 501 (USD 501) in Topeka, Kansas, is subject to taxation by, among others, USD 501, the City of Topeka, Shawnee County, and the State of Kansas. *See* SHAWNEE COUNTY CLERK, SHAWNEE COUNTY TAX LEVY SCHEDULE 1 (2009), available at http://www.snco.us/clerk/document/levysheets_2009.pdf.

53. KAN. STAT. ANN. § 79-1801(a) (providing that the tax levy must be certified to the county clerk by August 25 of each year).

54. KAN. STAT. ANN. § 79-1803 (Supp. 2009).

55. *See* BLACK’S LAW DICTIONARY, *supra* note 1, at 1084 (defining “mill rate” as “[a] tax applied to real property whereby each mill represents \$1 of tax assessment per \$1,000 of the property’s assessed value”). The statewide average mill levy in 2007 was \$119.66. *See* KAN. DEPT OF REVENUE, *supra* note 3, at 73. The lowest countywide average mill levy was \$73.16 in Stevens County, Kansas, and the highest was \$177.32 in Smith County, Kansas. *Id.* Thus, the owner of a \$100,000 commercial property in Stevens County, on average, would have paid \$1,829 in property taxes in 2007. *See* KAN. CONST. art. XI, § 1(a) (stating that commercial property is assessed at 25% of its value). The owner of a commercial building of the same value in Smith County would have paid approximately \$4,433. *See id.* The cases of Smith County and Stevens County illustrate the dramatic effect that variances in the valuation of property and county budgetary needs can have upon individual taxpayers.

56. *See* KAN. STAT. ANN. § 79-1803; *see also* Unified Government of Wyandotte County, Kansas, Treasury Property Tax Calculation, http://www.wycokck.org/Dept.aspx?id=7278&menu_id=1034 (last visited April 22, 2010). Using Shawnee County as an example, a calculation of tax liabilities for property located in a particular county, city, and school district might look like this:

The county needs \$8 million, the city needs \$4 million, the school district needs \$1 million, and the state takes 1.5 mills. Assume that the total assessed value of all taxable real and personal property located in the taxing districts are thus: county, \$1 billion; city, \$700 million; school district, \$500 million. To satisfy its \$8 million budget requirement, Shawnee County must collect \$8 per every \$1,000 of assessed value: [$\$8,000,000 \div \$1,000,000,000 = \$0.008$]. *See* Unified Government of Wyandotte County, Kansas, *supra* (providing a sample mill rate calculation). Thus, the Shawnee County mill levy would be 8 mills. To collect its \$4 million from the \$700 million of assessed property within it, the city must levy a tax of 5.71 mills. *See id.* The school district must levy a tax of 2 mills to collect its \$1 million from the taxable \$500 million within it. *See id.* The mill levies applicable to the property in the school district would, thus, be:

tax liabilities on the county tax roll.⁵⁷

C. Taxpayer Protection

Under the current property tax framework, four principal mechanisms protect the tax base from mismanagement and abuse. They include: (1) the constitutional guarantee of uniform and equal taxation; (2) statutory penalties for failing lawfully to carry out tax-related duties; (3) the state's central oversight authority; and (4) the taxpayer appeals process.

1. Uniform and Equal Taxation

The Kansas Constitution states that “the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation.”⁵⁸ The uniform and equal taxation requirement is coextensive with the guarantee of equal protection afforded by the Fourteenth Amendment to the United States Constitution.⁵⁹

To prove a state or federal constitutional violation, a taxpayer “must demonstrate that his or her treatment is the result of a deliberately adopted system which results in intentional systematic unequal treatment.”⁶⁰ However, deliberately adopted systems of unequal treat-

TAXING AUTHORITY	MILL LEVY
State	1.50 mills
County	8.00 mills
City	5.71 mills
School District	2.00 mills
	TOTAL: 17.21 mills

Now assume that a property with an assessed value of \$25,000 is located in the school district. Applying the hypothetical mill levies above, the owner of the property would owe \$430.25 in property taxes: [$\$25,000 \times 0.01721 = \430.25]. Of the \$430.25, the State of Kansas would receive \$37.50, the county would receive \$200, the city would take \$142.75, and the school district would receive \$50. *See id.*

57. KAN. STAT. ANN. § 79-1803.

58. KAN. CONST. art. XI, § 1(a). The constitution has always included a clause requiring uniformity in taxation. FISHER, *supra* note 2, at 76-77. The constitution, as ratified on October 4, 1859, read: “The legislature shall provide for a uniform and equal rate of assessment and taxation . . .” *Id.* at 76.

59. *In re City of Wichita*, 59 P.3d 336, 341 (Kan. 2002) (noting that the Kansas Constitution and the Equal Protection Clause of the United States Constitution provide virtually identical protection to taxpayers); *Krueger v. Bd. of County Comm’rs of Woodson County*, 71 P.3d 1167, 1171 (Kan. Ct. App. 2003) (“The right to equal treatment in matters of taxation is a protected right under both the Equal Protection Clause of the Fourteenth Amendment and the uniform and equal rate of assessment and taxation provision found in Article 11, § 1 of the Kansas Constitution.”) (citing *Colo. Interstate Gas Co. v. Beshears*, 24 P.3d 113 (Kan. 2001)).

60. *City of Wichita*, 59 P.3d at 342 (holding no equal protection violation when a court granted a sales tax exemption for a county but not for a similarly situated city because the city did not demonstrate that the disparity was intentional or the result of a deliberately adopted system). Errors of law or judgment are not sufficient to constitute systematic or intentional discrimination. *See Sunday Lake Iron Co. v. Wakefield Twp.*, 247 U.S. 350, 352-53 (1918). In *Sunday Lake*, the United States Supreme Court held that no constitutional violation existed when the State assessed the plaintiff's property, a mine, at its full value while other realty in the same county was assessed at one-third of its value. *Id.* The county where the mine was located set the mine's value at \$65,000. *Id.* at 352. Fol-

ment are immune from constitutional attack if they serve legitimate government interests.⁶¹ For example, the State may treat taxpayers differently for classification (assessment rates)⁶² and property tax exemption.⁶³ Although some deviations from uniformity are acceptable, the State generally must treat similarly situated taxpayers equally.⁶⁴ Even an individual taxed according to the law may suffer a constitutional injury if a taxing authority does not tax other individuals according to the law.⁶⁵ Thus, a taxpayer states a valid constitutional claim if she can demonstrate that: (1) a tax authority treated her differently than similarly situated taxpayers, whether or not she was lawfully taxed; (2) the disparate treatment was intentional; and (3) no rational reason existed for the disparate treatment.

2. Penalties for Failure to Comply with Tax Laws

The Director of the Property Valuation Division (PVD) of the Kansas Department of Revenue (Director)⁶⁶ and boards of county commissioners may investigate and penalize tax officials who fail to discharge their duties lawfully. State statutes authorize the removal or prosecution of tax officials.⁶⁷ County officials who knowingly or will-

lowing a legislative report issued in accordance with state law, the State of Michigan set the mine's value at \$1,071,000. *Id.* Although the mine owner offered evidence of the undervaluation of other parcels in the county, the State failed to order a reassessment of property in the county because of time constraints and lack of adequate information. *Id.*

Even though a statute barred the disparity in values because the state board did not intentionally set the value of the mine or fail to order reappraisal to discriminate against the mine owner, the valuation did not violate the Equal Protection Clause. *Id.* at 353. The State acted in good faith and lacked the time and evidence necessary to reappraise properly the entire county. *Id.* at 352.

61. *See In re Colo. Interstate Gas Co.*, 79 P.3d 770, 790 (Kan. 2003) (upholding the State's disparate tax treatment of public utilities and manufacturers because the treatment was based on a "plausible policy reason").

62. *See* KAN. CONST. art. XI, § 1(a) (establishing classification system); KAN. STAT. ANN. § 79-1439 (Supp. 2009) (implementing the constitution's classification system). Disparate treatment of property for classification purposes is permissible so long as a rational basis exists for the classification. *In re CIG Field Servs. Co.*, 112 P.3d 138, 152 (Kan. 2005).

63. The State may provide an exemption for one taxpayer but not another if a rational basis exists for the action. *See Colo. Interstate Gas Co.*, 79 P.3d at 790 (holding that no constitutional violation existed when the legislature excepted public utility inventory from an inventory exemption because the exemption was aimed at helping struggling manufacturers, and the public utilities, unlike manufacturers, were heavily regulated and failed to demonstrate to the legislature that they faced the same difficulties as manufacturers).

64. *City of Wichita*, 59 P.3d at 342.

65. *See id.* ("If similarly situated taxpayers receive disparate treatment, the one receiving the less favorable treatment may have been denied equal protection of the law even if the taxpayer receiving the less favorable tax is taxed according to the law."); *see also* *Allegheny Pittsburgh Coal Co. v. County Comm'n. of Webster County*, 488 U.S. 336, 346 (1989) (holding that a taxpayer's right to equal protection was violated when its mineral interest was taxed at its full value when mineral interests owned by other entities were unlawfully taxed at less than their full values).

66. The Property Valuation Division of the Kansas Department of Revenue (PVD) provides guidance, assistance, and oversight to counties in property tax matters. *See* KAN. STAT. ANN. § 75-5105a (1997). The PVD is administered by the Director, who is appointed to that position by the Secretary of the Kansas Department of Revenue. *See* KAN. STAT. ANN. § 75-5105 (Supp. 2009).

67. *See* KAN. STAT. ANN. § 19-431 (Supp. 2009); KAN. STAT. ANN. § 79-1405 (1997). Subsection 431(a) of chapter 19 of the Kansas Statutes Annotated provides that:

[w]henever it shall be made to appear to the board of county commissioners of any county

fully violate their duty to appraise property at fair market value face criminal sanctions including fines up to \$500 and up to ninety days imprisonment in a county jail.⁶⁸

3. State Oversight

In addition to investigating possible instances of tax officials' malfeasance, the Director must maintain statistical data on their performance. She must annually determine whether each county's assessment and appraisal of taxable property is "in substantial compliance with the law."⁶⁹ Pursuant to the Kansas Real Estate Ratio Study Act,⁷⁰ she performs part of this task by identifying fair market value property sales in each county and comparing each property's appraised value and sale amount.⁷¹ Using those comparisons, she statistically analyzes each county appraiser's performance and publishes the results.⁷² Using the ratio-study results and a number of other criteria, the Director determines whether each county complies with state law.⁷³ She also provides

or the district board of an appraisal district by evidence satisfactory to such board that the appraiser of such county or district has failed or neglected to properly perform the duties of office, by reasons of incompetency or for any other cause, the board shall enter upon its journal an order suspending or terminating the county or district appraiser from office.

KAN. STAT. ANN. § 19-431(a). Subsection 431(b) authorizes removal upon motion of the Director. Following suspension or termination by a board of county commissioners, an appraiser is entitled to a hearing before the Director. *Id.* § 19-431(a). Following suspension or termination by motion of the Director, an appraiser is entitled to a hearing before COTA. *Id.* § 19-431(b). All hearings must conform to the Kansas Administrative Procedure Act. *Id.* § 19-431(a)-(b).

In regard to criminal matters, the Director may:

prosecute any member of any board of county commissioners and any county, township or city assessor for a violation of any of the rules and regulations which may be prescribed, or the violation of any statute of this state relating to the assessment and valuation of property and the collection of taxes.

KAN. STAT. ANN. § 79-1405.

68. KAN. STAT. ANN. § 79-1426 (Supp. 2009). A county appraiser is not subject to criminal liability for an appraisal within 10% of a property's fair market value. *Id.*

69. KAN. STAT. ANN. § 79-1445 (1997). The Director uses the data that must be kept to determine whether county appraisers substantially comply with Kansas law. KAN. STAT. ANN. § 79-1485 (1997).

70. KAN. STAT. ANN. §§ 79-1485 to 79-1493 (1997 & Supp. 2009).

71. *See* KAN. STAT. ANN. § 79-1488 (1997). The error rate, called a coefficient of dispersion, is the average deviation of appraised values of property from the fair market sales values of the same properties. *See* KAN. DEPT OF REVENUE DIV. OF PROP. VALUATION, 2008 KANSAS REAL ESTATE RATIO STUDY 131 (2008). Assume there is one county in which five properties are appraised at \$10,000 each. In five arms-length transactions, the properties sold for \$6,000, \$8,000, \$10,000, \$12,000, and \$14,000. The ratio of the appraised value of each property to its fair market value is, thus, 1.67, 1.25, 1.0, 0.83, and 0.71. *See id.* at 128. The median appraised value to fair market value ratio is 1.0. *See id.* at 129. The coefficient of dispersion for the county's appraisals is $[(0.67+0.25+0+0.17+0.29) \div 5 \times 100]$, or 27.6. *See id.* at 131. A lower coefficient indicates more accurate appraisals. *See id.* (stating that the ideal coefficient is zero). In addition to the coefficient of dispersion, the Director measures appraisal accuracy by a number of other statistical methods that account for variables such as greater error rates in higher value properties. *See id.* at 125-50.

72. KAN. STAT. ANN. § 79-1490 (1997). Although the Ratio Study Act requires the Director to publish the study annually, it does not prohibit the Director from publishing other information or statistics. *Id.*

73. *See* Memorandum from Mark S. Beck, Dir. of Kan. Dep't of Revenue, Div. of Prop. Valuation, to County Appraisers (Nov. 3, 1995) (Directive No. 92-002), available at <http://www.ksrevenue.org/pdf/dir92-2.pdf>. Whether county appraisal systems are in substantial compliance with the law, as

guidance, support, and education to counties on property tax matters including the assessment and exemption of property.⁷⁴

4. The Taxpayer Appeals Process

County officials' conduct rarely implicates constitutional causes or justifies penal action.⁷⁵ In most cases, a taxpayer merely disagrees with the county's appraisal or believes her property is exempt from taxation. In these cases, a taxpayer may avail herself of the taxpayer appeals process.⁷⁶ COTA is the state's highest administrative tax tribunal and the court of record in the appeals process.⁷⁷ Parties may appeal COTA's decisions to Kansas appellate courts.⁷⁸ An understanding of the process, thus, requires a discussion of COTA, the various causes of action available to taxpayers, the unique procedures applicable to each cause of action, and appellate review of COTA orders.

a. The Kansas Court of Tax Appeals

As the paramount tax tribunal in Kansas, COTA has jurisdiction over a wide range of taxation issues.⁷⁹ Among COTA's most frequent

required by statute, is adjudged on a 100-point scale, with systems scoring less than seventy-five deemed to be noncompliant. *See id.* Other than ratio study statistics, which account for 50% of the points possible, the Director evaluates the procedures that counties use to value property. *See id.*

74. *See, e.g.*, KAN. DEP'T OF REVENUE, 2010 PERSONAL PROPERTY VALUATION GUIDE (2010) (providing procedures for determining the fair market value of personal property); KAN. DEP'T OF REVENUE, 2010 YEAR OIL & GAS APPRAISAL GUIDE (2010) (providing procedures for determining the fair market value of oil and gas property); Kansas Department of Revenue, Property Tax Directives, <http://www.ksrevenue.org/pvddirtoc.htm> (providing access to PVD directives addressing property tax issues) (last visited Apr. 22, 2010). The PVD "exercises general supervision over ad-valorem policies and procedures, conducts the valuation of state appraised properties and provides concise and timely property tax information. Property is assessed by county appraisers and collected at the county level." Kansas Department of Revenue, Main Page of the Division of Property Valuation, <http://www.ksrevenue.org/pvd.htm> (last visited Apr. 22, 2010).

75. *See, e.g.*, KAN. ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS, 2006 ANNUAL REPORT 6 (2007), available at <http://www.ksrevenue.org/pdf/kacirannualreport06.pdf> (noting that property assessment is closely monitored and the statewide appraised-value-to-sale-price ratio was 96% in 2005).

76. *See* discussion *infra* Part II.C.4.b.

77. *See* KAN. STAT. ANN. § 74-2426(c)(2) (Supp. 2009) (providing that the Kansas Court of Appeals has jurisdiction over COTA orders in all proceedings except for those on no-fund warrants).

78. *See id.*

79. COTA's powers are numerous, and statutory authority for the powers is scattered throughout the Kansas Statutes. *See* KAN. STAT. ANN. § 12-1744a(f) (Supp. 2009) (stating that COTA must prepare an annual report containing information required to be filed prior to the issuance of revenue bonds); KAN. STAT. ANN. § 12-1744b (Supp. 2009) (providing that COTA has the authority to determine whether procedural prerequisites for issuance of certain revenue bonds have been satisfied); KAN. STAT. ANN. § 72-6451(b)(1)(A) (Supp. 2009) (stating that COTA has the power to hear applications for special levies by school districts to make up the costs of declining enrollment); KAN. STAT. ANN. § 74-2437 (Supp. 2009) (stating that COTA has the power to hear appeals of various types from the Director and other powers prescribed by law); KAN. STAT. ANN. § 79-6a14 (Supp. 2009) (granting COTA authority to abate uncollectable tax liabilities of motor carriers); KAN. STAT. ANN. § 79-1404a (Supp. 2009) (stating that COTA has the authority to hear appeals from the rescission of unlawful changes in valuation); KAN. STAT. ANN. § 79-1413a (Supp. 2009) (stating that COTA has the power to order the reappraisal of property if a county's appraisals are not in substantial compliance with the law); KAN. STAT. ANN. § 79-1489 (Supp. 2009) (granting COTA the authority to hear appeals from rulings regarding challenged assessment ratios); KAN. STAT. ANN. § 79-1702 (Supp. 2009) (stating

duties in property tax matters are hearing appeals of county appraisers' assessments of real property,⁸⁰ ruling on applications for exemption,⁸¹ and sitting as the state board of equalization.⁸²

COTA is the product of a century-long evolutionary process. In 1907, the legislature established the Kansas Tax Commission, which had far-reaching supervisory, investigatory, and prosecutorial powers—all to provide statewide uniformity in property taxation.⁸³ In 1957, the legislature created the Kansas Department of Revenue (KDOR).⁸⁴ Within KDOR, it created the PVD and the Board of Tax Appeals (BOTA).⁸⁵ The legislature severed BOTA from KDOR in 1975, establishing it as an independent agency.⁸⁶

In the late 1990s, questions began to arise over BOTA's impartiality, the consistency of its decisions, and the agency's accessibility.⁸⁷ These concerns spurred efforts to reconfigure and more strictly regulate the agency.⁸⁸ In May 1998, the legislature created an executive director position to manage the agency, mandated that three of the then five-member board be practicing attorneys, made the board members sub-

that COTA has the authority to order the cancellation or abatement of taxes and penalties assessed because of clerical errors on behalf of county authorities); KAN. STAT. ANN. § 79-1964a (Supp. 2009) (stating that COTA has the authority to authorize increased rates of levy upon the application of a taxing authority); KAN. STAT. ANN. § 79-2005 (Supp. 2009) (stating that COTA has the authority to determine the legality of taxes paid under protest); KAN. STAT. ANN. § 79-2938(a) to (c) (Supp. 2009) (stating that COTA has the authority to hear applications for emergency warrants by taxing authorities to meet budget or maintenance expenses); KAN. STAT. ANN. § 79-2941 (Supp. 2009) (stating that COTA has the authority to hear applications for emergency warrants by taxing districts adjacent to U.S. military installations); KAN. STAT. ANN. § 79-3233g (Supp. 2009) (granting COTA the authority to abate individual income taxes); KAN. STAT. ANN. § 79-5205(d) (Supp. 2009) (stating that COTA has the authority to hear appeals from assessment of taxes against dealers of controlled substances).

80. See KAN. STAT. ANN. § 79-1609 (Supp. 2009) (providing that COTA may hear appeals regarding the valuation of property).

81. See KAN. STAT. ANN. § 79-213(f) (Supp. 2009) (providing that COTA must rule on applications for exemption).

82. See KAN. STAT. ANN. § 79-1409 (Supp. 2009).

83. FISHER, *supra* note 2, at 130. A board of tax commissioners created by the legislature in 1901 proposed the creation of a body with the power to supervise county tax officials. *Id.* at 125-26.

84. *Id.* at 166.

85. *Id.*

86. Executive Reorganization Order No. 6, ch. 387, 1975 Kan. Sess. Laws 1083 (codified as amended at KAN. STAT. ANN. § 74-2433a (Supp. 2009)).

87. See Lew Ferguson, Associated Press, *House Ponders Overhaul of Tax Appeals Board*, LAWRENCE J.-WORLD, Mar. 13, 1998, at 8B; see also Jim McLean, *Citing 'Bias' During Tax Hearing, Judge Orders Bogina off Case*, TOPEKA CAP.-J., Apr. 24, 1998, available at http://cjonline.com/stories/042498/gov_bogina.shtml ("For the past year, critics have charged that a bulldog approach and autocratic style by [the Board of Tax Appeals's (BOTA) chairman] have created a feeling among many business taxpayers that they [cannot] get a fair hearing at BOTA.").

88. Complaints from business taxpayers prompted then-Governor Bill Graves to propose legislation that would have abolished the Board of Tax Appeals (BOTA) and replaced it with a "Kansas Tax Appeals Commission." See Ferguson, *supra* note 87; McLean, *supra* note 87 (stating that a sponsor of BOTA reform legislation believed that BOTA's chairperson did not have the "judicial temperament" to run the agency). In one case, a Kansas district court judge had to order BOTA's chairman to recuse himself for his demeanor at a BOTA hearing. See McLean, *supra* note 87. Kansas Supreme Court Justice Eric Rosen, then a Shawnee County District Court Judge, ordered the chairman to refrain from participating in the case on remand, writing that "[t]he overall general tone of the questioning by [the chairman at the BOTA hearing was], at best, antagonistic and can only be characterized as unreasonable and devoid of impartiality." *Id.*

ject to the rules of judicial conduct, and created a small claims division to handle small dollar-value appeals.⁸⁹

BOTA's membership requirements were further refined in 2003, when the legislature downsized the board from five to three members, required one member to be an attorney, and required another to be a certified public accountant.⁹⁰ In 2008, state lawmakers abolished BOTA and transferred its powers to COTA.⁹¹ Among other things, the 2008 legislation created a chief hearing officer position on the court.⁹² The chief hearing officer serves as judge pro tempore and manages the court's small claims hearing division.⁹³ In addition, the legislation eliminated the process of appealing COTA's orders to state district court, conferring jurisdiction of appeals from COTA on the Kansas Court of Appeals.⁹⁴ Also, for the first time, the legislature explicitly referred to COTA as an "administrative law court."⁹⁵

As an administrative law court, COTA adjudicates more than 11,500 matters a year.⁹⁶ It is comprised of three judges and a chief hearing officer, all appointed by the governor and confirmed by the Kansas Senate for four-year terms.⁹⁷ The Kansas Supreme Court's rules of judicial conduct are applicable to the judges, and *stare decisis* binds

89. Act of May 13, 1998, ch. 146, 1998 Kan. Sess. Laws 947, 953 (codified as amended at KAN. STAT. ANN. §§ 74-2433, 74-2433f (Supp. 2009)). The 1998 legislation was the result of a compromise between state legislators and Governor Graves, who initially proposed a blank-slate reconfiguration of the agency. See Carl Manning, Associated Press, *New Tax Appeal Board Created*, LAWRENCE J.-WORLD, May 4, 1998, at 1B. Governor Graves praised the measure, asserting that the "reforms [would] result in more timely, impartial, professional and predictable results." *Board of Tax Appeals Reforms Signed into Law*, WICHITA BUS. J., May 13, 1998, available at <http://wichita.bizjournals.com/wichita/stories/1998/05/11/daily5.html>.

90. Act of May 19, 2003, ch. 147, 2003 Kan. Sess. Laws 1077 (codified as amended at KAN. STAT. ANN. § 74-2433(a)).

91. KAN. STAT. ANN. § 74-2447 (Supp. 2009).

92. See Act of Apr. 21, 2008, ch. 109, 2008 Kan. Sess. Laws 453 (codified as amended at KAN. STAT. ANN. § 74-2433(a)).

93. KAN. STAT. ANN. § 74-2433(a); Act of Apr. 21, 2008, ch. 109, 2008 Kan. Sess. Laws 456 (codified as amended at KAN. STAT. ANN. § 74-2433f); Act of Apr. 21, 2008, ch. 109, 2008 Kan. Sess. Laws 458 (codified as amended at KAN. STAT. ANN. § 74-2433). The small claims hearing division handles intermediate appeals from county assessment decisions for residential property and certain commercial property valued at less than \$2 million. See *infra* notes 107-109 (discussing small claims appeals).

94. Act of Apr. 21, 2008, ch. 109, 2008 Kan. Sess. Laws 453 (codified as amended at KAN. STAT. ANN. § 74-2426 (Supp. 2009)).

95. Act of Apr. 21, 2008, ch. 109, 2008 Kan. Sess. Laws 456 (codified as amended at KAN. STAT. ANN. § 74-2433a).

96. See KAN. LEGISLATIVE RESEARCH DEP'T, FY2010 BUDGET ANALYSIS 1737 (2009). During fiscal year (FY) 2008, taxpayers filed 11,176 new matters with the court. *Id.* In the same accounting period, COTA adjudicated more than 11,500 matters with an average time between filing and final adjudication of 115 days. *Id.*

97. KAN. STAT. ANN. § 74-2433(a). All judges and the chief hearing officer must be residents of the State of Kansas. *Id.* One judge must be an attorney and one must be a certified public accountant. *Id.* No more than two judges may be members of the same political party, and no two judges may be residents of the same congressional district. *Id.* The governor must select the judges and the chief hearing officer "with special reference to training and experience for duties imposed by [the act establishing the court] and [the individuals shall have] legal, tax, accounting or appraisal training and experience." *Id.*

COTA's support staff consists of twenty-six full-time employees. KAN. LEGISLATIVE RESEARCH DEP'T, *supra* note 96, at 1727. Its FY 2008 expenditures totaled \$1,897,939. *Id.* at 1731.

COTA with respect to published opinions of the Kansas Court of Appeals and the Kansas Supreme Court.⁹⁸ The Kansas Administrative Procedure Act⁹⁹ governs all proceedings before COTA's regular division.¹⁰⁰

b. Challenging Property Assessment

Proceedings before COTA are dictated by the nature of a taxpayer's case. Property tax appeals generally take one of two forms: (1) challenging the assessment—valuation, classification, or both—of property;¹⁰¹ or (2) challenging a county's authority to tax the property.¹⁰² Early-stage procedures vary depending on the case type. However, all regular division COTA matters are subject to the same requirements regarding formal hearings, agency orders, and judicial review.¹⁰³

A taxpayer may challenge the assessment of property by appealing to the county appraiser within thirty days of receiving notice of the assessed value of her property.¹⁰⁴ On appeal, the county appraiser arranges for an informal meeting with the taxpayer.¹⁰⁵ Based on the informal meeting, the appraiser determines whether to revise the assessment of the taxpayer's property or affirm the original assessment.¹⁰⁶ If the taxpayer is unsatisfied with the result of the informal meeting, she may continue the appeals process. Depending on the type and value of property subject to the appeal, a taxpayer may either ap-

98. KAN. STAT. ANN. § 74-2433(a).

99. KAN. STAT. ANN. §§ 77-501 to 77-566 (1997 & Supp. 2009).

100. KAN. STAT. ANN. § 74-2426(a) (Supp. 2009) ("Orders of the state court of tax appeals . . . in any proceeding . . . before the court shall be rendered and served in accordance with the provisions of the Kansas administrative procedure act.")

101. *See* KAN. STAT. ANN. § 79-1409 (Supp. 2009) (providing that a taxpayer may appeal to COTA for equalization of assessments between individuals, taxing districts, and counties); KAN. STAT. ANN. § 79-1609 (Supp. 2009) (providing procedures for appealing property assessments to COTA's regular division prior to the payment of tax); KAN. STAT. ANN. § 79-2005 (Supp. 2009) (providing for the appeal of property assessment after the payment of tax).

102. *See* KAN. STAT. ANN. § 79-213 (Supp. 2009) (providing that a taxpayer may petition COTA for exemption from taxation).

103. *See* discussion *infra* Part II.C.4.c.

104. KAN. STAT. ANN. § 79-1448 (Supp. 2009). In Lyon, Ellis, Saline, and Shawnee counties, a property owner may waive the appeals process and opt for binding arbitration proceedings to determine the proper classification or value of the property. KAN. STAT. ANN. § 79-1494 (Supp. 2009). After the county clerk sets the matter for hearing, the property owner and the board of county commissioners select an arbitrator from a list of arbitrators prepared by the Director. *See id.* The arbitrator has the power to accept the position advocated by either the county or the taxpayer or to make any other decision supported by the preponderance of the evidence submitted by the parties. *Id.* Arbitrated orders are final and are not subject to appeal or protest. *Id.*

In the alternative, a taxpayer may pay the taxes and file a protest. *See* KAN. STAT. ANN. § 79-2005. A protest, like assessment appeals pursuant to chapter 79 section 1448, first proceeds to an informal meeting between the taxing authority and the taxpayer. *See id.* § 79-2005(a). The taxpayer may appeal the result of the informal meeting to COTA. *See id.* § 79-2005(g).

105. KAN. STAT. ANN. § 79-1448. At the meeting, the county must initiate production of evidence and make the comparable sales data used to value the property available for the taxpayer's inspection. *Id.*

106. *Id.* If the determination is not in favor of the taxpayer, a written explanation of the reasoning must be provided. *Id.*

peal the results of the informal decision to a hearing officer or panel appointed by the county's board of county commissioners, COTA's small claims division, or COTA's regular division.¹⁰⁷ At small claims hearings, a hearing officer hears the dispute in the county where the subject property is located or the adjacent county.¹⁰⁸ Taxpayers may appeal small claims division orders to COTA's regular division.¹⁰⁹

When a taxpayer believes that her property is not subject to any tax, the taxpayer may request an exemption by filing an application with the appraiser for the county in which the property is located.¹¹⁰ The request must identify the potentially exempt property and provide the legal and factual bases for the exemption.¹¹¹ Upon receiving an exemption request, the county appraiser must investigate the facts represented by the applicant and recommend that COTA grant or deny the exemption.¹¹² If she recommends denial, the appraiser must cite the factual and legal bases for the recommendation and forward it to COTA with the taxpayer's application.¹¹³ COTA must set an exemption matter for hearing if either party so requests.¹¹⁴ Counties must appear at exemption hearings by their county attorneys or counselors.¹¹⁵ If neither party requests a hearing, COTA may summarily issue an order based on the application and recommendation.¹¹⁶

c. Hearings Before the Court of Tax Appeals

At COTA hearings, all parties may present evidence, make arguments, and respond to evidence and argument presented by the other parties.¹¹⁷ COTA need not adhere strictly to the rules of evidence;¹¹⁸

107. See *id.*; KAN. STAT. ANN. § 79-1609 (providing that a taxpayer may appeal a decision of a hearing officer or panel to COTA); KAN. STAT. ANN. § 79-1611 (Supp. 2009) (providing that counties may appoint hearing officers or panels, and in the event no officer or panel is appointed, appeals from informal meetings proceed directly to COTA).

COTA's small claims division has jurisdiction of all appeals from informal decisions regarding residential property. KAN. STAT. ANN. § 74-2433f(b) (Supp. 2009). If a taxpayer's property is non-residential and worth less than \$2 million, she may appeal the informal decision to either the small claims division or COTA's regular division. *Id.* § 74-2433f(c). If a county has elected to appoint a hearing officer or panel, a residential taxpayer may choose to bypass the panel. See KAN. STAT. ANN. § 79-1448.

108. KAN. STAT. ANN. § 79-2433f(e). At a small claims hearing, witnesses testify under oath. *Id.* § 79-2433f(f). A taxpayer may appear by an attorney, accountant, appraiser, tax representative, employee, or family member. *Id.* The county may appear by its county appraiser, attorney, or another representative. *Id.* The county must initiate the production of evidence and demonstrate the validity of its assessment by a preponderance of evidence. *Id.* § 79-2433f(h).

109. *Id.* § 79-2433f(d).

110. KAN. STAT. ANN. § 79-213(a), (c) (Supp. 2009).

111. *Id.* § 79-213(b).

112. *Id.* § 79-213(d).

113. *Id.* § 79-213(d) to (e).

114. *Id.* § 79-213(g).

115. *Id.*

116. See *id.* (stating that the court is permitted, but not required, to set exemption requests for hearing).

117. KAN. STAT. ANN. § 77-523(b) (Supp. 2009). The cause of action notwithstanding, all property tax appeals potentially may be set for formal hearings before COTA's regular division. See, e.g.,

however, it must “give the parties a reasonable opportunity to be heard and to present evidence.”¹¹⁹ COTA may consider only evidence that litigants present, and it may not engage in *ex parte* communications.¹²⁰

d. COTA Orders

COTA must issue an initial order in every case.¹²¹ Each order must include separately stated findings of fact, conclusions of law, and other reasons for its decision.¹²² COTA must base its factual findings and conclusions of law on the record evidence.¹²³ It may reconsider its orders upon a timely written petition of an aggrieved party.¹²⁴

e. Judicial Review of Court of Tax Appeals Decisions

The Kansas Judicial Review Act¹²⁵ governs judicial review of COTA orders.¹²⁶ The Kansas Court of Appeals has jurisdiction of appeals from all COTA final orders.¹²⁷ A party is entitled to judicial review if the party: (1) has standing; (2) has exhausted administrative remedies; and (3) has filed a timely appeal.¹²⁸

KAN. STAT. ANN. § 74-2433f(d) (Supp. 2009) (providing that taxpayers may appeal COTA small claims decisions to COTA’s regular division); KAN. STAT. ANN. § 79-213(g) (providing that COTA may set a tax exemption application for hearing).

Prior to a formal hearing, COTA may require a prehearing conference at which the parties may discuss settlement, stipulations, the issues before the court, and other procedural and evidentiary issues. *See* KAN. STAT. ANN. § 77-517(c) (1997). COTA reduces the matters discussed in the prehearing conference to a prehearing order. *See id.* In the event COTA does not hold a prehearing conference, it may nevertheless issue a prehearing order addressing procedural and evidentiary issues. *See id.* COTA may serve a proposed default order in the event of a party’s failure to attend or participate in a prehearing conference or a formal hearing. *See* KAN. STAT. ANN. § 77-520(b), (c) (Supp. 2009). If the party against whom COTA issues the order fails to make a motion to set aside the order, the order becomes effective and COTA may proceed to determine all issues in the matter. *See id.* § 77-520(d).

118. *See* KAN. STAT. ANN. § 77-524(a) (1997).

119. *See id.* For example, COTA may properly admit hearsay into evidence. *See id.*; *In re Andover Antique Mall L.L.C.*, 99 P.3d 1117, 1123 (Kan. Ct. App. 2004) (holding that BOTA properly admitted a bank appraisal that would have been considered hearsay under the rules of evidence); *see also* *Winston v. State Dep’t of Soc. & Rehab. Servs.*, 49 P.3d 1274, 1289 (Kan. 2002) (holding that an administrative action was not an arbitrary and capricious action when the agency admitted statements of a third party through the testimony of a social worker and a police detective).

120. *See* KAN. STAT. ANN. § 77-525(a) (Supp. 2009).

121. *See* KAN. STAT. ANN. § 77-526(b) (1997).

122. *See id.* § 77-526(c).

123. *See id.* § 77-526(d).

124. *See* KAN. STAT. ANN. § 77-527(b) (1997). Litigants must file petitions for reconsideration with COTA within fifteen days of service of the initial order. *See id.*

125. *See* KAN. STAT. ANN. §§ 77-606 to 77-623 (1997 & Supp. 2009).

126. KAN. STAT. ANN. § 77-606 (1997); *see In re Appeal of Derby Ref. Co.*, 838 P.2d 354, 356 (Kan. Ct. App. 1992) (noting that BOTA orders are subject to the Kansas Judicial Review Act).

127. *See* KAN. STAT. ANN. § 74-2426(c)(2) (Supp. 2009).

128. KAN. STAT. ANN. § 77-607 (1997). A party has standing to challenge a COTA order if the party appeared before the court in the challenged proceeding. KAN. STAT. ANN. § 74-2426(c)(1); *see* KAN. STAT. ANN. § 77-611 (1997). A party has exhausted her administrative remedies if she has petitioned COTA to reconsider its initial order. KAN. STAT. ANN. § 74-2426(b); *In re Appeal of Bremson Data Sys., Inc.*, 968 P.2d 267, 269-70 (Kan. Ct. App. 1998) (holding that the district court lacked jurisdiction to review an order of BOTA when the appellant had not moved for reconsideration, even though the order was made on remand from the district court and the appellant had petitioned for

Judicial review of COTA orders is much like judicial review of district court orders. The party challenging the order must demonstrate that it was erroneous,¹²⁹ and parties generally may not raise new issues.¹³⁰ Moreover, substantial competent evidence must support COTA's factual findings.¹³¹ The court of appeals may only reference evidence in the COTA record¹³² and must accept as true all reasonable inferences based on the evidence that support COTA's factual findings.¹³³ The appeals court has unlimited review of questions of law.¹³⁴ As in other civil matters, a litigant may petition the Kansas Supreme Court for review of a court of appeals opinion on a COTA order.¹³⁵ If a petition is granted, the supreme court applies the same standards of review as the court of appeals.¹³⁶

reconsideration of the initial order). A party must file a petition for judicial review of a COTA order within thirty days of service of COTA's order granting or denying the petitioner's claim. *See* KAN. STAT. ANN. § 77-613(c) (1997).

129. *In re* Appeal of Scholastic Book Clubs, Inc., 920 P.2d 947, 953 (Kan. 1996); *see* KAN. STAT. ANN. § 77-621(a) (Supp. 2009). A court may strike down a COTA order on eight grounds. *See id.* § 77-621(c); *Bishop v. City of Winona*, 983 P.3d 861, 864 (Kan. 1999). These are: (1) COTA's action was unconstitutional; (2) COTA lacked jurisdiction; (3) COTA failed to decide an issue requiring resolution; (4) COTA erroneously interpreted or applied the law; (5) COTA failed to follow proper procedure; (6) the judges were improperly constituted as a decision-making body or were subject to disqualification; (7) COTA's decision was based upon a finding of fact not supported by substantial evidence to the appropriate standard of proof in light of the record as a whole; and (8) COTA's action was unreasonable, arbitrary, or capricious. *See* KAN. STAT. ANN. § 77-621(c); *Bishop*, 983 P.3d at 864.

130. *See* KAN. STAT. ANN. § 77-617 (Supp. 2009); *Chowning v. Cannon Valley Woodwork, Inc.*, 93 P.3d 1210, 1216 (Kan. Ct. App. 2004) (holding that a party to a worker's compensation appeal was barred from raising an issue that was not raised at the administrative level). However, new issues may be raised if: (1) COTA did not have jurisdiction to grant an adequate remedy on the issue; (2) a party to the appeal was not notified of the administrative proceeding that produced the contested order; (3) if the interests of justice would be served by resolution of the issue and the issue arises from a change in controlling law that occurred after the agency action; or (4) COTA's final order was issued after the party raising the new issue "exhausted the last feasible opportunity for seeking relief from the agency." *See* KAN. STAT. ANN. § 77-617(a), (c), (d).

131. *See In re* CIG Field Servs. Co., 112 P.3d 138, 145 (Kan. 2005). "Substantial evidence is evidence which possesses both relevance and substance and which furnishes a substantial basis of fact from which the issue can reasonably be resolved." *Jones v. Kan. State Univ.* 106 P.3d 10, 20 (Kan. 2005) (citations omitted).

132. *See* KAN. STAT. ANN. § 77-618 (Supp. 2009); *Jones*, 106 P.3d at 20 ("In reviewing an agency action, the appellate court is limited to ascertaining from the record *if substantial competent evidence supports the agency findings.*") (emphasis in original). The reviewing court may remand a matter to COTA with directions to take more evidence if COTA improperly omitted or excluded evidence from the record. *See* KAN. STAT. ANN. § 77-619(b) (1997).

133. *Jones*, 106 P.3d at 20.

134. Under the doctrine of operative construction, administrative interpretations of statutes are entitled to judicial deference. The doctrine of operative construction provides that "an administrative agency's legal interpretation of the statutes that agency is authorized to enforce is generally entitled to great judicial deference." *Nistler v. Footlocker Retail, Inc.*, 196 P.3d 395, 399 (Kan. Ct. App. 2008). However, when an issue of law arises in the face of undisputed facts, administrative interpretation is entitled to less deference. *Id.* (citing *Graham v. Dokter Trucking Group*, 161 P.3d 695 (Kan. 2007)). Although courts state that administrative agencies' interpretations of statutes are entitled to deference, reviewing courts, in practice, engage in de novo review of those interpretations when they arise in the context of an adjudication. *See id.*

135. *See Jones*, 106 P.3d at 19 ("Parties that appeal an agency action to [an intermediate court] may appeal the . . . decision to [a higher appellate court], just as parties do in other civil cases.") (citation omitted).

136. *See State Dep't of Admin. v. Pub. Employees Relations Bd.*, 894 P.2d 777, 781 (Kan. 1995) (stating that the supreme court reviews an agency adjudication employing the same standards as the

III. ANALYSIS

As the preceding Part demonstrates, the property tax system is complex—a decentralized group of local governments charged with uniformly enforcing statewide property tax policies. From the initial assessment of property through the many levels of appeals, the system depends on clarity of purpose and the diligent efforts of taxpayers, local officials, and state government.¹³⁷ The mere fact that statewide property tax uniformity hinges on the independent work of discrete local agencies lends itself to non-uniform results.¹³⁸ Thus, to combat non-uniformity, it is important to ensure that the centralized appeals process operates with maximum efficacy, ensuring the fairness of the property tax system not only for litigants but also for all Kansas taxpayers.¹³⁹

A key element of an efficacious property tax appeals process in Kansas is zealous advocacy by parties to tax appeals. However, as a result of systemic defects, the property tax system fails to foster the level of zealous advocacy necessary for the tax appeals process's optimal performance. Specifically, state law and tax authorities' constituencies, both of which influence how tax authorities participate in the appeals process, do not promote effective advocacy on the part of county governments.¹⁴⁰ This Part addresses those defects. First, it clarifies the

lower appellate court).

137. See discussion *supra* Part II.

138. For example, the numerous factors that an appraiser must consider when determining fair market value could lead to reasonable disagreement as to the value of a single piece of property. See *supra* notes 43-45 (discussing fair market value). It is important to note that there is no evidence to suggest that non-uniformity of the current system results from intentional malfeasance or neglect.

139. As noted in Part I, COTA decisions redistribute the property tax burden among all taxpayers in the taxing district(s) where the property subject to the decision is located. However, COTA decisions carry statewide implications as well. The state levies a tax of 1.5 mills on all property. See KAN. STAT. ANN. § 76-6b01 (Supp. 2009) (providing for a one mill levy for state higher learning institutions); KAN. STAT. ANN. § 76-6b04 (Supp. 2009) (providing for a 0.5-mill levy for state institutions that care for children and other individuals). The legislature also mandates a 20-mill tax in each school district for financing the districts. See KAN. STAT. ANN. § 72-6431(b) (Supp. 2009). A change in one taxpayer's liability does not redistribute the statewide tax burden because the state tax levy is a constant, flat rate. However, it is inequitable when changes in valuation result in one taxpayer paying more in state taxes than another taxpayer whose property, though worth the same amount of money, is valued at a lower amount.

Assume, for example, that there are two counties: *A* and *B*. Further, assume there is one parcel of commercial property in each county, each with a value of \$500,000. The owner of the parcel located in county *A* has received a valuation adjustment, and the appraised value of his property is set at \$400,000. The assessed value of the property in county *A* is \$100,000, and the assessed value of the property in county *B* is \$125,000. See KAN. CONST. art. XI, § 1(a) (providing the assessment rate for commercial real estate). Pursuant to the 21.5-mill state levy, the taxpayer in county *A* owes only \$2,150, and the taxpayer in county *B* owes \$2,687.50—even though the two parcels of property are actually worth the same amount of money and taxed at an identical rate.

140. The duties of county tax authorities, from boards of county commissioners to county appraisers and county attorneys, are all determined by state law. See KAN. STAT. ANN. § 19-431 (Supp. 2009) (authorizing the removal of county appraisers who fail to comply with tax laws); KAN. STAT. ANN. § 79-1405 (1997) (providing for the prosecution of officials who fail to carry out property tax-related duties); see also KAN. STAT. ANN. §§ 19-101 to 19-5005 (2007 & Supp. 2009) (describing the duties of counties and county officers). Furthermore, the voters in each county have tremendous political control over tax authorities. For example, the boards of county commissioners of each county appoint county appraisers. KAN. STAT. ANN. § 19-430 (2007). County commissioners are

scope of COTA's authority in property tax appeals as well as the roles state officials, county officials, and taxpayers must play. Second, it explores the causes and effects of parties' failure to fulfill their roles. Finally, it identifies specific changes designed to maximize role-appropriate participation by all parties.

A. *The Role of the Court of Tax Appeals*

The legislature has not explicitly defined COTA's role in the property tax system.¹⁴¹ One must, thus, infer its role through an analysis of its organic legislation and the laws that define the authority of other state and local taxing agencies. An examination of COTA's dispute resolution format, the ethical rules applicable to COTA judges, and the agency's overall structure demonstrates that COTA's role is unique among executive agencies: Its only function is to resolve tax disputes neutrally.

First, the format of COTA proceedings supports the conclusion that COTA is a neutral decision maker. Cases presented to COTA proceed in "the traditional adversary format."¹⁴² Although COTA may engage in limited questioning of witnesses to develop or clarify testimony, the questioning must be non-adversarial.¹⁴³ In fact, COTA must base its decisions solely upon the evidence that parties to proceedings choose to present.¹⁴⁴ In effect, the lack of investigative authority and the adversarial dispute-resolution format places COTA judges in a position analo-

ected, as are county clerks and county attorneys. KAN. STAT. ANN. §§ 19-202 to 19-203 (Supp. 2009) (providing for the election of county commissioners); KAN. STAT. ANN. § 19-301 (2007) (providing for the election of county clerks); KAN. STAT. ANN. § 19-701 (2007) (providing for the election of county attorneys). Thus, all the officials responsible for cataloguing property, assessing it, and representing counties in taxpayer appeals are either subject to public approval or directly responsible to a body whose members are popularly elected.

141. The legislature has amended COTA's organic legislation several times in an effort to improve the impartiality or perceived impartiality of the agency. See discussion *supra* Part II.C.4.a. However, there has historically been confusion over COTA's precise role. See James P. Buchele, *Justifying Real Property Tax Exemptions in Kansas*, 27 WASHBURN L.J. 252, 289 (1988) (citing a belief that COTA has a duty to defend its orders as a reason counties fail to oppose exemption requests); McLean, *supra* note 87 (stating that COTA's chairman "steadfastly has maintained that it is his job to work aggressively to ensure that taxpayers pay their fair share"); see also Judy Conkling, *Judge Slams Appeals Board in Tax Ruling*, WICHITA BUS. J., Oct. 3, 1997, available at <http://65.213.146.1/wichita/stories/1997/10/06/story2.html> (quoting a representative of a public/private Kansas economic development agency as stating that ruling on exemption requests is a duty delegated to counties by the constitution). Compare KAN. CONST. art. XI, § 1(b) (providing for exemption of property used for certain purposes but is silent on the issue of what body, if any, must approve the exemptions), with KAN. CONST. art. XI, § 13 (providing that counties have the authority to issue exemptions for economic development property).

142. Buchele, *supra* note 141, at 288; see discussion *supra* Part II.C.4 (discussing the taxpayer-appeals process).

143. See, e.g., ROZIER E. SANCHEZ JUDICIAL EDUC. CTR. OF N.M., JUDICIAL ETHICS HANDBOOK § 5-840 (2010) (describing authority of judges to question witnesses under the rules of judicial conduct).

144. KAN. STAT. ANN. § 77-526(d) (1997). COTA does have some authority, in limited instances, to question the evidence that the parties have presented. See *In re Via Christi Reg'l Med. Ctr.*, 6 P.3d 896, 898 (Kan. 2000) (holding that COTA did not err when it ignored factual stipulations proven to be untrue upon the questioning of counsel).

gous to that of trial court judges: COTA receives evidence, hears legal arguments, resolves factual disputes, and applies the law.

To clarify further COTA's role as a neutral decision maker, the legislature has imposed ethical obligations on COTA judges.¹⁴⁵ As a general rule, executive branch officials are under no obligation to perform neutrally their official duties,¹⁴⁶ much less meet the strict ethical standards demanded of judges.¹⁴⁷ For COTA, however, the legislature has expressly provided that the judges' conduct must conform to the state code of judicial ethics applicable to judges of the district court.¹⁴⁸ These rules exist to protect the role of neutral, detached, and passive decision makers; they include prohibitions on independent factual investigation and rules that protect against conduct that might compromise a tribunal's appearance of impartiality.¹⁴⁹ The imposition of judicial ethical requirements on COTA judges reinforces the Kansas Administrative Procedure Act's requirement that COTA can only consider the evidence presented by the parties.¹⁵⁰ Additionally, the more stringent ethical standard demanded of COTA judges—as opposed to other administrative law judges—indicates the legislature's intent to hold COTA judges to higher standards of impartiality, thus, further distinguishing COTA as a uniquely quasi-judicial agency.¹⁵¹

In addition to the appeals format and COTA judges' ethical obligations, the scope of COTA's authority further supports the inference that the legislature created it to be a strictly quasi-judicial body. First, unlike other administrative agencies, COTA does not engage in interpretive

145. See KAN. STAT. ANN. § 74-2433(a) (Supp. 2009) (providing that COTA judges are bound by the rules of judicial conduct).

146. Molly McLucas, Note, *The Need for Effective Recusal Standards for an Elected Judiciary*, 42 LOY. L.A. L. REV. 671, 677-78 (2009). The author notes that elected officials in executive and legislative positions are “free to give preferential access and consideration to campaign supporters.” *Id.* at 677.

147. In adjudications, however, due process prohibits the involvement of a biased decision maker in the matter. See, e.g., *Antoniou v. SEC*, 877 F.2d 721, 726 (8th Cir. 1989). For example, an administrative judge that has demonstrated prejudgment of disputed facts must not participate in a hearing. See *id.* (holding that the Due Process Clause barred the SEC commissioner from participating in proceedings on the plaintiff's future employment in a securities business because the commissioner demonstrated bias when he indicated in a public speech prior to the proceeding that the plaintiff should be permanently barred from any employment in the business).

148. KAN. STAT. ANN. § 74-2433(a).

149. KAN. SUP. CT. R. 601B(2.2), (2.3)(B).

150. Rule 2.9(C) of the Kansas Code of Judicial Conduct provides that “[a] judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.” KAN. SUP. CT. R. 601B(2.9)(C). Even if COTA had the authority to investigate facts independently, it could not do so with a staff of only twenty-six full-time employees (all located in Topeka) and a budget of only \$1,897,939. Cf. KAN. LEGISLATIVE RESEARCH DEP'T, *supra* note 96, at 1731.

151. See *supra* note 147 (discussing the Due Process Clause requirement of impartial decision-making). In *Antoniou*, the due process violation was public comments made prior to a hearing that demonstrated a pre-judgment of facts. See 877 F.2d at 726. A judge may violate the code of judicial ethics, however, with something less than a demonstration that she has pre-judged facts. The code provides for the sanctioning of judges who display discourteous courtroom demeanor—a standard well short of manifest prejudgment of facts. See KAN. SUP. CT. R. 601B(2.8).

rulemaking; its administrative regulations are entirely procedural.¹⁵² Furthermore, the legislature did not design COTA to protect the tax base or make tax authorities' cases for them; the agency cannot be a party in its own cases,¹⁵³ defend its orders on appeal,¹⁵⁴ or investigate facts on its own authority.¹⁵⁵ Because COTA proceedings are adversarial, because the judges must comply with strict judicial ethics rules, and because the agency does not advocate any position or promulgate interpretive regulations, it is clear that COTA's role in matters before it is to sit as a neutral and detached decision maker. Its role is to decide cases based upon the facts and the law—not "to ensure that taxpayers pay their fair share."¹⁵⁶

B. The Roles of Parties to Court of Tax Appeals Proceedings

In light of COTA's limited role as a neutral, impartial decision maker, it is apparent that parties—taxpayers and taxing authorities—are responsible for producing and presenting evidence and arguments. An adversarial system cannot function properly unless opposing parties fully participate.¹⁵⁷ Quality decision making requires advocates on both sides of a controversy to present evidence and legal arguments to the decision-making body.¹⁵⁸

152. See KAN. ADMIN. REGS. §§ 94-2-1 to 94-4-2 (2006) (regulating proceedings before COTA, revenue bond application informational filings, and continuing education of judges). *But see, e.g.*, KAN. ADMIN. REGS. §§ 51-1-1 to 51-24-10 (2006 & Supp. 2008) (interpreting the substantive provisions of the Workers Compensation Act and regulating adjudication of workers compensation disputes); KAN. ADMIN. REGS. §§ 82-1-1 to 82-15-1 (2006) (providing procedural guidance for practice before the State Corporation Commission and interpreting, for example, state conservation laws). Nor do courts, in practice, give any deference to COTA's interpretations of tax statutes. See *supra* note 134 (discussing the doctrine of operative construction).

153. See KAN. STAT. ANN. § 74-2433(f) ("The state court of tax appeals shall have no capacity or power to sue or be sued.").

154. See KAN. STAT. ANN. § 77-611(b) (1997) (providing that parties to administrative actions have standing to challenge the actions); see also KAN. STAT. ANN. § 74-2433(f) (stating that COTA may not be party to a lawsuit).

155. See KAN. SUP. CT. R. 601B(2.9)(C).

156. McLean, *supra* note 87 (interpreting comments of former BOTA chairperson Gus Bogina).

157. See *Lassiter v. Dep't of Soc. Servs. of Durham County*, 452 U.S. 18, 28, 31-32 (1981) (holding that the United States Constitution does not require the appointment of counsel for indigent parties to parental-status termination proceedings unless due process considerations are strong enough to overcome a presumption that there is no right to appointed counsel). The Court wrote that "our adversary system presupposes [that] accurate and just results are most likely to be obtained through the equal contest of opposed interests." *Id.* at 28.

158. Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353, 383-84 (1978). Professor Fuller wrote that:

[T]he true significance of partisan advocacy [touches] the integrity of the adjudicative process itself. It is only through the advocate's participation that the hearing may remain in fact what it purports to be in theory: a public trial of the facts and issues. Each advocate comes to the hearing prepared to present his proofs and arguments, knowing at the same time that his arguments may fail to persuade and that his proofs may be rejected as inadequate. It is a part of his role to absorb these possible disappointments. The deciding tribunal, on the other hand, comes to the hearing uncommitted. It has not represented to the public that any fact can be proved, that any argument is sound, or that any particular way of stating a litigant's case is the most effective expression of its merits.

Id.

When a party fails to advocate its position, the adversarial process fails because the decision maker must decide the case based on an under-developed record.¹⁵⁹ Thus, when taxpayers or counties fail to advocate their positions, they leave COTA with a skewed record. Furthermore, because the record is binding on reviewing courts, failure to advocate fully and zealously one's position taints both COTA's and the reviewing courts' decisions.¹⁶⁰ To avoid adjudication on bad facts and promote sound decision making, both tax authorities and taxpayers must fully participate in the tax appeals process. COTA cannot make the parties' cases.

C. The Problem with the Current Process

The property tax system, particularly the appeals process, requires the full participation of taxpayers and taxing authorities.¹⁶¹ Zealous advocacy on both sides of tax appeals is the only way to ensure that COTA adjudicates disputes fairly, uniformly, and consistently. Taxpayers have a natural incentive to advocate for their own interests in tax appeals.¹⁶² County officials, on the other hand, lack the same natural motivation. Historically, county officials have under-performed their duties associated with protecting the tax base.¹⁶³

The legislative evolution of the tax appeals system has clarified the roles of the various participants in the property tax system. Yet this process apparently has not eliminated all of the systemic conditions that cause confusion and lack of participation by taxing authorities.¹⁶⁴ One commentator has identified three reasons for these phenomena: First, counties believe that the agency has a duty to defend its orders; second, prospective defense expenses deter county involvement; and, finally,

159. Buchele, *supra* note 141, at 288.

160. See KAN. STAT. ANN. § 77-618 (Supp. 2009); KAN. STAT. ANN. § 77-617 (Supp. 2009); *Chowning v. Cannon Valley Woodwork, Inc.*, 93 P.3d 1210, 1216 (Kan. Ct. App. 2004) (holding, in an appeal from a workers' compensation board order, that a party was barred from raising an issue that was not raised at the administrative level).

161. See discussion *supra* Part III.A-B.

162. See discussion *supra* Part II.C.4.b (discussing the initiation of property tax appeals by aggrieved taxpayers).

163. See FISHER, *supra* note 2, at 125 (citing a 1901 report of the Kansas Tax Commission which stated that meetings of local assessors "had become schools in which they were taught the methods of releasing property from assessment, of lowering values, and generally evading the tax laws"); see also Callahan & Parks, *supra* note 34, at 324 n.50 (citing *Gillett v. Treasurer of Lyon County*, 1 P. 577 (Kan. 1883) and *Chicago Burlington & Quincy R.R. v. Commissioners of Atchison County*, 39 P. 1039 (Kan. 1895), for the proposition that county officials had been ignoring statutory taxation requirements since the 1800s).

164. See, e.g., Buchele, *supra* note 141, at 289 (providing three reasons for the failure of county officials to prosecute tax exemptions at BOTA); Conkling, *supra* note 141 (citing BOTA's chairman as saying, in response to a Shawnee County District Court decision overturning BOTA's denial of a tax exemption, that "[t]he difficulty with that, as I see it, is no one presented the pertinent facts of this case[] because the county and the taxpayer were in agreement"); *infra* notes 166-176 and accompanying text (discussing the failure of counties to oppose tax exemption requests).

county officials respond to political pressure to lower property taxes.¹⁶⁵

The legislature has recently revised the appeals process, clarifying COTA's neutrality, specifically referring to the agency as a tax court and making it the court of record for tax disputes.¹⁶⁶ Despite the changes, there is some indication that the three factors cited above continue to discourage full and zealous participation by counties, particularly in tax exemption cases.¹⁶⁷ For example, if taxed at current rates, tax-exempt property would generate more than \$330 million in revenue.¹⁶⁸ Yet in five of the last eight property tax exemption cases that have reached the appellate level, counties failed to represent themselves.¹⁶⁹

Counties also frequently recommend that COTA grant exemptions, even when the basis for exemption is questionable.¹⁷⁰ In a recent case, *In re Mental Health Association of the Heartland*,¹⁷¹ a taxpayer applied for an exemption, and the county recommended that COTA grant it.¹⁷² COTA denied the exemption, and the taxpayer appealed.¹⁷³

165. See Buchele, *supra* note 141, at 289.

166. See *supra* Part II.C.4.a (discussing recent amendments to COTA's organic legislation).

167. The problem is more easily demonstrable in tax-exemption cases, in which COTA must always issue an order. See KAN. STAT. ANN. § 79-213(f) (Supp. 2009). Conversely, in valuation cases, a county that does not wish to pursue a matter can simply stipulate as to the value of the property or enter into a settlement agreement. See discussion *supra* Part II.C.4.b. Additionally, the issue in valuation cases is one of fact—determining the fair market value of a property—and the deferential standard of review of COTA's factual findings likely prevents many appeals. See, e.g., *King v. Butler County*, No. 100,948, 2009 WL 4035341, at *4 (Kan. Ct. App. Nov. 20, 2009) (upholding COTA's valuation of the appellant's property because substantial competent evidence supported COTA's findings of value); *supra* text accompanying note 131 (discussing review of COTA's factual findings for substantial competent evidence).

168. The appraised value of all exempt real property in Kansas in 2008 was \$24,400,399,524. KAN. DEP'T OF REV., DIV. OF PROP. VALUATION, STATISTICAL REPORT OF PROPERTY ASSESSMENT AND TAXATION 81 (2008). The constitutional exemptions account for an estimated \$20 billion of that amount. KAN. ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS, *supra* note 75, at 6. Note that these figures only account for real property; the breadth and cost of exemptions for personal property is unknown. *Id.* The \$330 million estimate was calculated by assuming the lowest rate of assessment and the statewide-average mill levy: [\$24,400,399,524.00 x 11.5% x 119.66 mills = \$335,771,457.80].

169. *In re Mental Health Ass'n. of the Heartland*, 221 P.3d 580, 582 (Kan. 2009); *In re Gracious Promise Found.*, 211 P.3d 161, 161 (Kan. Ct. App. 2009); *In re Inter-Faith Villa, L.P.*, 185 P.3d 295, 298 (Kan. Ct. App. 2009); *In re K.S.U. Se. Agric. Research Ctr.*, 157 P.3d 1, 2 (Kan. Ct. App. 2007); *In re Holy Spirit Ass'n for Unification of World Christianity*, No. 93,800, 2006 WL 90105, *1 (Kan. Ct. App. Jan. 13, 2006). Counties did appear at the appellate level in three of these cases. See *In re Goddard*, 180 P.3d 604, 605 (Kan. Ct. App. 2008); *In re City of Garnett/East Kan. Agri-Energy, L.C.C.*, 177 P.3d 1279, 1280 (Kan. Ct. App. 2008); *In re Applications for the City of Atchison for Exemption from Ad Valorem Taxation in Atchison County*, No. 96,730, 2007 WL 2241661, *1 (Kan. Ct. App. Aug. 3, 2007).

170. See, e.g., *Mental Health Ass'n. of the Heartland*, 221 P.3d at 583 (“Although the county appraiser recommended that [Mental Health Association of Heartland] receive the exemption, BOTA denied the application.”).

171. 221 P.3d 580.

172. *Id.* at 583.

173. See *In re Mental Health Ass'n of the Heartland*, 194 P.3d 580, 583 (Kan. Ct. App. 2008). The property at issue was really the appellant used to provide housing to the homeless and mentally ill. *Id.* The appellant sought exemption pursuant to subsections *Second* and *Ninth* of chapter 79 section 201 of the Kansas Statutes Annotated. *Id.* at 583-84; see KAN. STAT. ANN. § 79-201 *Second, Ninth* (Supp. 2009) (providing for the exemption of property used exclusively for charitable purposes and property used predominantly for providing humanitarian services).

A unanimous panel of the court of appeals upheld the order,¹⁷⁴ but the Kansas Supreme Court unanimously reversed, holding that COTA's interpretation of the statutes in question was erroneous as a matter of law.¹⁷⁵ Reasonable minds were in disagreement about whether the exemption was warranted, as two unanimous panels of Kansas appellate courts took opposite views of the pertinent issues.¹⁷⁶ Yet the county failed to present any evidence, failed to argue against the exemption, and failed to defend COTA's denial of the exemption application on appeal.¹⁷⁷

In addition to litigation expenses, political pressure, and confusion about COTA's role, the administration of state policy by many local governments may be another factor contributing to a lack of prosecution. The state constitution and legislative acts establish standards and procedures for administering the tax system. However, the state entrusts 105 sets of county officials with the uniform enforcement and application of those standards and procedures.¹⁷⁸ Because the appraisal

174. COTA denied the exemption request, holding that subsection *Fourth* of chapter 79 section 201b controlled because it was the statute that most specifically addressed the exemption request. See *Mental Health Ass'n of the Heartland*, 194 P.3d at 583-84; see also KAN. STAT. ANN. § 79-201b *Fourth* (Supp. 2009) (providing for the exemption of property used exclusively for the housing of low-income individuals). According to COTA, the applicant failed to meet the requirements of subsection *Fourth*, and COTA denied the exemption request. See *Mental Health Ass'n of the Heartland*, 194 P.3d at 584. The court of appeals affirmed, holding that subsection *Fourth* governed the request and that the applicant failed to meet the requirements for exemption pursuant to that subsection. See *id.* at 591.

175. The supreme court held that COTA and the court of appeals erroneously applied the general-versus-specific rule of statutory construction. *Mental Health Ass'n of the Heartland*, 221 P.3d at 587. The appellant was entitled to exemption under subsections *Second* and *Ninth* of chapter 79 section 201 because the specific provision in subsection *Fourth* of chapter 79 section 201b did not modify their scope. See *id.* Accordingly, the residential real estate was exempt under subsections *Second* and *Ninth* of chapter 79 section 201, and the lower courts inappropriately resorted to statutory construction because the three provisions at issue were not in conflict; an applicant could simultaneously qualify under one of the subsections but not qualify under the others. See *id.*

176. Compare *Mental Health Ass'n of the Heartland*, 221 P.3d at 587, with *Mental Health Ass'n of the Heartland*, 194 P.3d at 593.

177. Counties' failure to advocate zealously encourages appellate courts to make overbroad holdings on review of COTA orders. See, e.g., *Mental Health Ass'n of the Heartland*, 221 P.3d at 587 (holding that a statute concerned with the exemption of property used for residential purposes did not preclude exemption of residential property arguably within the scope of that statute under another statute providing for the exemption of property used for humanitarian services); *Lutheran Home, Inc. v. Bd. of County Commr's of Dickinson County*, 505 P.2d 1118, 1124-25 (Kan. 1973) (holding that property used as a nursing home was not exempt from taxation under a statute providing for the exemption of charitable properties, even though the applicant could only distribute its assets for charitable purposes because the applicant failed to demonstrate any charitable gifts from the applicant to others).

These holdings bind COTA in later cases. Kan. Stat. Ann. § 74-2433(a) (Supp. 2009). In the exemption context, these holdings either (a) cause the legislature to create new exemption statutes or (b) generate future litigation, both of which cost taxpayers money. See *Mental Health Ass'n of the Heartland*, 221 P.3d at 583-85 (discussing the passage of subsection *Ninth* of title 79 section 201 of the Kansas Statutes Annotated in response to the court's decision in *Lutheran Home*).

Although the records of appellate cases sometimes expose the failure of counties to oppose exemption requests, such failures in assessment cases are virtually undiscoverable. First, as a matter of common sense, a taxpayer generally will not appeal a property valuation when the county initially undervalued the property. Second, the numerous levels of appeal prior to formal hearings present many opportunities for counties to settle cases with taxpayers. See discussion *supra* Part II.C.4.b.

178. See KAN. STAT. ANN. §§ 18-101 to 18-1,105 (2007) (providing the names and boundaries of

process is not a science, it is possible that 105 different appraisers could appraise a given property at 105 different values.¹⁷⁹ By extension, 105 different sets of officials could vary in opinion as to whether a given tax appeal—whether it be a valuation appeal or an application for exemption—should be defended in the appeals process.

Ultimately, taxpayers need counties to participate in the tax appeals process to minimize unfair shifts in the property tax burden. The state legislature, state tax agencies, county governments, and voters must address these problems.

D. Proposals

Under the current system, confusion about COTA's role, political pressure, expense concerns, and the decentralized tax administration structure contribute to the counties' failure to advocate effectively for their interests in tax appeals. Because the problems are rooted in confusion, negative political influence, and decentralization, five structural observations assist in formulating measures to foster clarity, positive political influence, and more consistent handling of tax matters by the various taxing authorities. First, precedent provides a basis for predicting what courts will do in the future.¹⁸⁰ Second, county tax authorities are politically responsible to taxpayers.¹⁸¹ Third, many tax cases present legal issues that only attorneys can fairly evaluate.¹⁸² Fourth, the legislature has the power to mandate the involvement of county attorneys in tax cases.¹⁸³ Finally, the legislature has the power to mandate the involvement of state officials when county officials have failed to perform adequately their duties.¹⁸⁴

In light of these observations, there are three possible solutions to the lack of county involvement. First, the state should require greater transparency throughout the tax appeals process. Second, county attorneys should be required to participate meaningfully in tax appeals. Finally, when county attorneys do not meaningfully participate, the legislature should require the Director to advocate for the county when the county's failure to advocate for itself is unreasonable.

all Kansas counties).

179. See Callahan & Parks, *supra* note 34, at 326-27. The root cause of this potential variance is the rule that property must be valued at "fair market value"—a concept that escapes precise numerical definition. See *supra* notes 43-45 and accompanying text (discussing the concept of fair market value and the numerous factors that an appraiser considers when attempting to ascertain it).

180. See *infra* notes 189-190 and accompanying text.

181. See *supra* note 140 (discussing the political vulnerability of tax officials).

182. See discussion *infra* Part III.D.2 (discussing the need for county attorneys to participate in COTA cases).

183. See discussion *infra* Part III.D.2.

184. See discussion *infra* Part III.D.2-3.

1. Increased Transparency in the Tax Appeals Process

County authorities must comply with state tax laws.¹⁸⁵ Those authorities are also politically responsible to the taxpayers their decisions affect.¹⁸⁶ Currently, however, there is a lack of precedent from COTA concerning ad valorem tax disputes. Constituencies have no easy way to monitor the decisions that their public officials make in property tax matters. Nor are they readily able to determine the effects of those decisions on the tax base.¹⁸⁷ To provide guidance, promote sound decision making, and increase political accountability, two specific changes should be implemented. First, COTA should publish its decisions. Second, a central regulatory agency (most appropriately PVD) should track the true impact of property appeals decisions.

COTA has the authority to publish its decisions, yet no public, freely accessible and searchable archive of its orders exists.¹⁸⁸ The lack of ready public access to COTA orders creates regulatory uncertainty because taxpayers and taxing authorities are unable to predict with any level of confidence what COTA might do in future cases.¹⁸⁹ A searchable database of published COTA orders, on the other hand, would provide predictability to parties to tax disputes and promote consistent adjudication.¹⁹⁰ A repository of COTA's decisions, although not binding on the court, should at least be persuasive in cases with similar facts and governing legal principles and, therefore, be helpful both to future parties and COTA.¹⁹¹

185. See KAN. STAT. ANN. § 19-431 (Supp. 2009) (providing for the removal of county appraisers who fail to comply with state law); KAN. STAT. ANN. § 79-1426 (Supp. 2009) (providing for the criminal prosecution of tax officials who fail to perform lawfully their duties); *In re City of Wichita*, 59 P.3d 336, 341-42 (Kan. 2002) (finding that a plaintiff may demonstrate a constitutional violation in a situation in which some taxpayers, but not others, are taxed according to the law).

186. See *supra* note 140 (discussing the election and appointment of county tax officials).

187. The Kansas Real Estate Ratio study and other statistics published by the Kansas Department of Revenue (KDOR) do provide some measure of the efficacy of county appraisal procedures, but the State does not publish a study of COTA or the effect of COTA dispositions on the tax base. See, e.g., KAN. DEP'T OF REVENUE DIV. OF PROP. VALUATION, *supra* note 71 (providing a statistical analysis of county appraisals as compared to fair market value sales); KAN. DEP'T OF REVENUE, DIV. OF PROP. VALUATION, *supra* note 168, at 33-49 (providing a county-by-county study of levy rates and property taxes collected from various classes of property).

188. KAN. STAT. ANN. § 74-2433(d) (Supp. 2009) (stating that COTA may publish its orders). COTA does have a handful of its orders available for public viewing on its website. See Kansas Court of Tax Appeals, Recent Decisions, http://www.kansas.gov/cota/Recent_Decisions/index.html (last visited Apr. 22, 2010). The collection consists of seventeen selected orders that COTA has issued within the last few years. See *id.* Note that last year alone COTA adjudicated over 11,000 cases. See KAN. LEGISLATIVE RESEARCH DEP'T, *supra* note 96, at 1737.

189. See Daniel L. Simmons, *California Tax Collection: Time for Reform*, 48 SANTA CLARA L. REV. 279, 322-23 (2008). Advocating the adoption of a process by which the California Board of Equalization issues formal opinions in matters it adjudicates, Professor Simmons writes that: "The potentially arbitrary nature of decision making, unrestrained by the guiding light of precedent, and operating in the shadow of unpublished reasoning, prevents taxpayer reliance on past decisions. Reliance is impossible in the absence of Board opinions explaining the Board's interpretation of the law." *Id.* at 323.

190. See *id.* at 322-23.

191. COTA would not be bound by its own decisions; stare decisis only binds COTA with regard to published Kansas appellate decisions. KAN. STAT. ANN. § 74-2433(a).

COTA's predecessor, BOTAs, came under criticism in the past for its decision making. In response, the legislature has made major changes to the agency's organic legislation.¹⁹² It clarified the agency's role as an administrative law court and took measures to increase COTA's impartiality and its appearance of impartiality, principally by binding the agency's judges to adhere to the state's code of judicial ethics.¹⁹³ A searchable database of published COTA orders would further the legislature's goal of creating a more court-like, administrative tax tribunal—one that renders well-reasoned and consistent decisions based on the evidence and an accessible body of law.

Creating a database of searchable COTA orders would be in line with the American Bar Association's Model State Administrative Tax Tribunal Act (Model Act). The Model Act addresses the issue of order publication by providing that a tax court must "publish its final decisions in such print or electronic form as it deems best adapted for public convenience."¹⁹⁴ Either the legislature should consider adopting the Model Act's publication requirement, or it should provide COTA with the resources and direction to publish its decisions on its own.¹⁹⁵ In either case, the decisions should be published for future reference.

In addition to publication of COTA orders, the Director should contribute to the transparency of the appeals system by collecting and analyzing data about COTA decisions. Political pressure has historically worked against the adversarial process, causing counties to acquiesce to reduced property valuations or tax exemptions in questionable cases, even if only by inaction.¹⁹⁶ Under the current opaque and decentralized system, counties may be tempted to permit redistributions in the

192. See discussion *supra* Part II.C.4.a (discussing the history of COTA).

193. See discussion *supra* Part II.C.4.a.

194. MODEL STATE ADMIN. TAX TRIBUNAL ACT § 17 (2006), available at http://www.abanet.org/tax/groups/salt/ABA1_OFFICIAL_MODEL_ACT_REPORT_AS_ADOPTED_8-7-06.pdf. The Model State Administrative Tax Tribunal Act (Model Act) exempts small claims decisions from the publication requirement. *Id.* In addition to the publication requirement, the Model Act provides that the tribunal is bound by its decisions in prior cases, unless it is reversed by an appellate court or provides "satisfactory reasons for reversing prior precedent." *Id.* § 13(f).

195. The legislature could amend chapter 74, section 2433 of the Kansas Statutes Annotated to read "(d) [a]ppeals decided by the regular division of the state court of tax appeals which are deemed of sufficient importance to be published shall be published by the court in print or electronic form." However, a requirement that COTA publish all of its orders may be overbroad. Additionally, while the Model Act strives to create the equivalent of an administrative branch district court for tax matters, it also provides that a tax tribunal's own precedent should bind it. MODEL STATE ADMIN. TAX TRIBUNAL ACT, *supra* note 194, § 13(f); see MODEL STATE ADMIN. TAX COURT ACT, 1-3 (Proposed Draft 2004) (stating that the purpose of the act is to create a virtual trial court with jurisdiction limited to tax matters). However, trial court decisions are generally binding only upon the parties to the action. See, e.g., Harrott v. County of Kings, 25 P.3d 649, 655 (Cal. 2001) (agreeing with the assertion in an amicus curiae brief that a trial court could not bind other trial courts to its interpretation of an issue of law). Thus, while a tax tribunal such as COTA should follow its prior cases, statutorily binding it to its prior decisions is inconsistent with the accepted view of the precedential weight of trial-level decisions.

196. See Buchele, *supra* note 141, at 289 (noting that board members of non-profit organizations seeking exemptions tend to be influential community members and that county officials are reluctant for political reasons to oppose their wishes).

tax base rather than spend the time, money, and political capital necessary to defend an unpopular position.

However, political pressure can be a force for improving the adversarial process. The effectiveness of the political process depends upon the participation of well-informed voters.¹⁹⁷ Currently, voters are not well informed about the tax appeals process; lack of information about the process prevents taxpayers from holding tax authorities politically accountable for their decisions and making reasoned judgments about their performance.¹⁹⁸

At present, informing the voting public about the tax appeals process is difficult because only limited data concerning the cost of tax exemptions and valuation adjustments is available.¹⁹⁹ No data is available regarding the cost of exemptions for personal property.²⁰⁰ Similarly, no published data is available regarding the impact of cases resolved at the various levels of the appeals process.

To remedy this lack of data, the Director should devise a method of tracking the precise cost of tax exemptions, valuation reductions, and classification changes to taxpayers. The PVD is in an excellent position to perform this function because it is already required to collect information about property tax in each county. It conducts and publishes statistical studies of the property tax and determines whether appraisals comply with state law.²⁰¹ It also provides guidance and consultation to counties in property tax matters.²⁰² Tracking tax appeal data would al-

197. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 49 n.55 (1976) (“Democracy depends on a well-informed electorate, not a citizenry legislatively limited in its ability to discuss and debate candidates and issues.”).

198. See Buchele, *supra* note 141, at 290 (discussing state legislators’ lack of political accountability for tax exemptions and their costs as a reason for the expansion of the body of statutes authorizing the exemptions). Legislators are politically free to create new tax exemptions because their constituencies are never made aware of the cost of those decisions. *Id.* The legislature creates exemptions, and the costs of the exemption are spread evenly among taxpayers in each county. *Id.* The lack of any quantification of the shifted costs obscures the fact that they were shifted in the first place. See *id.* The same situation results when counties fail to defend adequately tax appeals. Counties stipulate to values, do not challenge appeals, or put on sub-par cases at COTA. As a result, values are adjusted and other taxpayers in the counties must absorb the costs. See discussion *supra* Part I (demonstrating the effect of changes in property valuations on the tax base). Because no data exists on how, why, and at what cost this happens, the taxpayers who pay the extra taxes do not even realize that their governments have harmed them. See Buchele, *supra* note 141, at 290.

199. See Buchele, *supra* note 141, at 290-91 (discussing the lack of data regarding the cost of tax exemptions).

200. KAN. ADVISORY COUNCIL ON INTERGOVERNMENTAL RELATIONS, *supra* note 75, at 6 (stating that data on personal property exemptions is unavailable because exempt personal property is neither listed for taxation nor appraised). There is no data on the cost or breadth of other exemptions because they require no COTA order and there is no formal process for obtaining or keeping records of them. See KAN. STAT. ANN. § 79-213(1) (Supp. 2009) (authorizing the exemption of certain property, for example, farm machinery and equipment, without COTA’s approval).

201. See KAN. STAT. ANN. §§ 79-1485 to 79-1493 (1997 & Supp. 2009) (requiring the Director to conduct and publish a real estate ratio study); discussion *supra* Part II.C.3 (discussing the Kansas Real Estate Ratio Study).

202. See KAN. STAT. ANN. § 75-5105a(b) to (d) (1997) (requiring the Director to: (1) publish guides on personal property valuation; (2) assist counties in providing uniform assessments; and (3) assist counties in the appraisal of property when appraisal requires technical knowledge); see also

low the PVD to provide better guidance, more accurate assessment of county performance, and more helpful consultation to counties.²⁰³ Moreover, effective guidance on the property tax laws should incorporate an analysis of the state tax court's treatment of tax matters. For voters, the availability of this information could shed necessary light on how, why, and at what cost their local officials resolve property tax disputes. As a result, county governments would be more accountable to taxpayers, which would encourage more zealous defense of the tax base.

2. Involvement of County Attorneys in Tax Cases

Aside from providing guidance and creating political pressure, a significant way to ensure county involvement in tax disputes would be to mandate greater participation by county legal counsel. Failure of counties to involve their attorneys is particularly problematic in exemption cases. In those cases, the involvement of county legal counsel is required only after a matter is set for hearing.²⁰⁴ However, because COTA may rule on tax exemptions without hearings,²⁰⁵ attorneys need to be involved at an earlier stage of the process.

The first option for getting attorneys involved early is a legislative amendment of the tax-exemption procedure statute. Not only does the legislature have the power to implement this change,²⁰⁶ the nature of the tax-exemption process makes it a necessary one. Whether property qualifies for exemption always involves a question of law.²⁰⁷ Currently,

discussion *supra* Part II.C.3 (discussing the duties of the Director).

203. The PVD could track: (1) the value of all real and personal property located in a jurisdiction; (2) whether and under what authority an exemption has been granted; (3) the appraised and assessed values of all exempt property; (4) whether and under what authority the value of the property has been otherwise adjusted; and (5) the appraised value of the property before and after the adjustment and the total amount of adjustments in each tax year.

204. See KAN. STAT. ANN. § 79-213(d), (g). Additionally, county attorneys still fail to appear at COTA exemption hearings even when they are required by law to attend. See, e.g., *In re Mental Health Ass'n of the Heartland*, 221 P.3d 580, 582 (Kan. 2009).

205. See KAN. STAT. ANN. § 79-213(g) (providing that COTA *may* set an exemption request for hearing).

206. The legislature already mandates the involvement of county attorneys in tax appeals in certain instances. See *id.* (requiring county attorneys or counselors to appear before COTA for all formal hearings in exemption cases). Furthermore, an entire article of the Kansas Statutes is devoted to outlining the duties of county attorneys. See KAN. STAT. ANN. §§ 19-701 to 19-724 (2007). In fact, the legislature explicitly outlines the duties of all primary county-level positions and departments from boards of county commissioners to unique county departments like the "Johnson County Education Research Triangle Authority." See KAN. STAT. ANN. §§ 19-101 to 19-5005 (2007 & Supp. 2009).

207. See *T-Bone Feeders, Inc. v. Martin*, 693 P.2d 1187, 1191 (Kan. 1985) ("Whether certain property is exempt from ad valorem taxation is a question of law if the facts are agreed upon, and is a mixed question of law and fact if the facts are controverted.") (citation omitted). In *T-Bone Feeders*, the Kansas Supreme Court summarized the guidelines courts must use in determining whether exemptions are warranted. See *id.* The court noted that: (1) exemption is an exception to the rule that all property is subject to taxation; (2) exemption statutes are strictly construed, and all doubts are resolved in favor of taxation; and (3) the taxpayer has the burden of proving entitlement to exemption. *Id.* As a practical matter, the cards are stacked against the taxpayer who seeks an exemption. The taxpayer must produce evidence and offer legal arguments overcoming a presumption in favor of taxation. See *id.* However, a county makes a taxpayer's job easier when it fails to controvert facts,

the statute only requires review and recommendation of exemption applications by county appraisers²⁰⁸—which is tantamount to requiring county sheriffs to determine whether to prosecute those arrested for crimes. To ensure that counties have legal advice before deciding whether to challenge a taxpayer's request, the legislature should require county attorneys to review all tax exemption applications when taxpayers submit them.²⁰⁹ If the legislature is unwilling to take such a step, local governments should require attorney review of exemption applications as a matter of policy.

3. Limited State Involvement in Property Tax Proceedings

To address the counties' failure to prosecute tax exemption cases, one commentator has recommended that the Director be a party to all cases before COTA.²¹⁰ Mandatory PVD involvement could work well in all COTA cases, not just those concerning tax exemptions. It would remove the ability of county governments to leave COTA and reviewing courts with incomplete records and promote adjudication of disputes on

leaving COTA to decide only a legal issue. *Cf. id.* discussion *supra* Part III.B (discussing the effects of failure of a party to advocate its position in an adversarial proceeding). A county also makes a taxpayer's job easier when it fails to present any legal argument. *See* discussion *supra* Part III.B. The catch here is that once COTA grants an exemption that a taxpayer should not have received, or at least might not have received if the county had represented itself, the matter is settled. A taxpayer surely would not appeal a favorable COTA decision, and a county would not appeal an exemption it recommended that COTA grant in the first place.

208. *See* KAN. STAT. ANN. § 79-213(d) (providing that county appraisers must review exemption requests, indicate whether they dispute the facts in the requests, and recommend that COTA either grant or deny the exemptions). County attorneys are only required to represent the county at COTA proceedings if a matter is set for hearing. *See id.* § 79-213(g).

209. The amended statute could read:

(c) The request for exemption shall be filed with the county appraiser of the county where such property is principally located. *The county appraiser shall forward the request to the county attorney or counselor.*

(d) After a review of the exemption request, and after ~~a~~ *an* preliminary examination of the facts as alleged, the county ~~appraiser~~ *attorney or counselor* shall recommend that the exemption request either be granted or denied, and, if necessary, that a hearing be held. ~~If a denial is recommended, a~~ *A detailed* statement of the controlling facts and law relied upon shall be included on the form.

(e) The county ~~appraiser~~ *attorney or counselor*, after making such written recommendation, shall, *within fifteen (15) days of receiving the application, return the request for exemptions and recommendation to the county appraiser, who shall* file the request for exemption and the recommendations of the county ~~appraiser~~ *attorney or counselor* with the court of tax appeals.

(f) Upon receipt of the request for exemption, the court shall docket the same and notify the applicant and the county ~~appraiser~~ *attorney or counselor* of such fact.

(g) After examination of the request for exemption, and the county ~~appraiser's~~ *attorney or counselor's* recommendation related thereto, the court may fix a time and place for hearing, and shall notify the applicant and the county ~~appraiser~~ *attorney or counselor* of the time and place so fixed. . . . Hearings shall be conducted in accordance with the provisions of the Kansas administrative procedure act. In all instances where the court sets a request for exemption for hearing, the county shall be represented by its county attorney or county counselor.

See id. § 79-213(c)-(g) (alterations added).

210. Buchele, *supra* note 141, at 292 (arguing that this solution would improve the adjudicative process by removing political pressure from tax-exemption proceedings and promoting uniformity in the administration of the tax-exemption regime).

the best facts possible.²¹¹

While this solution has benefits, it also has drawbacks. Administration of the property tax is a traditionally local concern.²¹² The tax appeals system that the legislature designed makes counties responsible for the appeals brought by their citizens.²¹³ This design is not only equitable, but it deters, or at least should deter, counties from unfairly valuing property because assessments that generate appeals generate corresponding expenses. Forcing the state to defend all tax appeals would shift costs that are properly attributable to individual counties to the state at large.²¹⁴ Moreover, county officials have better access to pertinent facts than state officials.²¹⁵

A county should be responsible for the expense of defending tax appeals involving property within its own jurisdiction; making the state do the county's work externalizes costs attributable to the county to the rest of the state. However, counties' failure to participate fully and zealously in the appeals process also has a cost: It compromises the fairness and uniformity of the property tax system.²¹⁶ To avoid all-or-nothing approaches to state involvement, both of which are harmful to taxpayers, the Director should be required to intervene in any tax dispute in which the county fails to challenge the taxpayer's position.²¹⁷ The State should charge the cost of its intervention to the county where

211. See discussion *supra* Part III.B.

212. The vast majority of property tax revenue remains in the coffers of local governments. See SHAWNEE COUNTY CLERK, *supra* note 52, at 1 (providing, for example, that a taxpayer in Topeka, Kansas pays a 1.5-mill tax to the state but nearly 36 mills to the city and almost 41 mills to Shawnee County); discussion *supra* Part II.B. Not considering other local assessments, the State collects less than 2% of tax levied on property in Topeka, Kansas. See SHAWNEE COUNTY CLERK, *supra* note 52, at 1.

213. See, e.g., KAN. STAT. ANN. § 79-213(g) (requiring county attorneys to appear in exemption hearings); discussion *supra* Part II.C.4.b (discussing the requirement that counties produce evidence and persuade fact-finders of the validity of their valuations at all stages of the assessment appeals process).

214. Counties are responsible for tax matters within their boundaries, and the rest of the state should not have to pay for the actions of individuals over whom they have no political power. See discussion *supra* Part II.B (discussing the role of county officials in the tax system); discussion *supra* Part III.B (discussing the role of county officials in the appeals process).

215. See discussion *supra* Part II.B (discussing the interaction of county officials with taxpayers' property for the purposes of cataloguing and valuing property and computing tax liabilities).

216. Failure to participate does not implicate fairness and uniformity in the legal sense, unless the failure is the result of an intentionally adopted system. See, e.g., *In re City of Wichita*, 59 P.3d 336, 341-42 (Kan. 2002). However, it would be "unfair" or "non-uniform" if COTA adjusted the value of one property because the only facts presented were the appellant's but did not adjust the value of a different property because the county presented evidence sufficient to support its initial valuation. See discussion *supra* Part III.B (discussing the effects of participation of only one party to a dispute).

217. The Director should be required to appear unless she makes a written determination, after investigation, that intervention is not necessary. This recognizes that some cases are not worth fighting and mirrors the requirement in chapter 79 section 213 that county appraisers make written recommendations on the merits of exemption requests. See KAN. STAT. ANN. § 79-213(g). An example of a case unworthy of defense would be that of a church requesting an exemption for a building it owns and uses to conduct religious services. See KAN. CONST. art. XI, § 1(b) (providing for the exemption of property used exclusively for religious purposes); KAN. STAT. ANN. § 79-201 First (Supp. 2009) (providing for the exemption of buildings used as places of public worship); KAN. STAT. ANN. § 79-201 Second (providing for the exemption of property used exclusively for religious purposes).

the appeal originated.

IV. CONCLUSION

Administration of the Kansas property tax system is a complex task requiring statewide coordination, yet more than one-hundred local governments are responsible for managing it. Kansas policymakers have tempered the inherent frailties of such a disjointed system, in part, by enacting an elaborate centralized appeals process. As the court of record for all state and local tax appeals in Kansas, COTA properly serves as a neutral and impartial arbiter. However, for COTA to do its job properly, litigants must supply well-developed factual records, sound legal arguments, and zealous advocacy.

Currently, the process is broken. The 2008 legislation establishing COTA and making it the court of record for tax disputes clarified the roles of participants within the property tax appeals system. But there is still evidence that confusion persists. COTA continues to adjudicate disputes in which only one of the interested parties fully participates and zealously advocates its position. In those cases, the onus of making a difficult and politically unpopular decision falls improperly on COTA. In addition, lack of transparency leaves parties with little predictive precedent regarding COTA's treatment of analogous issues. Further, there is a dearth of useful information with which Kansas taxpayers may evaluate the property tax appeals system, diminishing its legitimacy.

To promote fair and effective adjudication of tax appeals and better administration of the tax, counties must defend the tax base by fully participating in COTA appeals. In addition, the various state agencies involved in property taxation must enhance tax appeal transparency. The public should have ready access to a meaningful body of decisional authority as well as other information regarding property tax matters. Finally, local governments should be encouraged to consult legal counsel on legal issues raised in matters involving property taxation. Guidance, political accountability, and appropriate involvement of county attorneys would promote zealous advocacy throughout the tax appeals process, which would, in turn, enhance fairness and equity in the distribution of the tax burden statewide.

