

Summary Report

28th Annual Legal Seminar on

AD Valorem Taxation

San Antonio, Texas | August 27-29, 2014

The 28th Annual Legal Seminar on **Ad Valorem** Taxation offered discussions on **legal ethics, fraud, economic trends** and more.

Texas is on the verge of a population explosion, and demand for real estate here is high. So it's more important than ever for anyone involved in the buying and selling of property to understand the intricacies and nuances of ad valorem tax laws. This is why the Real Estate Center's 28th Annual Legal Seminar on Ad Valorem Taxation attracted hundreds of attorneys, appraisers, land buyers and sellers, policy makers and others from across the state.

In addition to a panel discussion on Texas property case law and a case study on the State Farm KDC Development in Richardson, this year's conference offered discussions on professional ethics, fraud, economic trends and more.

Here are some highlights.

Property Tax Limitations

Property tax is Texas' largest source of public funding for government services. It constitutes 45.7 percent of the \$93.2 billion in all state and local taxes levied in 2012.

Property tax limitations are usually a direct response to rising property values by providing predictability and stability in tax bills.

In her session, "Property Tax Limitations," Debbie Cartwright of Olson & Olson LLP in Houston said the most drastic means of providing property tax relief is to abolish the property tax altogether. The downside? In Texas, that would mean a loss of over \$42 billion in tax revenue that would have to be replaced so cities, counties, school districts and special districts could continue providing services.

Other means of property tax relief are appraised value limits ("caps"), tax rate limitations, tax levy limitations, exemptions, special appraisals, prior-year value determinations and unequal appraisal.





Delivering this year's case law reports were (from left to right) John Brusniak Jr., David Kaplan, Mario Dell'Osso, David Hugin and Robert A. Mott.

In Texas, appraised values for properties in 2014 have increased in most counties. The residential market has rebounded vigorously since the economic downturn of the last few years. In addition, business activity is thriving, which increases the value of commercial property. The result is an estimated statewide value increase of more than 10 percent for most property categories. Cartwright said this will impact legislative activity in 2015 regarding limitations on appraisals, rates, levies and other matters related to property taxation.

Defining Value: How Far Can the Legislature Go?

In "Defining Value: How Far Can the Legislature Go?," Matthew Tepper and Doug Sigel discussed what limitations, if any, Texas Constitution Article VIII, Section 1(a) and (b), place on the legislature's ability to define value in the context of ad valorem taxation.

Section 1(a) requires that all taxation be equal and uniform. Section 1(b) requires all property be taxed in proportion to its value, which will be ascertained as provided by law.

The session covered open-space valuation, valuation of personal property inventory, valuation of real property inventory and valuation of motor vehicle inventory. It focused on

whether the new heavy equipment inventory tax will withstand constitutional scrutiny in the many compressor lawsuits that have been filed across the state.

Tepper is a partner with McCreary, Veselka, Bragg & Allen PC in Round Rock, and Sigel is a partner with Ryan Law Firm LLP in Dallas.

23.01(e) – Limitations on Second-Year Value Increases

Sandy Griffin, a partner with Perdue Brandon Fielder Collins & Mott LLP in Austin, and Joseph M. Harrison IV, a principal of Harrison & Duncan PLLC in San Antonio, talked about Section 23.01(e) of the Texas Tax Code and limitations on second-year value increases.

"Section 23.01(e) prohibits a chief appraiser from raising a previously lowered value in a subsequent year unless the appraiser has substantial evidence," Griffin said. "It is our position that this burden applies at the Appraisal Review Board level but is not a separate cause of action to appeal in district court. The district court review is de novo (from the beginning).

"However, even if a court were to find that 23.01(e) applies in district court, 'substantial evidence' is a small burden. It is more than a mere scintilla of evidence. It does not need to

add up to a preponderance of the evidence. In fact, the evidence could preponderate against raising the value but still meet the substantial evidence test. Because the burden is low, pursuing summary judgment on the issue in district court seems to be a waste of the taxpayer's time and money. An affidavit from the staff appraiser should be sufficient to raise enough of an issue to defeat summary judgment."

Rockin' Rules of Ethics

Judge Mark Davidson of Houston, who served as judge of the 11th District Court for 20 years, still likes that old time rock 'n' roll. So much so, he invoked the music of some of American's most famous rock and pop stars to help illustrate his "Rockin' Rules of Ethics" (or, in some instances, basic professionalism) for attorneys.

Among his rules:

- refrain from detrimental conduct,
- tell the truth,
- avoid biases,
- be dignified,
- be punctual,
- mind your behavior in court,
- accept rulings,
- treat court staff with respect,
- take responsibility for mistakes, and
- be professional.



Economic Outlook

U.S. economic activity lost momentum in the first half of 2014, but Real Estate Center Research Economist Dr. Luis Torres told conference attendees that activity is expected to pick up in the second half of the year. The Texas economy is also well positioned to continue growing for the remainder of this year.

Other things to be on the lookout for as the year comes to a close:

- steadily improving labor market;
- better household balance sheets;
- healthier housing market;
- construction anticipated to remain strong;
- need to upgrade the capital stock (substantial cash holdings, low financing costs, high rates of capacity using and rising business confidence);
- dissipating fiscal drag;
- supportive monetary and financial conditions; and
- energy sector and technology sector expected to remain strong.

Torres said economic activity in the United States and the world is expected to pick up moderately. The Mexican economy, in particular, is expected to grow more than in 2013. The weakness in manufacturing jobs could be reversed.

Looking ahead to 2015, Torres said that, barring unforeseen shocks, the country's economic growth should accelerate to its fastest annual pace since 2005, and the Texas economy will likely continue to grow faster than the national average and most other states.



Roy G. Martin Jr., senior vice president of the Valero Energy Corporation Ad Valorem Department, received the 2014 Wayne Peveto Award.

Ethics of Managing Client Expectations

Although factors such as technology may have altered what clients expect of their attorney, the key to ensuring that client expectations are met essentially boils down to open and honest communication.

In "Ethics of Managing Client Expectations," presenters Walt McCool and Braden Metcalf advised that attorneys have a duty to make sure the client has all the information – no matter how unpalatable – pertaining to his or her case.

McCool is with McCool Law Firm PC, while Braden Metcalf is an associate with Nichols, Jackson, Dillard, Hager & Smith. Both firms are based in Dallas.

Evaluating the Cost of Litigation

"Evaluating the Cost of Litigation" explored not only the financial costs of litigation but the cost of allowing opposing counsel to learn your litigation strategy and insights.

"Litigation is expensive," said Blackwell & Duncan PLLC's Melinda Blackwell, who led the session with the Dallas Central Appraisal District's Ken Nolan. "Costs for both sides include not only paying for counsel but for a report from an appraiser, deposition and testimony fees, deposition transcripts, along with the potential risk to appraisal districts to have to reimburse prevailing taxpayers for their legal fees (within the statutory limits) and costs. Careful consideration of these types of costs should be part of any decision whether to proceed to trial."

In addition to these purely financial costs, Blackwell said there is also a risk in using an appraisal district's in-house employee to testify as an expert witness.



Houston ISD Inspector General Robert E. Moore spoke on workplace fraud.

“The in-house employee must be qualified to testify,” she said. “If not, a serious risk exists that a testifying expert will not be allowed to

testify, which can seriously impair an appraisal district’s negotiating position. Another risk includes allowing opposing counsel the opportunity to gain insight into your overall settlement or litigation strategy when deposing an in-house expert.”

Ultimately, deciding whether to settle a lawsuit or proceed to trial is a business decision that both taxpayers and appraisal districts must carefully consider, taking into consideration both the rewards and the risks involved.

It Might Be Fraud If . . .

A recent study by the Association of Certified Fraud Examiners on occupational fraud and abuse found that the typical organization loses 5 percent of revenues each year to fraud. The median loss caused by fraud was \$145,000.

The study also found that tips are by far the most common method for uncovering fraud, and organizations with hotlines are much more likely to catch fraud by tips.

In “It Might Be Fraud If . . .,” Houston ISD Inspector General Robert E. Moore said the

following increase the likelihood of workplace fraud:

- management tone promoting risky behavior that could lead to fraudulent activity, such as providing falsified data to support an appraisal estimate;
- lack of adequate segregation of duties;
- management’s ability to override process level controls through their high level of authority;
- excessive pressure to meet performance targets;
- ability of staff members with expert knowledge of the various processing systems to bypass existing controls through data manipulation; and
- lack of proactive fraud-detection techniques, such as fraud risk assessment, built-in controls in transaction-processing software, personnel background checks and mandatory vacations (during which time others are temporarily assigned the vacationing employee’s job duties).

Clues that a person might be committing fraud include:

- refusal to take a vacation,
- living beyond means,
- financial and/or family problems,
- unusually close associations with vendors,
- drug/alcohol addiction, and
- complaints about inadequate pay.



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