

**OAG 16-003**

April 29, 2016

*Subject:* Whether the use of digital imaging technology meets the quadrennial physical examination requirement set forth in KRS 132.690(1), or whether KRS 132.690(1) requires on-site inspections.

*Requested by:* Tony Lindauer  
Jefferson County Property Valuation Administrator

Lonnie Osborne  
Pike County Property Valuation Administrator

Rachel P. Foster  
Daviness County Property Valuation Administrator

Karen R. Bushart  
Clark County Property Valuation Administrator

Bill Alward  
Muhlenberg County Property Valuation Administrator

Jason S. Chinn  
Ohio County Property Valuation Administrator

Dustin Billings  
Powell County Property Valuation Administrator

Bruce W. Johnson  
Bullitt County Property Valuation Administrator

Pete Morgan  
Fulton County Property Valuation Administrator

*Written by:* S. Travis Mayo

*Syllabus:* The use of digital imaging technology by the PVA of a Kentucky county to examine each parcel of taxable real property or interest therein satisfies the requirement under KRS 132.690(1) that each parcel of taxable real property or interest therein be physically examined at least once every four (4) years, so long as such use fairly and equitably assesses property based on its individual physical characteristics.

*Statute construed:* KRS 132.690

### *Opinion of the Attorney General*

The Property Valuation Administrators (“PVA”) of nine (9) Kentucky counties have requested an opinion of this office on the issue of whether the use of digital imaging technology meets the quadrennial physical examination requirement set forth in KRS 132.690(1), or whether the statutory provision requires on-site inspections. The PVAs requesting an opinion are: Tony Lindauer, Jefferson County; Lonnie Osborne, Pike County; Rachel P. Foster, Daviess County; Karen R. Bushart, Clark County; Bill Alward, Muhlenberg County; Jason S. Chinn, Ohio County; Dustin Billings, Powell County; Bruce W. Johnson, Bullitt County; and Pete Morgan, Fulton County. As each of the separate requests addresses the same issue and are nearly identical to one another, this office answers the requests in this singular opinion.

Specifically, the PVAs state that each of their offices utilizes digital imaging technology as a supplemental tool to examine physical characteristics of properties in their respective counties. All but five (5) of the PVAs indicate that each of their offices uses high-resolution, sub-inch pixel street-view images, aerial orthophoto images and low-level, three-inch pixel resolution oblique images capable of being used for measurement of structures from all four cardinal directions. With regard to the Daviess County PVA, Ms. Foster states that the office uses high-resolution four-inch pixel in the City of Owensboro and nine-inch pixel in the county, and also uses orthophoto images and oblique imagery.

Jason Chinn, the Ohio County PVA, indicates that his office uses high-resolution, sub-inch pixel street view images, aerial orthophoto images, and low-level, six-inch pixel resolution oblique images. Powell County PVA Dustin Billings states that his office uses high-resolution, aerial orthogonal images and low-level four-to twelve-inch pixel resolution oblique images. Pete Morgan, the Fulton County PVA, states that his office uses high-resolution images capable of being used for measurement of land boundaries and identification of structures located on a parcel. Bruce Johnson, the Bullitt County PVA, indicates that his office wants to use the same digital imaging technology as the Jefferson County PVA currently uses to perform the quadrennial physical examination of properties.

As most of the PVAs further explain, each of their offices updates aerial imagery on a two-year basis, and the digital images allow their offices to examine the same property characteristics that would be examined in on-site inspections, along with discovering characteristics that are not always visible in on-site inspections. The Ohio County PVA updates aerial imagery on a three-year basis, and the Powell County PVA updates aerial imagery at least every four (4) years.

We advise that the use of digital imaging technology by the PVA of a Kentucky county satisfies the quadrennial physical examination requirement set forth in KRS 132.690(1). Pursuant to KRS 132.690(1), "Each parcel of taxable real property or interest therein subject to assessment by the property valuation administrator ... shall be physically examined no less than once every four (4) years by the property valuation administrator or his assessing personnel." Absent from KRS Chapter 132 is any provision setting forth the specific method or methods the PVA must use when performing the requisite physical examinations of each parcel of taxable real property or interest in the property. Further, KRS Chapter 132 does not define the phrase "physically examined." See KRS 132.010 and KRS 132.720. Thus, KRS Chapter 132 does not require that the PVA perform an on-site examination of each parcel of taxable real property or interest therein to comply with KRS 132.690(1).

**A. Construing the Phrase "Physically Examined" to Allow the Use of Digital Imaging Technology Carries Out the Intent of the Legislature.**

At the heart of the inquiry is the phrase "physically examined" as set forth in KRS 132.690(1). Pursuant to KRS 446.080(1), all statutes of Kentucky shall be liberally construed with a view to promote their objects and carry out the intent of the legislature. In determining legislative intent, courts first look to the lan-

guage of the statute, giving the words their plain and ordinary meaning. *Pearce v. University of Louisville, by and through its Board of Trustees*, 448 S.W.3d 746, 749 (Ky. 2014) (citing *Richardson v. Louisville/Jefferson County Metro Gov't*, 260 S.W.3d 777, 779 (Ky. 2008)). Moreover, all words and phrases must be construed according to the common and approved usage of language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in the law must be construed according to such meaning. KRS 446.080(4). As the phrase “physically examined” has acquired a peculiar and appropriate meaning in the law related to the levy and assessment of property taxes, it must be construed according to that meaning.

Neither KRS 132.010 nor KRS 132.720, which define terms appearing in KRS 132.690, define the phrase “physically examined.” Black’s Law Dictionary defines the term “physical” as “of, relating to, or involving material things; pertaining to real, tangible objects.” Black’s Law Dictionary 1331 (10th ed. 2014). The term “examination” is defined as “a close look at a person or thing to determine its condition.” Black’s Law Dictionary 680 (10th ed. 2014). A court could construe the phrase “physically examined” to mean a close look at a parcel of taxable real property, which is a real and tangible object, through the use of digital imaging technology. Likewise, a Court could reasonably conclude that the requirement of a physical examination of properties under KRS 132.690(1) may be accomplished by an on-site inspection, as well as through the use of digital imaging technology, which is an alternative and, as you assert, in some respects a more accurate method of examining properties.

Interpreting KRS 132.690(1) to require the PVA to perform on-site inspections of real property would neither promote the objects of the statutory provision nor carry out the intent of the legislature. Again, KRS Chapter 132 does not define the phrase “physically examined.” The absence of a definition for the phrase shows the intent of the General Assembly to not require the PVA to use a specific method or methods to complete quadrennial physical examinations of properties, as does the absence of specific instructions in KRS 132.690(1) as to how the PVA must examine properties.

If the General Assembly intended for KRS 132.690(1) to require quadrennial physical examinations of property to be performed by on-site inspections, it could have included the phrase “on-site inspection.” Indeed, the General Assembly used the phrase “on-site inspection” in other statutory provisions. See KRS 16.505(1) (partly defining “inspection” as “on-site investigation”); KRS

39E.110(3) (“on-site inspections”); KRS 99.605(2) (“on-site inspection”); KRS 151.293(1) (“on-site inspection”); KRS 216B.185(1), (4) (“on-site licensing inspection” and “on-site inspection”); KRS 304.13-121(7), (11), (12) (“on-site inspections”); and KRS 337.530 (including the phrase “on-site inspections” in the title). However, the General Assembly chose to use the phrase “physically examined” instead of “on-site inspection.”

In addition, the General Assembly’s enactment of KRS 132.191(3) in 2012 demonstrates its intent to allow the use of digital imaging technology in assessing properties. That statutory provision mandates that the valuation of residential, commercial, or industrial tract development meet the minimum applicable appraisal standards of the Kentucky Department of Revenue, or the International Association of Assessing Officers (“IAAO”). KRS 132.191(3). “Section 3.3.5 Alternative to Periodic On-site Inspections” of the IAAO Standard on Mass Appraisal allows the use of digital imaging technology tools to supplement field re-inspections with a computer-assisted office review. “Section 3.3.4 Maintaining Property Characteristics Data” of the IAAO Standard on Mass Appraisal provides aerial photography as a method of updating property characteristics data.

**B. Courts Acknowledge the Acceptance of the Use of Various Methods to Assess Real Property in Kentucky.**

Furthermore, Kentucky courts have indicated that the General Assembly did not intend to restrict the methods used in assessing real property fairly and equitable on the basis of the physical characteristics of the property. In *Revenue Cabinet v. Leary*, the Court upheld the Franklin County PVA’s plan for a systematic physical examination of all real property in the county over a four-year period to meet the requirement of KRS 132.690. 880 S.W.2d 878, 879-82 (Ky. App. 1994). The PVA proposed to divide Franklin County into four (4) geographic sections, and then physically examine and revalue the property located in each section in its scheduled year. *Id.* at 879. In *Dean v. Commonwealth, ex rel. Revenue Cabinet*, the Court recognized that the tax assessor does not need to be specifically instructed on what method to use, but should provide an assessment that is fair and equitable under whatever method he uses. 967 S.W.2d 594, 595 (Ky. App. 1998) (citing *Borders v. Cain*, 252 S.W.2d 903 (Ky. 1952) and *Dolan v. Land*, 667 S.W.2d 514 (1947)). As the Court provided in *Borders*:

“... One [tax] assessor might use one method and another a different method in arriving at the same result. We know of no law which restricts him to one specific method or limits him in his search for advice and counsel. Nor do we know of any law which gives the taxpayer the right to object to the method used so long as the assessment is fair and equitable. ... .”

252 S.W.2d at 905. See also *Fayette County Bd. of Sup'rs v. O'Rear*, 275 S.W.2d 577, 579 (Ky. 1954) (writing, “... an assessment cannot be held invalid merely because of the method employed in making it, so long as the method is fairly designed for the purpose of reaching, and reasonably tends to reach, an approximation of the fair voluntary sale price.”).

In *Dolan*, the Court recognized that the PVA's use of a mathematical formula to arrive at a value for farm property, with no on-site inspection, may be proper if the procedure does not produce an unfair or unequal valuation. 667 S.W.2d at 687. There, the Court ruled the PVA's method, which included no physical examination whatsoever, was unconstitutional because it did not take into account the specific characteristic of each farm. *Id.* at 687-689. In contrast, the PVAs indicate that digital imaging technology would allow them to examine the same property characteristics as in an on-site inspection and discover some characteristics no always visible in an on-site inspection. In addition, the Court in *Revenue Cabinet v. Gillig* upheld the Department of Revenue's interim method of assessing the value of unmined coal as sufficiently “individualized” despite the absence of independent surveying or personal inspections of properties. 957 S.W.2d 206, 207-211 (Ky. 1997). In that case, the Court noted that it is not practical or constitutionally-required that a tax assessor considers all characteristics of a particular property, but only those factors that allow him to make a logical estimate of the property's value. *Id.* at 209.

### **C. Conclusion**

The use of digital imaging technology by the PVA of a Kentucky county to examine each parcel of taxable real property or interest therein satisfies the requirement under KRS 132.690(1) that such property be physically examined at least once every four (4) years. Interpreting the phrase “physically examined” to include the use of digital imaging technology promotes the objects of KRS 132.690(1) and carries out the intent of the legislature. The General Assembly did not specify a particular method or methods that the PVA must use in performing

quadrennial physical examinations, as it did in other statutes by using language like “on-site inspection.” Further, the legislature did not define “physically examined” in KRS Chapter 132. Thus, the PVA’s use of digital imaging technology is an appropriate method to meet the quadrennial physical examination requirement of KRS 132.690(1), so long as it fairly and equitably assesses property based on its individual physical characteristics.

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