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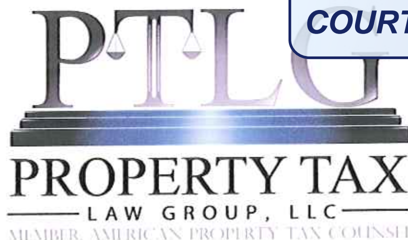

October 29, 2012

Kansas Court of Tax Appeals
Docking State Office Building,. 4th Floor
10th & Harrison
Topeka, Kansas 66612

Re: In the Matter of the Appeal of Kathy L. Lyerla Trust
Docket No. 2012-3110-PR

To Whom It May Concern:

Attached please find the Corrected / Amended Petition for Reconsideration and Motion to Strike in the matter noted above.

The original was filed on Thursday, October 25, 2012 and contained several attachments. The attachments are to be considered as a part of this filing as well and as if filed with the Corrected and Amended Petition for Reconsideration and Motion to Strike.

Thank you for your attention to this request.

Respectfully,

PROPERTY TAX LAW GROUP, L.L.C.
BY: Linda Terrill, Attorney

CC: Kathryn Myers (electronically)

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IN THE MATTER OF THE PAYMENT UNDER PROTI	)	
OF KATHY L. LYERLA LIVING TRUST	)	
FOR THE TAX YEAR 2011	)	*Docket No. 2012-3110-PR*
IN JOHNSON COUNTY, KANSAS	)	
PURSUANT TO K.S.A. 79-1409 AND 79-1609	)	
____	)	

CORRECTED / AMENDED

PETITION FOR RECONSIDERATION
AND
MOTION TO STRIKE THE ORDER IN WHOLE OR IN PART

COMES NOW, the taxpayer, Kathy L. Lyerla Living Trust, by and through counsel, the Property Tax Law Group by Linda Terrill, and files this Petition for Reconsideration in the matter noted above.

SUMMARY

While it is the intention of the taxpayer and legal counsel to remain professional to and respectful of this tribunal, it is unfortunately none the less necessary to advise that the tribunal's actions in this case are unprecedented and border on the outrageous. It is apparent that under the guise of reviewing subject matter jurisdiction not only in this matter but, also in hundreds of other similarly situated pending matters, this Court has instead engaged a path of frolic and detour solely to address what appears to be an agenda and an animus against Kansans who have businesses in this state where tax consulting

services and assistance is provided to Kansas property owners and also against lawyers, in good standing before the Kansas Supreme Court and, who have as a part of their practice areas the representation of Kansas taxpayers who have chosen to do business with tax consultants.

It is a fact that subject matter jurisdiction has not been challenged by any party here or by any party in the literal thousands of similarly positioned cases coming before this case. For reasons unknown, this Court of strict limited authority, jurisdiction and power has taken it upon itself to immerse in a bevy of issues about and for which it has no statutory or other legal interest, business, authority, jurisdiction or power. Included among those issues are this administrative Court's actions:

-- interpreting contractual issues where neither the contract nor persons and/or entities who are parties to the contract are even parties before the Court,

--using the sanctum of the tribunal as a sword to poke, prod and otherwise invade into the business points of the attorney client relationship between the parties and the professionals appearing there,

--conducting proceedings on the public record to interrogate Kansas tax payers with respect to their reasons for hiring counsel and even the client's satisfaction level of legal services performed,

-unilaterally making negative comment regarding the propriety of actions and issues of persons and entities not even before the Court,

-making allegations against and engaging in personal attacks upon experienced legal counsel in good standing before the Kansas Supreme Court without so much as a sliver of due process,

-making not only unfounded allegations but then reaching conclusions about the propriety of legal relationships without so much as notice, much less opportunity for hearing, to those affected,

-acting as judge and jury with respect to alleged ethical and disciplinary issues which are statutorily ceded to the purview of the Office of the Kansas Disciplinary Administrator[1],

-attempting to act as a judicial Court of this state when its purview is statutorily limited to an Administrative tribunal to determine the sole issue of property valuation for taxation purposes,

-blatantly ignoring Mutual Stipulations of Settlement between Taxpayer and County and instead, holding matters in an undefined standstill realm, thereby by causing delay in the system, delay to the taxpayer and the county and increase in interest on any refunds prescribed in the settlement documents.

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[1] Indeed, roughly 35 of the 82 pages of the Court's Order were devoted to an inappropriate discussion of ethical matters. Notwithstanding that such issues are far beyond the Court's authority, it is curious that an administrative tribunal that includes a non-lawyer would even begin to weigh questions of legal ethics and the unauthorized practice of law.

This Court reached a singular relevant determination, with respect to a form document required to appeal from the informal hearing with the County to the Small Claims Division of this Court and whether that document was originally signed by the taxpayer or an attorney. The problem, however, is that the entire foundation of the Court's determination was erroneously based on a discussion of wrong and/or immaterial facts, numerous unsupported legal conclusions, and unilateral determinations on matters concerning fee sharing and/or the unauthorized practice of law.

COTA is in the executive branch of the government and has no authority to legislate or set public policy. K.S.A. 74-2433; also *Republic Natural Gas Company v. Axe,* 197 Kan. 91, 415 P. 2d 406, citing to *Sprague Oil Service v. Fadely,* 189 Kan. 23, 367 P. 2d 56

The Court's Order is wholly erroneous, without authority or basis and should be set aside.

The Court has openly chosen to delve into fact patterns which have no bearing upon the valuation issues before the agency and has then reached legal conclusions without due process, notice or hearing with respect to each and every of the above listed issues. Taxpayer respectfully submits that these enumerated issues are all wholly unrelated to anything within the purview of the statutory authority granted and furthermore, that the factual determinations and legal conclusions rendered with respect to those issues, are not only unsupported in evidence but are simply wrong.

The Court's Order of October 10, 2012 is unclear as to exactly what the basis for its determination that subject matter jurisdiction was lacking. Although the Order traversed on for 82 pages discussing and drawing conclusions on a variety of unrelated matters that

will be shown to be clearly outside the purview of this state agency, the final determination appears to be based solely and only on the fact that the form document required to file an appeal from the informal hearing with the county to the Small Claims Division of this agency was not originally signed by the taxpayer or an attorney.

In as much as some of the "factual" contentions contained in the Order are misleading, incomplete and/or incorrect, this Petition for Reconsideration will

(1) Address the "Findings of Fact" contained in the Order. This section will also include, where appropriate, Petitioner's argument that the "Findings of Fact" demonstrate the order to be (a) arbitrary, capricious and unreasonable'; (b) that the agency's action was based on 'determination[s] of fact, made or implied by the agency, that [are] not supported' by the record; K.S.A. 77-621 (c) 7 and 77-621(c)8, and (c) based on administratively noticed documents and/or data in violation of K.S.A. 77-524.

(2) Address the basis of this agency's conclusion that the defective signature is fatal and strips the agency of jurisdiction to rule upon the stipulation of value entered into by and between the parties. The position of the appellant/taxpayer is that this agency has 'erroneously interpreted or applied the law' and has 'engaged in an unlawful procedure or has failed to follow prescribed procedure'. K.S.A. 77-621(c) 4 & 5.

(3) Address the peripheral issues in this Order that had no bearing on the outcome of the decision on subject matter jurisdiction and were all

outside the jurisdiction of this agency to address. The position of the appellant/taxpayer is that this agency 'has acted beyond the jurisdiction conferred by any provision of law'; 'has erroneously interpreted or applied the law'; 'has engaged in an unlawful procedure or has failed to follow prescribed procedure'; the person taking the agency action were improperly constituted as a decision-making body or subject to disqualification'; the agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review'; and the agency action is arbitrary, capricious and unreasonable. See K.S.A. 77-621.

I. THE COTA FINDINGS OF FACT" DEMONSTRATE (A) THAT THE AGENCY ACTION IS 'ARBITRARY, CAPRICIOUS AND UNREASONABLE'; (B) THAT THE AGENCY'S ACTION WAS BASED ON 'DETERMINATION[S] OF FACT, MADE OR IMPLIED BY THE AGENCY, THAT [ARE] NOT SUPPORTED' BY THE RECORD; AND (C) THE AGENCY TOOK ADMINISTRATIVE NOTICE IN VIOLATION OF K.S.A. 77-524. K.S.A. 77-621 (C) 7 AND 77-621(C)8.

COTA's view of the facts take up the first 17 pages of the Order and taxpayer disagrees with many of them as being misleading, incomplete or otherwise unfounded conclusions that have no basis in fact. Further, COTA disregards many facts provided by documentation or testimony supplied at the hearing on September 18, 2012.

Taxpayer's disagreement with "facts" included in the Order by COTA, include: Finding of Fact #5;

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, include: Finding of Fact #6:

> While COTA correctly cites to the provisions of various Chatam contracts, COTA ignored all of the uncontroverted testimony of every taxpayer/witness that testified in the hearing and the testimony of Mr. Chatam.
>
> Page 48 of the Transcript:
>
> Q. (by Terrill) Okay. And every time for --- let's just draw some examples, in specific to this particular case. After the --- there was an offer to settle the case, and you received that. What was the next step taken? Did you notify her and me?
>
> A. (by Mr. Chatam) Well, what – once the offer was --- was – we received the offer from your office --- this came out of Johnson County. Ms. Myers would have sent that to you.
>
> Q. Can I interject? It was a residential. Could it have been maybe from Tracy Weaver, directly since Ms. Myers frequently doesn't get involved too –
>
> A. Yes, ma'am. And I 'm not sure, but it would have came (sic) from Johnson County.
>
> Q. Okay.
>
> A. --- and I'm pretty sure that offer would have been from their attorney. When I first saw it is when you provided it to us. And at that time we would have called the client, talked to them about the offer, what the offer was, what value that --- because we had conversations with the client about where we thought the appropriate

> number[2] was. In this particular case, it was --- in our opinion, it was a real easy deal because it was for sale. And we looked at the County's offer, we looked at the sale price, we discussed that with the client. And then they – we made a recommendation to them as to "Well, the reality is you probably should settle this. It's about the best we're going to do. It's not worth going up to the Court of Tax Appeals for remaining value difference." And she concurred with that and authorized us to accept that ---

Additionally, Mr. Chatam testified on page 51 of the transcript that despite what the contractual provisions clearly states, "They [the taxpayers] rely on our expertise to make recommendations to them, but the final say in settling an appeal is entirely in their hands."

There are also numerous citations that can be made from the taxpayers that testified. *Every* taxpayer testified that they alone make the decision to file the appeal, to settle the appeal, to dismiss the appeal or to continue to prosecute the appeals. See, for instance, the testimony of Mr. Kinney (Tr. pp. 152-155); Mr. Vincent Dean (Tr. pp. 164-165); Mr. Privitera (Tr. p. 169); Mr. Bernard Craig (Tr. p. 176); Mr. Steve Sulzer (Tr. pp. 181-182); Ms. Cummins (Tr. p. 183); Mr. John Alvey (Tr. p. 187); Mr. Robin Bean (Tr. pp. 191-192); Ms. Tana Moore (Tr. p. 195); Mr. David Collis (Tr. p. 198); Mr. Mark Bado (Tr. p. 203) and Mr. Todd Bleakly (Tr. pp. 206-207)

The failure to completely and accurately set out the facts on this point *arguably* was designed to lead the reader to believe that the position 'advocated' by the agency in the Order was as 'adjudged' in accordance with the testimony received.

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[2] Mr. Chatam is a general certified appraiser and is qualified to provide valuation advice. Tr. pp. 72, 73. Curiously, it would appear that the Order never mentions Mr. Chatam as being a General Certified Appraiser once anywhere in the 82 pages.

> Q. (by COTA Judge Sheldon) Are you an appraisal-- appraiser—certified appraiser?
> A. (by Mr. Chatam) I am.
> Q. Okay. So you do have some expertise in these areas, obviously.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This, and virtually all other "facts" listed by this agency in the Order have nothing to do with the decision rendered by the agency, were not identified by the agency as issues before it, were not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #7.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #8.

The agency order notes that expenses paid by Chatam include but are not limited to any filing fees, fees for experts including appraisers, attorneys (sic) fees, travel expenses and document expense.

Left out of the statement is the testimony of Chatam that:

a. Lyerla pays the filing fee. Tr. p. 43.

b. The clients, except Sunflower Bank, now pay the filing fees due to the huge increases in filing fees for this agency. (Tr. pp. 43, 68)

c. That some taxpayers pay for the appraisal costs. (Tr. pp. 69, 70.)

Also, the order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #9.

COTA correctly recited the contractual provisions but opportunely ignores the sworn testimony of the taxpayer/witnesses and Mr. Chatam. The citations noted above, conclusively prove that the taxpayers, in each case, control all aspects of the prosecution of the appeal and rely on Mr. Chatam for his valuation expertise.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #10.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #11.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #12.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was

not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #13.

Here COTA acknowledges the findings in #13 do not apply to this case. The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This, and virtually all other "facts" listed by this agency in the Order have nothing to do with the decision rendered by the agency, were not identified by the agency as issues before it, were not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #14.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #15.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #16.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact 17.

Here the substance of the finding does relate to the issue in this case, but the statement therein was a conclusion drawn by COTA and is false and cannot be supported

by the facts. Ms. Lyerla completed the payment under protest form, signed it and named JW Chatam & Associates as her tax representative. See Attachment 1.

There is no mention in this Order as to how it came to be that Ms. Lyerla retained the services of JW Chatam & Associates. The record is uncontroverted that Ms. Lyerla ***contacted him*** about representing her in these matters. See, transcript page 43, wherein Mr. Chatam testified in response to direct examination questions:

> A. Well, basically, she contacted us. She got a reference from – about our firm through a -- a gentleman that will be here this afternoon, Vincent Dean, and he recommended us to her. She had a home that she was trying to sell, and the County had it valued above, I believe the asking price for the home and ultimately above the -- the price that they actually sold the house for. So she contacted us and said, "Hey, would you assist us with this tax appeal?"

Leaving out this fact also calls into question the decision here by COTA to meander off on page after page of discussion of Champerty, which COTA defined as "frequently exciting and stirring up quarrels either at law or otherwise." (Order, page 25.) It seems clear that inclusion of this "argument" on champerty in this case proves COTA investigated issues not relevant to this case, outside their statutory authority and included them for the purpose of advocating and not adjudicating. One cannot read the *facts* about how Ms. Lyerla contacted the JW Chatam & Associates based on a referral from a friend and requested assistance with an appeal to have any bearing to the unnecessary, irrelevant, extra-statutory discussion of champerty. Also, another taxpayer testified that he was referred to Chatam by his banker (Tr. p. 199). The problem for COTA seems to be that despite the inquisition, the record is devoid of any testimony of "exciting or stirring up" appeals.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #20.

This issue does address facts that bear on the ultimate issue resolved on subject matter jurisdiction. However, the fact implies the filing fee was paid by Chatam without mentioning Lyerla reimbursed him for the filing fees. (Tr. p. 43)

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #22.

While it may be argued that it is necessary to the resolution of the issue of subject matter jurisdiction, the record will reflect that this agency order has identified the 2012 Declaration of Representative and the issue in this case is the 2011 tax year. The confusion was likely caused by the fact that this is a Payment Under Protest action and thus has a 2012 docket number for a 2011 case. The Declaration supplied inadvertently to this agency was for the 2012 tax year.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #24.

While it may be claimed that this fact is necessary to the resolution of the issue of subject matter jurisdiction, the finding is incomplete as it neglects to mention that the county appeared through a non-lawyer employee of the county appraiser's office and was also not otherwise represented by counsel.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #25.

Appellant/taxpayer takes exception to the legal conclusion drawn by the agency in this Finding that the Small Claims order "was mailed to interested parties on April 24, 2012." It was clearly not served according to Kansas law. Other than Lyerla, the only other party is the Board of County Commissioners of Johnson County, Kansas. The Order was not served upon them in accordance with the law and arguably the Order is void and of no force and effect. See Attachment 2, *Claus v. Kansas Department of Revenue,* 16 Kan.App.2d 12 (1991); *Anderson v. Kansas Department of Revenue,* 18 Kan. App. 2d 347 (1993)

Additionally, the order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #26.

This finding has nothing to do with the issue of who can sign the appeal to the Small Claims Division. Further, to the extent that the Finding implies that Property Tax Law Group, LLC is anything other than the name of the law firm that is partially owned by Linda Terrill, it is false. Property Tax Law Group, LLC is the name of the law firm.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #27.

The record is devoid of who "mailed" the appeal to COTA. The appeal was signed by counsel.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #28.

COTA concludes that Chatam paid the filing fees. They cite to no document or anything in the record to support this statement. Coincidentally, COTA fails to reference the testimony of Mr. Chatam where he testified that Ms. Lyerla paid her filing fees. See the testimony on page 43 of the transcript where Mr. Chatam provided the following uncontroverted testimony in response to a question by counsel:

> Q. Okay. And does this woman pay her filing fees?
>
> A. Yes ma'am

This testimony directly disputes all of the conclusions of COTA concerning JW Chatam & Associates paying all of the fees and expenses of the litigation. Again,

because the “facts” recited by COTA do not match the facts in the record, it arguably supports the conclusion that the Order was written prior to the hearing.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer’s disagreements with “facts” included in the Order by COTA, also include Finding of Fact #29.

A notice of hearing was mailed by the agency on June 21, 2012. It was not served upon the Board of County Commissioners of Johnson County but it was served on Mr. Robert Ford, an attorney in the County Counselor’s office. The record does not reflect that Mr. Ford ever entered his appearance. Taxpayer’s counsel did not receive any Entry of Appearance. Yet, COTA served Mr. Ford with a copy of the Notice of Hearing. (Attachment 3) In as much as the agency expressed confusion as to who was proceeding as counsel for the taxpayer, the order is devoid of any explanation how Ms. Myers was noticed up for the Order to Show Cause, how she signed the Stipulation (Attachment 4) since she neither entered her appearance or otherwise indicated to this agency in this matter that she would be representing a party.

In any event, this issue is not relevant to the issue of subject matter jurisdiction ruled upon by this agency which ultimately was only the alleged defective signature. Its

inclusion herein is unnecessary to the resolution of the issues raised in the Order to Show Cause.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #30.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #31.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #32.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #33.

COTA correctly indicates that the taxpayers were informed that the Show Cause Hearing was to "determine the identity of the real party in interest and whether the Court could properly exercise subject matter jurisdiction. The Order instructed Chatam, Terrill, Mulcahy, and the Taxpayer to appear in person on September 6, 2012. " However, COTA did not cite to any authority granting to them the right to order parties to appear in person thus denying them the right to appear through counsel.

What is left out of the Fact #33 is what is instructive as to what appears to be the real issue in this and the related cases. The Order to Show Cause limited the matters to determining the real party in interest. At the conclusion of the hearing COTA directed

Counsel to brief four issues. Specifically, COTA requested briefing on:

1. Whether, as a matter of subject matter jurisdiction, a defective signature on the Small Claims appeal form can be corrected after the time period for an appeal has run?
2. Are tax appeal claims assignable?
3. Can there be subject matter jurisdiction for an assigned tax appeal claim?
4. Is a contingent fee in favor of Chatam & Associates effectively a partial assignment? (Tr. pp. 217 – 220)

This agency then indicated if it had any additional "issues" it would notify counsel by email on Friday, September 21, 2012 followed by written correspondence. Neither counsel were notified by email of any additional issues so the brief was be limited to the original and final four questions as directed by this agency.

From any reading of the Order issued herein, the taxpayers and counsel were ambuscaded by COTA. The Order addressed very little of the four issues that were provided by COTA to counsel. Instead, the Order strays off to opine on issues not before the agency and issues that cannot from any reading of Kansas law be within their statutory authority to decide. These include issues such as champerty, unauthorized practice of law and alleged ethical issues, ***none*** of which were ever mentioned by COTA. The appellant was never noticed of the arguments and never given an opportunity to address them prior to the order being written. Arguably this was all done in such a calculated manner as to give the agency an opportunity to opine on the issues unconstrained by any opposing view, facts, or law. The agency clearly did not give the taxpayers or their counsel an opportunity

to address these issues before the order was issued likely as part of a plan to ensnare the parties and counsel. All of this was done despite statements from COTA Judge Sheldon that the agency would notify counsel of any other issues and was specific as to how the notification would occur and when. Certainly, if COTA had informed the parties and counsel of the issues of champerty, the unauthorized practice of law and alleged ethical issues, counsel would have briefed and confirmed that COTA has no equitable powers and NO AUTHORITY to (a) void a contract; (b) regulate the unauthorized practice of law and/or (c) charge, try and convict a lawyer on attorney ethics issues. It seems clear that COTA purposefully did not inform counsel of the issues so that they could issue an Order that COTA knows, or should know, contains discussion and resolution of issues that are not within their statutory authority.

In any event, the order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order under Finding #33 has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a policy position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #34.

Again, the order was not served in accordance with Kansas law as it was not lawfully served upon the Johnson County Board of County Commissioners. The order continues to

proceed without an explanation as to how Ms. Myers was in the case or why she was noticed up. Ms. Myers indicated at the hearing that she did not file an entry of appearance in this case, or for that matter, in any case before this agency. (Tr. p. 127) According to the statements of Ms. Myers she doesn't "enter [her] appearance" and indicated that she was "thankful" that she didn't "have to." (Tr. p. 127) It is unclear from the record if the agency and Ms. Myers have some tacit arrangement that she does not have to enter her appearance even though counsel for taxpayers are required to do so.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #35.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #36.

The stipulation was signed by counsel of record, Linda Terrill. See Attachment 4.

However, the order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #37.

The finding that Terrill "suggested" that this agency "order Terrill" to provide anything is an inaccurate finding. It was counsel for the taxpayers that offered to provide the documents that she believed would establish who the real party in interest is and whether or not the agency has subject matter jurisdiction over the matter. The documents provided proved Lyerla to be the real party in interest. The only issue was the signature. In as much as the agency had the copy of the notice of appeal on the Lyerla matter, it had everything it needed to rule on the issue that was noticed up. Instead, the agency demanded the appearance of individual taxpayers to appear without a subpoena and be subjected to questioning by the agency ostensibly to try and elicit testimony that would match what appears to be a pre-determined opinion about issues that were not before the agency for deliberation and consideration.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #40

The disagreements with the findings in 40 are primarily two-fold. First, the finding correctly indicates that the agency did order counsel to produce the documents; however, the finding does not indicate that the agency included the word "existing" before documents. The word was in bold type and italicized. Seemingly the agency was expressing doubt that the documents existed with no basis in fact.

Secondly, the Order was not properly served. A state agency must serve its orders in compliance with Kansas law. K.S.A. 77-531. *Claus v. Kansas Department of Revenue,* 16 Kan.App.2d 12 (1991); *Anderson v. Kansas Department of Revenue,* 18 Kan. App. 2d 347 (1993) Such statute does not grant to an agency the authority to have counsel for one of the parties serve persons required by law to be served. There is no doubt that the law requires this agency to serve copies of its orders on the parties AND their attorneys, if any. Here the agency served counsel for the taxpayers and asked her to serve it upon her clients, the parties in these cases. Again, the order was also not served in accordance with the law upon the Johnson County Board of County Commissioners.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #41.

The finding that the Order was mailed is accurate, but fails to include that such service was in violation of K.S.A. 77-531 making the order of no effect. *Claus v. Kansas Department of Revenue,* 16 Kan.App.2d 12 (1991); *Anderson v. Kansas Department of Revenue,* 18 Kan. App. 2d 347 (1993)

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #45.

The finding that the taxpayer "defied" the order is inflammatory and unnecessary to the resolution of the case. Furthermore, the order was served illegally and no summons was issued. Thus, it is incorrect to draw the "conclusion" the agency made. Conclusions, even correct ones, are not to be labeled Findings of Fact. Further, Lyerla apologized through counsel for her not being able to be in attendance.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #46.

It is unclear from the finding herein why the agency was confused by the taxpayer but not by the two attorneys for the county. It is also unclear as to why the agency seems to imply each appellant can only have one attorney.

However, the order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #48.

While the statement is correct; what is left out is any citation to any law which permits the agency to conduct an inquisition, particularly on issues that the agency never noticed up for hearing. For instance, at one point COTA Judge Sheldon asks Vincent Dean, part owner of Southcreek Office Park, if he has "been happy with the legal services" provided by counsel. (Tr. p. 166) The agency does not have investigatory authority and clearly overstepped its authority in this instance and in many others. See for example, *In re Application of Park Comm'rs for Ad Valorem Tax Exemption,* 14 Kan.App.2d 777, 799 (1990), *see also Salina Airport Authority v. Board of Tax Appeals*, 13 Kan. App.2d 80, 87 (1998).

For the record, he testified that he was and has been satisfied with the legal service of Terrill for years.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #49.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #50.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #51.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #52.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was

not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #53.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #55.

There is absolutely no evidence in the record to support the "finding" advanced herein. If this is a "fact" it was learned by the agency as a result of some conversations with others or as a part of an investigation into matters not before the agency here. Or it was not a fact but simply a conclusion.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as

included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #56.

There is absolutely no evidence in the record to support the "finding" advanced herein. If this is a "fact" it was learned by the agency as a result of some conversations with others or as a part of an investigation into matters not before the agency here. Or it was not a fact but simply a conclusion.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #57.

There is absolutely no evidence in the record to support the "finding" advanced herein. If this is a "fact" it was learned by the agency as a result of some conversations with others or as a part of an investigation into matters not before the agency here. Or, it was not a fact, but simply a conclusion.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #58.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #59 Taxpayer's disagreements with "facts" included in the Order by COTA, and also include Finding of Fact #59.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as

included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #60.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #61.

This fact is contrary to all of the evidence contained in the record. The testimony of Chatam and each and every taxpayer directly disputes the "finding" herein.

Additionally, Mr. Chatam testified on page 51 of the transcript that despite the contractual provisions, "They [the taxpayers] rely on our expertise to make recommendations to them, but the final say in settling an appeal is entirely in their hands."

There are also numerous citations that can be made from the taxpayers that testified. *Every* taxpayer testified that they alone make the decision to file the appeal, to settle the appeal, to dismiss the appeal or to continue to prosecute the appeals. See, for instance, the testimony of Mr. Kinney (Tr. pp. 152-155); Mr. Vincent Dean (Tr. pp. 164-

165); Mr. Privitera (Tr. p. 169); Mr. Bernard Craig (Tr. p. 176); Mr. Steve Sulzer (Tr. pp. 181-182); Ms. Cummins (Tr. p. 183); Mr. John Alvey (Tr. p. 187); Mr. Robin Bean (Tr. pp. 191-192); Ms. Tana Moore (Tr. p. 195); Mr. David Collis (Tr. p. 198); Mr. Mark Bado (Tr. p. 203) and Mr. Todd Bleakly (Tr. pp. 206-207)

The failure to completely and accurately set out the facts on this point *arguably* was designed to lead the reader of the order to the conclusion that the position advocated by the agency which was in opposition to the testimony received. In summary, there is no evidence in the record that would support the finding that appeals are settled without client involvement and client approval.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #62.

The finding is clearly unrelated to the issue herein but also neglects to mention that Mr. Chatam is a general certified appraiser Tr. pp. 72, 73 and as such would arguably be expected to know certain legal issues relating to valuation.

Q. (by COTA Judge Sheldon) Are you an appraisal-- appraiser—certified appraiser?
A. (by Mr. Chatam) I am.
Q. Okay. So you do have some expertise in these areas, obviously.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as

included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #63.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #64.

Again, as above, the finding is clearly unrelated to the issue herein but also neglects to mention that Mr. Chatam is a general certified appraiser, Tr. pp. 72, 73, and as such would arguably be expected to know certain legal issues relating to valuation.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #65.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #66.

Mr. Chatam testified extensively as to the services he performs on behalf of his clients. This "finding" is not a "finding" but some conclusion drawn by the agency.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #67.

The evidence supports the finding that Mr. Chatam has appeared on behalf of taxpayers at local level informal hearings. What the "finding" neglects to mention is that the county employee is also present and representing its side of the case without counsel. The same statute that permits a taxpayer to be represented by a tax consultant is the statute that permits a county appraiser employee to represent the Board of County Commissioners at the informal and Small Claims level. K.S.A. 74-2433f.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #68

This finding has nothing to do with the resolution of this case. However, if the point of this "finding" is to advance an argument of the agency (not raised by the county) that Mr. Chatam engages in the unauthorized practice of law, the question then is where is the agency's discussion of the unauthorized practice of law by the county appraiser employee when they negotiate and offer a settlement to tax consultants. The finding here seems to indicate that the agency has different rules for counties than they do for taxpayers.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #69.

There is no evidence in the record that Mr. Chatam signs appeal forms to the Regular Division. The testimony and the evidence related only to signing appeal forms to the Small Claims Division pursuant to K.S.A. 79-2433f. The testimony was that this has been the accepted practice for years before this agency. Tr. p. 71, and related Tr. pp. 148, 157, 164, 165, 171, 175, 180, 194, 199, 207.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #70.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #71.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #72.

This finding neglects to include the fact that the taxpayers all contracted with JW Chatam & Associates and that the contract provided he would obtain counsel when necessary. All of the evidence from the taxpayers was that was exactly what they wanted him to do, what they contracted for and would not want to do it any other way.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #73.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #74.

This finding has nothing to do with the ultimate issue and ruling on subject matter jurisdiction. Arguably it is included herein to suggest that Mr. Chatam participated in offering analysis or advice as to whether or not an offer should be accepted. Clearly, many smaller taxpayers would not have any idea about the makeup of this agency, their published decisions on perhaps similar issues. Many testified that is why they hired JW Chatam & Associates. His valuation experience and knowledge of this agency can be valuable to any taxpayer's determination as to whether or not to take the appeal...

For instance, Orders issued on cases where an evidentiary hearing was held (and not counting Orders on Remand) since COTA Judge Sheldon and COTA Judge Cooper, the non-lawyer member, joined COTA, shows that only 27 cases have decisions issued, (an average of 5 opinions per month) of those, 18 involved residential house appeals such as the case here. A review of them arguably would indicate that the advice of Mr. Chatam to Lyerla

was correct as the taxpayer lost everything in all but 3 cases, and in those cases where some relief was granted it was never the value requested by the taxpayer and resulted in refunds of $25, $197 and $316.

Specifically, of those 18, all of which are attached hereto, as Attachment 5, the following summarizes the appearances and the conclusions in Regular Division matters tried to COTA that one would likely consider, if known, when deciding to accept a settlement, continue or dismiss a case other than the reasons cited by COTA.

a. Only one of the decisions was resolved in the year the appeal was filed (2012). The trustee's son appeared for the taxpayer and the county was permitted to proceed without counsel and appeared by a county appraiser employee. Docket number 2012-3364-EQ. Knowing this information would likely be of assistance in informing the taxpayer, MBS BARKEY 1031, L.L.C. that even simple residential cases can take over a year to get a decision after the hearing. What is the time value of money?

b. Three cases had hearings up to 2 years after they appear to have been filed. In all three cases the taxpayer appeared Pro Se. Again, the time value of money should be a consideration when deciding to assume the risks of litigation. It is interesting to note that two cases were from Johnson County. In both cases the certificate of mailing was to the Assistant Johnson County Counselor, Kathryn Myers. She did not appear at the hearings and the county was not represented by counsel but instead appeared through employees of the county appraiser's office. The Order does not reference why Ms. Myers was listed in the Certification but did not appear at the hearings. Docket numbers 2011-6878-PR & 2011-8074-PR. The county won one case and COTA made a slight reduction in the second case resulting in a refund of approximately $278.00. The third case was in Wyandotte County and the county was represented by counsel, Ryan Carpenter and the taxpayer appeared Pro Se. The county won. Docket number 2011-7366-PR.

   Of the remaining 14 residential cases, four were in Johnson County. Again, the Orders indicate service of the Order to the Attorney for the County, but do not explain why Ms. Myers did not appear at the hearing or how it was possible for the county to appear without counsel. (Ks. AG Op. 93-100) In each case, but instead was represented by non-attorney members of the county appraiser's office. Docket numbers, 2011-7126-EQ; 2011-7712-EQ; 2011-7753-EQ and 2011-7820-EQ. In each case the valuation of the county or an alternative valuation of the county was sustained. The same process occurred in another non-Johnson County case, Docket number 2012-2069-PR, the taxpayer appeared Pro Se and the county did not appear by counsel. Again, the Order was certified to the County Counselor, Lisa Johnson,

but the Order does not mention why Ms. Johnson did not appear at the hearing. The county appeared through Jamie Wilson, an employee of the Franklin County Appraiser's Office. Ms. Wilson is not an attorney. The county value was sustained.

In five other non-Johnson County residential cases, the taxpayer appeared Pro Se and the County appeared through counsel. In three of them the county valuation or the county alternative valuation was sustained by COTA. Docket numbers: 2012-2156-PR; 2011-7834-EQ and 2011-7281-EQ.

In another non-Johnson County case, Docket number 2012-2072-PR-PR, the taxpayer was not a person but an artificial entity and appeared by a non-lawyer and the county did not appear by counsel. Again, the Order was certified to the County Counselor, Lisa Johnson, but the Order does not mention why Ms. Johnson did not appear at the hearing. The county appeared through Jamie Wilson, a non-lawyer employee of the Franklin County Appraiser's Office. The county value was sustained

In another Johnson County residential case, Docket number 2011-7769-EQ, the taxpayer was a LLC corporation and appeared by someone identified as the "owner" and the county did not appear by counsel. Again, the Order was certified to the Assistant County Counselor, Kathryn Myers, but the Order does not mention why Ms. Myers did not appear at the hearing. The county appeared through non-lawyers Tracy Weaver and Darla Frank, employees of the Johnson County Appraiser's Office. The county value was sustained.

In another non-Johnson County case, Docket number 2011-5788-EQ, the taxpayer was an LLC corporation and appeared by two non-lawyers. The county appeared through counsel. The county value was sustained.

Finally, in a non-Johnson County case, Docket number 2011-3709-EQ, the Order notes the taxpayer was a Trust and appeared by the trustee, *Pro Se.* The county was represented by Counsel. The county valuation was sustained.

There were only 3 decisions that COTA issued on residential matters since Mr. COTA Judge Sheldon and Mr. COTA Judge Cooper, the non-lawyer member, joined COTA that granted some relief to the homeowner. In Docket number 2011-8145-EQ, the taxpayer appeared Pro Se and the county was represented by counsel. COTA reduced the value of the taxpayer's home by $197 in assessed value, resulting in a refund of approximately $25.00. In docket number, 2011-8101-EQ, the taxpayer fared slightly better. The taxpayer appeared Pro Se and the County was represented by counsel. COTA reduced the value of the taxpayer's home by $1,762 in assessed value resulting in a refund of approximately $316.

In summary, the cases reflect that of the 18 residential house appeals, the county valued was sustained in all but 3 instances. No commercial real property taxpayer won a

case. In one case (Docket numbers 2011-4868-EQ and 2011-5735-EQ) COTA accepted as a fact that the taxpayer purchased the property in an arms-length, open-market sale (the very definition of market value) for $400,000. Despite this and an appraisal by an appraiser holding the MAI designation which determined the valuation to $400,000, COTA "appraised" the property at $900,000. From the Order it does not appear that there was any evidence that the value was $900,000 and that COTA rejected all of the valuation evidence of the county, discounted the expert's opinion then created a value from parts of the appraisal reports. Lyerla and others would want to consider that this agency may only average 5 written decisions a month on cases that were litigated[3]. This kind of information would be helpful to Lyerla who was also relying on her sales price to set the valuation. She would be correct to consider this decision when she deliberated whether to accept an offer or to proceed to trial. The remaining cases included one vacant land appeal, one ag appeal, one retail appeal, one manufacturing appeal, one personal property case, three hotel cases and one apartment case.

However, the order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

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[3] COTA currently employs five attorneys. If you add the two members that are attorneys that raises the number to seven. Recalling the 27 cases that have orders as a result of a trial on the merits that averages to less than one written Order per attorney per month.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #75.

Again, knowledge that the residential taxpayer has little chance of winning and commercial taxpayers' chances are demonstrably less based on the opinions issued (and attached hereto) after a hearing with the current make-up of the agency could play a role in a taxpayer's decision on whether or not to continue, settle or dismiss the appeal. Also, knowing that only 28 cases (not counting Orders on Remand or Orders on Reconsideration) have had Orders issued in the last 5 months demonstrates considerable delay between hearing time and the issuance of an order and that may also be considered. Here, in this "finding" the agency just makes a "conclusion" that is representative of what the agency believes is the impetus of the taxpayer, her consultant and her attorney.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #76.

It is unusual for COTA to include this finding. Especially since the record is very clear that Ms. Myers NEVER informs her client of any appeal before COTA. NEVER discusses any COTA matter with her client. Myers stated on the record that her client is

the Board of County Commissioners, [4] All of her communications are with the county appraiser or employees of the county appraiser's office and all of the decisions relating to the prosecution of the appeal are made by the County Appraiser, not the County Commissioners. Myers stated "in the 13 years that I've been with Johnson County, no Commissioner has ever directed me or Mr. Welcome to take any specific action in any appeal before this Court through the entire process, Informal all the way up. " Tr. p. 125. "I do not go to my Board of County Commissioners with every stipulation or whether we're going to appeal up to your level or whether any – or whether we're going to proceed or – or not. It's all done through my recommendations to Mr. Welcome and Mr. Welcome has the ultimate decision to continue up to this level, even if I sometimes don't think that's the right thing to do." Tr. p. 126. Myers first informs her client after the final Order of the agency and only when she desires to seek approval to appeal the agency action to the judiciary.

The finding appears to be inserted here for reasons completely unrelated to the subject matter of the hearing and treat the taxpayer differently than the county.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

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[4] The transcript or the statement by Myers incorrectly refers to County Appraisers rather than County Commissioners. A complete reading of the statement proves Myers states the County Commissioners do not direct the county appraiser to settle or dismiss a case throughout the whole time the matter is before this agency. Tr. p. 124.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #77.

This finding is correct, however, the finding leaves out all of the testimony of the witnesses in these cases. It is true that Mr. Chatam testified that the clients rely on his valuation advice. It is also true that each and every witness testified that they contracted for his expertise and wanted his opinion on valuation matters.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #78.

This finding is only partially true. Mr. Chatam testified that some clients pay him on a flat fee basis. Tr. p. 153.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as

included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #79.

This paragraph cannot be construed to be a fact, but a conclusion drawn by COTA.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #80.

This paragraph is primarily a conclusion not a statement of fact.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #81.

This was addressed above. Factually the statements contained herein are false.

Left out of the statement is the testimony of Chatam that:

d. Lyerla pays the filing fee. Tr. p. 43.

e. The clients, except Sunflower Bank, now pay the filing fees due to the huge increases in filing fees for this agency. (Tr. pp. 43, 68)

f. That some taxpayers pay for the appraisal costs. (Tr. pp. 69, 70.)

Arguably, the inclusion of this allegation gives the appearance that the order was written prior to the hearing and this paragraph was not cleaned up after the testimony was received.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #82.

See, objection to Finding of Fact #81.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact 83

Again, see objection to Finding of Fact #81. The finding herein is not an accurate representation of the facts.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #84.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was

not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #85.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #86.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact 87.

This “finding” herein is offensive in as much as it questions the veracity of the statements by Terrill contained therein.

Ms. Myers can confirm that I had a conversation with her about my concern about the new COTA procedures being imposed on taxpayers. The procedures were being added to orders and given from the bench. I told her my concern was that the taxpayers’ information, in conformity with the new ‘rules’, be provided in a timely manner in an effort to get cases properly presented and I informed her at that time that I would not be proceeding on the 2012 cases that Mr. Chatam, at my suggestion, would be getting another counsel in order to ensure the clients’ interests are protected in the midst of the new ‘rules’.

This agency’s conclusion herein that Mr. Chatam’s testimony and my statements may not be believable because I have fully “re-engaged” as the attorney is offensive. It should be clear that once COTA denied the Motion to Withdraw, I would remain fully engaged as counsel. Additionally, it was not due to the conclusion of COTA that counsel had a “putative overwhelming workload”. Nowhere in the record does the word “overwhelmed” even appear.

In fact, the testimony was just the opposite of that concluded by COTA.

Q. By COTA Judge Sheldon: So what you’re saying is she wasn’t capable of handling the quantity of appeals that you had referred to her.

A. By Chatam: No sir, that’s not what I’m saying. (Tr. p. 101) v

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #88.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #89.

The testimony of Mr. Chatam was that he did not believe that he had a written agreement with Ms. Mulcahy. (Tr. p. 102) Ms. Mulcahy was called upon by COTA to answer a few questions. She stated that there was a "written agreement between myself and Chatam & Associates as was written in the offer letter, which set out what my compensation would be. And Mr. Chatam said that there was not something in writing." (Tr. p. 110.) It is possible that both are correct in so far as one was asked about a written agreement and the other addressed an offer letter setting out the terms of compensation.

Even then, it is inexplicable why the issue is raised in this order. The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included

herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #90.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #91.

This finding of a "long standing and persistent relationship" is a conclusion. If it is included herein for the purpose to suggest that that Terrill and Chatam are in business together. The testimony was clear that there is no business relationship in any form. Neither has any interest in the other's business and never has. Tr. pp. 93, 94.

The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #92.

This finding has no relationship to the issue in this case. However, it is curious that COTA would include such an argument here. First, pursuant to K.S.A. 77-524, COTA is required to inform the parties *before or during the hearing or before the issuance of the order* when they intend to take administrative notice of anything. COTA is required to be specific about what they intend to notice and afford the parties an opportunity to contest or rebut. COTA's reliance on K.S.A. 60-412 to get them out of the requirements of K.S.A. 77-524 is misplaced.

In any event, appellant welcomes the opportunity to rebut the conclusion drawn by COTA. COTA created the problem for taxpayers and they certainly should not be permitted to now complain of the results.

In every case, COTA issues a ***form*** Discovery & Scheduling Order. A sampling of the ***form order*** is attached hereto as Attachment 6. In each and every case, COTA orders the taxpayer to provide their expert report months before the pre-hearing conference. The order specifically does not order the county to provide their expert report to the taxpayer. There exists no discovery tool anywhere where the taxpayer can force the disclosure of this report as it does not yet exist. COTA can but it chooses not to. A taxpayer cannot get a document that does not exist as a result of a request for production. A taxpayer cannot depose someone about a report that s/he has not worked on or written. I suppose one could ask for a settlement conference, but again, since the county will not prepare the

report until right before the hearing, a settlement conference would be useless unless done within 20 days prior to trial.

There exists the opportunity for a Joint Modified Scheduling Order but only two attorneys that represent counties have ever agreed to such an Order that would direct a mutual exchange of expert reports. Those two attorneys are Jarrod Kieffer and Michael Montoya. Ms. Myers has refused every time. Myers will agree to send her expert report 30 days ahead of the trial date. Ms. Parker in Sedgwick County will provide the information 30 days ahead rather than the more restrictive 20 days in the COTA regulation. Other lawyers, such as Aimee Betzen of Shawnee County, refused to exchange at any time other than the tine indicated in the rules and regulations of COTA, K.A.R. 94-5-21, or 20 days prior to the hearing. So, with the exception of Mr. Kieffer's cases and Mr. Montoya's cases, counsel does not receive the county's side of the case until 30 and in some cases 20 days, prior to the hearing. That is generally the first time the taxpayer knows that the county intends to offer a reduction in value now that they have worked up the case. In some cases, the county value in their expert report matches their mass appraisal valuation and that would be the first time the taxpayer would know that the county will not be making an offer to reduce the valuation.

Additionally, COTA sets pre-hearing conferences ***before*** the date that the county has to exchange their expert report. A hearing date and time has to be reserved at the pre-hearing because the taxpayer still does not have the information (expert report) to be able to fully evaluate the case. If COTA would require a mutual exchange of reports or, at a minimum set the pre-hearing conference after the county exchanges its expert report, then

I would expect a vast number of cases would settle or dismiss sooner obviating the need to set a hearing date and time.

So, in conclusion, because of the process COTA created whereby only one side of the appeal has to play its cards early and the other side is protected by COTA from exposing its hand until 20 to 30 days ahead of trial, it should seem obvious why cases dismiss at the last minute. Taxpayers' counsel, in most cases, have only 20 days to get the report to the client, review it, discuss it, answer questions about it and then determine with the taxpayer what the next step should be. That is why cases dismiss or settle at the last minute.

Additionally, this finding is irrelevant to the issue noticed up for the hearing. The order concluded no subject matter jurisdiction solely on the issue of the alleged defective signature. This fact listed by this agency in the Order has nothing to do with the decision rendered by the agency, was not identified by the agency as issues before it, was not necessary to the resolution of the issue identified, and can only be considered as included herein for the purpose of advocating a position held by COTA that is not at issue here and which is outside their authority granted to them by any statute.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #93

See the argument above on Finding 92 and the argument on the failure of COTA to comply with the law on administrative notice.

It is interesting to note that those cases where I represented the taxpayer, the statistics quoted by COTA indicate that in nearly one-half of the cases, my clients received

some form of a reduction. In other words, in over half of the cases, the county conceded their original valuation was wrong. For the time period since May 2, 2012, taxpayers who litigated their cases with counsel or pro se did not do as well.

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Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #94.

See all of the argument for Finding ## 92, 93.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #95.

See all of the argument for Finding ## 92, 93.

Taxpayer's disagreements with "facts" included in the Order by COTA, also include Finding of Fact #96.

COTA correctly quotes the testimony of Mr. Chatam, however, it does not support the conclusion inappropriately included as a finding.

His testimony supports the conclusion that his appraisal experience tells him which cases are meritable. But, the fact remains; the finding/conclusion of COTA has nothing to do with the issue in this case.

Conclusion on the issue of disputed findings:

This Petition went through virtually each finding for a specific purpose. COTA held that they did not have subject matter jurisdiction due to what they determined to be a non-correctable defective signature. The ONLY finding of fact that is necessary to that determination is a finding that the appeal form at issue was signed by Blake Newell, a non-party, non-attorney. All of the other 95 findings by COTA were unnecessary and gratuitous to the order.

It is not known, at least as of this date, what the motivation of COTA was to include 95 unnecessary and gratuitous findings. All that is known is that they are unnecessary and gratuitous and all are hereby requested to be stricken from the order.

II. WAS COTA CORRECT IN ITS RULING ON THE ALLEGED DEFECTIVE SIGNATURE DEPRIVING THEM OF SUBJECT MATTER JURISDICTION AND BEING INCAPABLE OF BEING CURED.

Taxpayer disagrees with COTA's conclusion that a defective signature is fatal and deprives COTA of subject matter jurisdiction. It is the position of the taxpayer that a defective signature is technical, rather than fatal, and can be corrected after the proscribed appeal timeframe.

COTA's rules indicate that pleadings can be signed by a party or a party's attorney. K.A.R. 94-5-4(b). COTA's Order cites K.S.A. 60-211(a), which indicates that pleadings of a party represented by an attorney shall be signed by at least one attorney of record. However, the entire statute must be read. K.S.A. 60-211(c) states that if a pleading "is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." COTA's Order did not address this opportunity to cure a defective signature in a pleading. COTA's Order indicated that the notice of appeal to the Small Claims Division was defective because a non-lawyer who was not the taxpayer signed the appeal form. This issue was first brought to the taxpayer's attention in COTA's Order to Show Cause, certified on August 23, 2012. Counsel for the taxpayer and County filed a Stipulation in this case on August 27, 2012. The issue of the defective signature was not fully realized by the taxpayer until COTA's Order, certified on October 10, 2012. Taxpayer's counsel corrected the defective signature and re-filed the notice of appeal on October 19, 2012. Attachment 7. Taxpayer has cured the defective signature and therefore COTA retains subject matter jurisdiction.

In addition to the statute authorizing a cure for a defective signature, COTA itself has ruled on this issue and published the decision on its website. In *In the Matter of the Equalization Appeal of Pierson Investments, L.L.C. for the Year 2008 From Johnson County, Kansas,* Docket No. 2008-3974-EQ, COTA cited *Architectural & Engineered Products* as support for the decision in *Pierson* to grant to the taxpayer an opportunity to correct the signature. In the *Pierson* case, a tax consultant signed the notice of appeal from the local level to the Regular Division. After the time to appeal had run, COTA permitted Kansas counsel to sign the appeal forms and correct, the 'defect'. COTA addressed *Pierson* in its

Order in the subject case, and stated that the *Pierson* opinion did not indicate whether the corrected or amended notice of appeal would have been untimely and that there was no indication that subject matter jurisdiction was challenged in that case. However, subject matter jurisdiction was an issue in that case. COTA need only look at the *Pierson* record to find that the issues and facts are substantially the same as the subject case. A Freedom of Information Act Request on Thursday, October 18, 2012 produced the original notice of appeal and the amended notice of appeal for the *Pierson Investments, L.L.C.* case, Docket No. 2008-3974-EQ from COTA's own records. The original appeal was filed on May 6, 2008 and was timely filed. Johnson County, Kansas then filed a Motion to Dismiss the appeal on July 23, 2008 on the grounds that the original appeal application was signed by a tax representative and not by the Applicant or the Applicant's attorney arguing COTA had no jurisdiction. By Order dated August 15, 2008, COTA denied the County's Motion to Dismiss and provided the Applicant the opportunity to timely correct the defective Appeal Application. The corrected appeal was signed by counsel on September 2, 2008 or 119 days after the original filing and re-filed with COTA. Attachment 8. It is important to note that the 'Notice of Appeal" form signed by the non-lawyer was an appeal to the REGULAR DIVISION and not to the lesser, informal Small Claims Division. Even then COTA held that the original signature was defective and should be treated as unsigned. COTA knew and had access to this notice of appeal and amended notice of appeal at the time COTA issued the Order. Then they peculiarly deny knowledge of the facts. Furthermore, the county did not file a motion to dismiss in this case and does not object to the taxpayer correcting the signature.

COTA's determination of whether a defective signature is fatal or technical hinged on its interpretation of *Becker v. Montgomery,* 121 S. Ct. 1801, 149 L.Ed. 2d 983, 49 Fed. R. Serv. 3d 357 (2001). The standard applied by COTA in order to make that determination was whether an appellant's assent to the appeal is "assuredly authentic" or "objectively clear." COTA erroneously found that the taxpayer had "no objective connection to the transmittal or filing of the appeal" because the notice of appeal to the Small Claims Division was filed by Chatam, not the taxpayer. In the subject case, the taxpayer, Kathy L. Lyerla Living Trust by Kathy L. Lyerla Trustee, completed the Payment Under Protest Application, signed the protest form and filed the protest form with the Johnson County Treasurer when the first half payment of taxes were paid on December 21, 2011. A copy of Payment Under Protest Application is attached as Attachment 1. The appeal form attached clearly shows that the taxpayer had an intention to file the payment under protest appeal and assented to filing said forms. Based on this, COTA's argument that the taxpayer did not assent to the appeal fails, and thus COTA retains subject matter jurisdiction.

However, taxpayer would also like to address COTA's arguments regarding whether the defective signature was fatal or technical.

First, COTA indicated that neither Chatam, as the taxpayer's Authorized Representative, nor the taxpayer's attorney could assent on the taxpayer's behalf. In support of this conclusion, COTA cited *Atchison Homeless Shelters, Inc. v. County of Atchison*, 24 Kan. App. 2d 454, 946 P.2d 113 (1997), which held that a notice of appeal by a corporation not signed by an attorney was fatally defective. However, COTA erroneously interpreted that case and failed to distinguish pertinent facts between that case and subject

case. In *Atchison Homeless Shelters*, the Appellant Corporation was never represented by counsel and no effort was made by counsel to cure the defective signature. In the subject case, taxpayer is represented by Linda Terrill. Ms. Terrill filed a corrected signature to cure the defective signature on October 19, 2012. Further, *Atchison Homeless Shelters* does not address whether an Authorized Representative can sign or assent on behalf of the taxpayer. Therefore, *Atchison Homeless Shelters* does not apply. Additionally, *Atchison Homeless Shelters* was expanded in *Babe Houser Motor Co., Inc. v. Tetreault*, 270 Kan. 502, 14 P.3d 1149 (2000) to direct that corporations can appeal and appear in Small Claims Divisions of the Judiciary without an attorney.

Second, COTA determined that the relationship between Chatam and taxpayer was champertous thus void and unenforceable, which prohibited Chatam from assenting on behalf of the taxpayer. The topic of champerty is addressed elsewhere in this Petition for Reconsideration. However, it is the position of the taxpayer that COTA does not have authority to make any determinations regarding whether a contract is void because COTA does not have equitable powers. Any attempt by COTA to exert jurisdiction over subject matters that are not conferred by the legislature leads to COTA's orders being without legal authority and thus void. *Vaughn v. Martell*, 226 Kan. 658, 603 P.2d 191 (1979).

COTA then makes an argument that requires one to equate a "Notice of Appeal" under Chapter 60 from the District Court to the Court of Appeals as the same thing as the form that one signs to contest the decision at an informal hearing with a county employee to the Small Claims Division of COTA. They clearly are unrelated and disparate. The *State*

v. Grant, 19 Kan. App. 2d 686 (1994) case that COTA relied on does not apply to the facts at hand.

COTA neglects to include in the discussion that the *Grant* case was called into doubt by *State v. Patton,* 287 Kan. 200 and distinguished by cite *State v. Unruh,* 39 Kan.App.2d 125 (2008). The *Unruh* courts analysis of the *Grant* case differs sharply with that of COTA.:

> The State maintains that Unruh's appeal in the instant case is confined to the specifically crafted issue in the April 2002 notice of appeal. The State contends that this case is similar to ***State v. Grant,* 19 Kan.App.2d 686, 875 P.2d 986**, *rev. denied* 255 Kan. 1005 (1994), where this court held that the appellant was limited to the issues raised in his timely filed notice of appeal. Nevertheless, unlike the instant case, the appellant's attorney in ***Grant*** timely and properly perfected the appeal. Although the appeal in Grant *was dismissed during the appellate process, it was immediately reinstated as the dismissal was in error. Therefore, the original notice of appeal controlled the issues in the case.* (Emphasis supplied.)

It is also important to note that *Grant* found that the K,S.A. 60-207 defines pleadings. That rule is applicable to "civil suits". Administrative law will control this issue not rules affecting civil suits. See, AG Opinion 2012-24 where General Schmidt clearly concludes COTA is not a court and the actions before it are not civil suits. Reliance on the *Grant* decision and reliance on any conclusion about a notice of appeal in a civil suit is misplaced.

COTA goes on to list and disregard several counterarguments to the conclusion that the defective signature is fatal and deprives COTA of subject matter jurisdiction. Some of the counterarguments listed were raised in the taxpayer's brief responding to COTA's Order to Show Cause and subsequent oral arguments on that Order. Taxpayer is incorporating that Brief by reference and asserts all issues raised therein. Attachment 9.

One of the counterarguments that COTA found unpersuasive was that statutory authorization gives tax representatives authority to sign notices of appeal. COTA cited A.G. Opinion 93-100, which concludes "a taxpayer may participate through an attorney, or 'if permitted by law,' any other representative. We are aware of no statutes which allow an individual taxpayer to be represented in a hearing before the board of tax appeals by anyone other than the taxpayer personally or an attorney authorized to practice in this state." That was a correct statement at that time, but not since 1998, as K.S.A. 74-2433f (f) is now such a statute as referenced in the Opinion.

> "A party may appear personally or may be represented by an attorney, a certified public account, a certified general appraiser, a tax representative or agent, a member of the taxpayer's immediate family or an authorized employee of the taxpayer."

COTA stated that this statute does not authorize the practice of law in tax appeal cases by unlicensed persons. However, COTA, especially the Small Claims Division, routinely allows non-lawyers to represent taxpayers at hearing. In fact, counsel for the taxpayer attending a Small Claims hearing on August 29, 2012 on behalf of Harold, Phillipp R Trust. The Hearing Officer, Carl Edwards gave the County, which was represented by a non-lawyer employee of the Miami County Appraiser's Office, the opportunity to cross-examine the taxpayer's witness. Taxpayer's counsel objected and was overruled on the basis that it was a small claims hearing and such questioning was allowed.

In summary, the practice approved by COTA since the adoption of the Small Claims Division has been to permit tax representatives to sign all notices of appeal forms. (See *Pierson*) To change this practice now, without notice, can only be viewed as punitive. Particularly since as recently as August 29, 2012, COTA has permitted a non-lawyer county

employee to appear without counsel, argue a case and offered, over the objection of counsel for the taxpayer, an opportunity to cross-examine a witness. Under the theories advance by COTA herein, COTA and Mr. Edwards could be held to aid and abet in the unauthorized practice of law when they permit a county appraiser employee to appear and present argument.

III. PERIPHERAL ISSUES NOT NECESSARY TO THE RULING IN THIS CASE.

Included in this section is a discussion of the COTA actions taken outside their authority and will include specific discussion of the issues (or non-issues) of (1) Real Party in Interest; (2) Champerty; and (3) the unauthorized practice of law and ethical issues.

(1) **Real Party in Interest**

Under the general heading Conclusions of Law, COTA discusses subject matter jurisdiction from several perspectives. On pages 20-24 COTA discusses subject matter jurisdiction and posits that in order to engage the jurisdiction of COTA the taxpayer must be the real party in interest. Apparently COTA concludes on page 24 that the taxpayer in this case is the real party in interest and jurisdiction has attached.

Even though taxpayer agrees that she is the real party in interest COTA fails to cite the Kansas cases which would have made that finding obvious.

In *Thompson v. James*, 3 Kan. App.2d 499, 502 (1979), the Court of Appeals stated:

> "KSA 60-217(a) requires that every action be prosecuted in the name of the real party in interest. The real party in interest is the person who possesses

> the right sought to be enforced, and is not necessarily the person who ultimately benefits from the recovery. *Lawrence v. Boyd*, 207 Kan. 776, Syl.P.1 (1971); *see also Lisbon v. Heatcraft,* 23 Kan.App.2d 374 (1997); *Colorado Interstate Gas Co. v. Outfield* 9 Kan. App.2d 428, Syl. ¶6, *Ryder v. Farmland Mutual,* 248 Kan. 352 (1991).

A recent unpublished opinion of the Kansas Court of Appeals, *Brown-Enviro-Control, Inc. v. Marcotte,* opinion No. 94,764 153 P. 3rd 570 (table) issued March 6, 2007 (Attachment 10) quotes KSA 60-217(a) in pertinent part as follows:

> No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Thus, even though COTA obviously would have preferred to conclude that this taxpayer is not the real party in interest and deny jurisdiction on that basis, it is clear that under Kansas law that this taxpayer is the real party in interest. Moreover, even if this taxpayer was not the real party in interest, COTA could not have legally denied jurisdiction and dismissed the appeal until the taxpayer was provided an opportunity to substitute or join the real party in interest.

Also, the *Marcotte* Court further stated:

> "If the defendant does not make a timely objection to the failure of the real party in interest to prosecute the claim, then the objection is waived. *O'Donnell v. Fletcher,* 9 Kan.App.2d. 491, 694 (1984).

In this case, Johnson County is in the position of a defendant. Johnson County has not objected and even informed COTA at the September 18, 2012 hearing that she believed COTA had jurisdiction. It would appear that COTA has no standing to object and on their

own motion to deny jurisdiction for the reason that the real party in interest is not pursuing the appeal.

Of particular applicability is the case of *O'Donnell v Fletcher*, 9 Kan.App.2d. 491 (1984). At page 484 the court made clear that the failure to prosecute a claim in the name of the real party in interest is to be raised by the defendant (Johnson County) and failure to raise the issue by the defendant, the objection is deemed to be waived. Significant to this appeal, it was COTA that raised the issue rather than Johnson County. The Court of Appeals in *O'Donnell* stated as following:

> "… the real party in interest issue ***should not be raised by the trial court sua sponte***. *US. Fidelity and Guaranty Co. v Slofkin*, 200 F.Supp. 563 (ND. Ala. 1961), *Mid American Trailer Sales, Inc. v. Moorman*, 576 P.2d 1194, 1196 (Okla.App. 1997)." (Emphasis supplied)

(2) Champerty

Under heading III "Subject Matter Jurisdiction- Champerty" COTA concludes that the contract between Chatam and the taxpayer is champertous and void. Further because the contract is champertous attorney Terrill "may herself, by direct association and by business relationship be engaged in champerty and thus an activity that violates KRPC Rule 1.8 (e) and 1.8 (j)."

Taxpayer, Lyerla has never asserted and does not believe her contract with Chatam is champertous nor has she ever asserted nor does she believe Terrill has violated any of the model rules of professional conduct. We could examine the facts and documentary evidence and argue with COTA about those issues, however, those two subjects are far beyond the authority of COTA to address.

That COTA has limited authority is obvious. It is not a court created by Article III of the Kansas Constitution. It is a quasi-judicial administrative agency created by statute, residing in the executive branch of government.

COTA is a creature of the legislature. Its authority and power is only such as is expressly or impliedly given by legislative enactment, "If it attempts to exercise jurisdiction over a subject matter not conferred by the legislature, its orders with respect thereto are without authority and void." *Board of Johnson County Comm'rs v. Duffy*, 259 Kan. 658, 660 (1979).

COTA's statutory authority includes the power to hear tax appeals (KSA 74-2437; KSA 74-2439, KSA 79-2005) In the case at bar the taxpayer has appealed the valuation of her property by paying the taxes under protest and is seeking a refund (KSA 79-2005)

> "No statute, expressly or impliedly, gives BOTA power to investigate property which is not the subject of a dispute before it." *In re Application of Park Comm'rs for Ad Valorem Tax Exemption,* 14 Kan.App.2d 777, 799 (1990), *see also Salina Airport Authority v. Board of Tax Appeals*, 13 Kan. App.2d 80, 87 (1998).

As a creature of the legislature COTA has the power given it expressly or impliedly. COTA has no general or common law power, only statutory power. *Pork Motel Corp. v. Kansas Dept. of Health and Environment*, 234 Kan. 374, 378 (1983).

The Kansas Constitution provides that "[t]he judicial power of this state shall be vested exclusively in one Court of justice. Kan.Const.Art.3, §1." *Sage v. Williams*, 23 Kan.App.2d 624, 627 (1997). Administrative agencies such as COTA may perform quasi-judicial functions reasonably necessary to the proper performance of their administrative duties when specifically authorized by the legislature. *Public Employees Relations Board,*

225 Kan. 435, 443 (1979). Agencies such as COTA have no general or common law powers. *Woods v. Midwest Conveyor,* 231 Kan. 763, 770 (1982).

The circumstances of this case with respect to the authority of COTA are best described in *Sage v. Williams*, 23 Kan.App.2d 624, 628, where the court stated:

> "Because BOTA is an administrative agency and not a court, it does not have the power to hear and decide equitable claims. BOTA's authority is limited to tax matters, and while Sage's equitable estoppel claim tangentially involves taxes, taxation is not at the heart of the claim. Sage's claim requires judicial determination…"

Very recently (October 9, 2012) the Kansas Attorney General issued an opinion (2012-24) which examines the difference between a judicial court and an administrative agency which exercises quasi-judicial authority. Citing *Sage v. Williams*, 23 Kan.App.2d 624, 627 (1997), the Attorney general stated:

> While "administrative agencies such as [the Board of Tax Appeals] (now COTA)] may perform quasi-judicial functions reasonably necessary to the proper performance of their administrative duties," these agencies are not courts that exercise judicial power under Article III of the Kansas Constitution.

The Attorney General was being called on to opine whether or not a tax exemption application at COTA was a "civil action" for the purposes of KSA 60-2005, a statute exempting cities from the filing fee. In so doing the opinion stated:

> We opine only that the "civil action" does not refer to proceedings before an administrative agency, however, judicial in character. Because the statute creating COTA explicitly states that it is "an independent agency and administrative law court located within the executive branch of state government" and not a court within the judicial branch, its consideration of a tax exemption application is not a "civil action" for purposes of KSA 2011 Supp. 60-2005.

By raising the issue of champerty COTA has clearly stepped far beyond their authority. Champerty is a defense to the attempted enforcement of a champertous contract and can only be raised by a party to the contract. *Boettcher v. Criscione* 180 Kan. 39 (1956), *see also Levy &Craig v. Sifers,* unpublished opinion No 92, 231, 94,528, 14 P.3rd 163 (table) December 8, 2006 (Attachment 11). Even if COTA had the authority to determine the nature of the contract between the taxpayer and Chatam, it would only be a matter for resolution by COTA if the current appeal was an action by Chatam to enforce the contract, which it is not. Further, COTA has no authority to raise the issue sua sponte.

(3) Unauthorized Practice of Law & Ethics.

The headings in the COTA Order relating to the unauthorized practice of law (V and VI) as well as those relating to the alleged ethical violations (VII through XIV) are conclusions drawn by COTA that amount to rank speculation on subjects that are clearly far beyond their authority.

The Supreme Court of Kansas is the body charged with the duty to inquire into the authority by which one assumes to practice law in Kansas and to make appropriate orders relating thereto. Const. Art. 3 §3. *State ex Rel. Boyton v. Perkins*, 138 Kan. 899, Syl1. The *Perkins* court also concluded that it was the function of the Kansas Supreme Court to prevent the practice of law by unauthorized persons and to expel those found unworthy to practice law. Further, the proper remedy for the alleged unauthorized practice of law is a Quo Warranto action brought by the Kansas Attorney General. That COTA has no such authority or duty is obvious. As has been seen above, any Order by COTA that goes beyond

their statutory authority is void. *See also State v. Martinez* 27 Kan.App.2d 9, (2000), *State v. Williams,* 246 Kan. 681 (1990).

COTA's jurisdiction over alleged ethical violations is as lacking as it is over the unauthorized practice of law. *See* Rules relating to Discipline of attorneys, Supreme Court Rule 201. Jurisdiction which states:

> (a) Any attorney admitted to practice law in this state and any attorney specially admitted by a court of this state for a particular proceeding is subject to the jurisdiction of the Supreme Court and the authority hereinafter established by these Rules.

Supreme Court Rule 204 creates a Kansas Board for Discipline of Attorneys and Rule 205 creates a Disciplinary Administrator. The Board and the Disciplinary Administrator have the duty to investigate alleged ethical violations, conduct investigations and make recommendations concerning attorney ethical complaints but, ultimately it is the Supreme Court who has exclusive jurisdiction to determine whether an attorney has violated the Model Rules and in the appropriate case, exact a penalty.

COTA's invectives concerning the unauthorized practice of law and alleged ethical violations are, at best, meager conclusions drawn about matters which they have never had any authority over or jurisdiction. At worst, suggests a bias by COTA against tax consultants generally or J.W. Chatam and Linda Terrill individually. It seems clear that it was plainly directed at J.W. Chatam and Linda Terrill personally as there is no explanation for how the cases selected for the "Order to Show Cause" were identified by this agency and set for hearing. COTA had not otherwise set any of the cases for prehearing, hearing, etc. An Order to Show Cause was summarily

issued, apparently randomly, and *only* on certain selected cases where J.W. Chatam was the tax consultant.

In furtherance of this point, Attachment 12 is an approximately 19 page memorandum authored by COTA Judge Sheldon and COTA Judge Wohlford. The memorandum, dated October 4, 2012, is addressed to "Mr. Stan Hazlet" (sic) and was included with the ethical complaint filed by this agency against Linda Terrill. The complaint is signed by COTA Judge Sheldon and COTA Judge Wohlford but submitted on the letterhead of the agency. Mr. Hazlett received the memorandum 6 days before the decision is this case was certified. The memo and its conclusions obviously will be addressed in other forum(s) and is mentioned here only to indicate the overreaching actions and predisposition by this agency on this issue prior to the hearing. Obviously this memorandum and the suppositions and hypotheses taken by this agency will be used against other tax practitioners in Kansas who have tax controversies referred to them by tax consultants. That would include law firms such as Property Tax Law Group, a small boutique firm that concentrates exclusively in tax controversy cases, to some of the largest multi-state law firms practicing in Kansas.

All references to the unauthorized practice of law or alleged ethical violations are void and must be removed from the Order. *Vaughn v. Martell*, 226 Kan. 658, 603 P.2d 191 (1979).

The Court of Tax Appeals (COTA) is, as previously mentioned, a small administrative agency that handles tax matters in Kansas. It is currently the state's highest tax tribunal.

This agency'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." (Emphasis added) *See* Kansas Court of Tax Appeals, http://www.kansas.gov/cota/ (last visited Sept. 20, 2011).

> It is important that this small agency is able to adjudicate tax matter disputes in a manner that is *fair*—not only to the parties, 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. *See* Gage Rohlf, *Kansas Property Tax Appeals: An Adversarial System Without Adversaries,* WASHBURN LAW JOURNAL, Vol. 49, at 873.
>
> In the late 1990s, questions began to arise over BOTA's impartiality, the consistency of its decisions, and the agency's accessibility. *See* Lew Ferguson, Associated Press, *House Ponders Overhaul of tax appeals board.* LAWRENCE J.-WORLD, Mar. 13, 1998, at 8B. Thus in May 1998, the legislature again took action. The legislature created an executive director position to manage the agency along with various other new provisions for the board members. This enactment held the board members subject to the Kansas Supreme Court's rules of judicial conduct. Act of May 13, 1998, ch. 146, 1998 Kan. Sess. Laws 947, 953 (codified as amended at KAN.STAT.ANN. §§74-2433, 74-2433f (sup. 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 _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." (Emphasis added). *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. *See* Gage Rohlf, *Kansas Property Tax Appeals: An Adversarial System Without Adversaries,* WASHBURN LAW JOURNAL, Vol. 49, 871-903

A description of the BOTA decision-making debacle that led to such limiting legislation enforcing impartiality and accountability on the board members follows: "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." *See* Jim McClean, *Citing 'Bias' During Tax Hearing, Judge Orders Bogina off case,* TOPEKA CAP.-J, Apr.24, 1998.

This order demonstrates that the reforms have not changed the results.

IN SUMMARY, it is unknown, *as of this date*, what the motivation of this agency was in issuing an order that addresses issues so far outside of its authority. It is clear from a detailed reading of the order that many of the "facts" were not facts in this case and some were nowhere in the record. One is left to wonder where the information came from. Has COTA had meetings with county officials? Has COTA solicited assistance on these issues from county counselors? The memo does reference that they considered complaints from counties about consultants but does not identify how COTA became aware of any complaints. At this point, we just don't know. However, it gives the impression that COTA has an agenda that was intentionally not disclosed to counsel for the taxpayers or the taxpayers prior to the issuance of this order.

As an example, COTA notes in the order that they are speculating beginning on page 56 of the Order as "not all of the following are necessarily indicated on the record in the present tax appeal…" On appeal this order will be judged based on whether or not there is substantial evidence in the record to support the findings therein. Why would COTA include speculation and then make conclusions, often wrong, in this order?

Take for example their conclusion about "horse trading". COTA speculates that tax representatives *may* "horse trade" cases. This counsel is unaware of that

ever happening with a tax representative. Counsel is aware that, at least in one circumstance, counsel for Johnson County attempted that very thing. As the attached emails demonstrate, counsel for Johnson County attempted to force 3 separate taxpayers to all accept or all reject an offer. (Redacted emails attached hereto as Attachment 13) When the undersigned indicated to opposing counsel that the taxpayers may all be a certain type of hotel, the ownership of each is different and requested the county reconsider the demand and make each offer separate and not dependent on any other taxpayer. The horse trade was reaffirmed by the county noting that the hotel operators were all the same and that the County knew the operator "drove the car." When informed that that was not the case, the county withdrew the horse trade provision.

On point 4 on page 57, COTA carries the banner for the counties again. COTA knows that when filing a tax appeal, there is not a 5 year statute of limitations. The statute of limitations for tax appeals is 30 days. The purpose of filing the appeal would be to preserve the rights of the clients, not to file frivolous appeals as suggested by COTA.

But, again, the point of this discussion in the order is what? It is difficult to conclude it is anything other than a white paper on some agenda being advanced by COTA.

As to point 5 on page 57, this Petition already discussed why taxpayers and their attorneys have to wait until the last minute. It is because COTA does not require the county to exchange its expert report until 20 days prior to the hearing.

No attorney would dismiss until such time as the other side exposes its arguments and facts.

As to point 6 on page 58, county tax dollars, wasted or not, are not under the purview of this agency. One has to wonder again, what is the fixation of COTA relative to the preservation of the tax base to the detriment of persons that have the constitutional right to have their property valued uniformly and equally at fair market value?

Point 7 does not comport with the experience of the undersigned in this matter. Experience demonstrates that tax consultants typically represent smaller, local taxpayers. But, more importantly, the question still remains; where did this information that COTA included here come from? It was certainly not from the record in this case. Most troubling is the statement "Collectively, the state's small number of tax representatives likely garner millions of dollars by way of their contingent fee arrangement and thereby drain that amount from the tax revenue system without any benefit to taxpayers generally and, relatively speaking, with only little benefit, on an individual basis, to their taxpayer-clients. It is the tax representatives who are 'gaming' the system for their own benefit, and receiving the *primary* benefit therefrom."

It seems clear from the above that COTA considers the impact of a refund on other taxpayers when considering an appeal of another taxpayer. The effects of an appeal are not the issue in a tax controversy. The issue is the valuation of the property under appeal and nothing else.

If "tax policy" is to be considered by COTA (which it never should be) then it would seem that the first consideration is how did it come to be that so many millions of tax dollars were unlawfully collected in the first place? If tax consultants typically get 1/3 of the tax savings, then, in COTA's example on page 59, counties would have collected two times the "alleged millions" that COTA thinks consultants are paid through contingent fees. Taxpayers are entitled under the Kansas Constitution and Kansas law to have their property appraised uniformly and equally at fair market value. Is there no policy concern of COTA as to how it comes to be that many (apparently according to COTA) are over-assessed and over-taxed?

Clearly COTA desires that tax consultants be prohibited from contracting with clients on a contingent fee basis. Yet the opinions of COTA on this subject should properly be presented to the Kansas legislature, an entity that does have authority over tax policy and this is a policy question.

Admittedly COTA did, in this case and others, order that the contingent fee contracts of the tax consultant were void. However, it is also clear that COTA does not have any equitable powers to do this. They do not have judicial powers. COTA can no more void a contract than they can void a marriage. COTA is also without authority to prohibit someone from being represented by the attorney of their choice. Is there any other conclusion that one can draw other than this Order is a dissertation of the tax policy beliefs of COTA?

The remaining issues that COTA included in the order concerning ethical issues are unfortunate. COTA does not have the authority to charge, investigate,

and *convict* any attorney on ethical issues. The inclusion of the ethics suppositions in this order can only be rationalized as having been done for reasons outside the determination of subject matter jurisdiction. Perhaps just castigatory, but obviously irrelevant to the resolution of the issue noticed up and decided. This issue will be addressed more thoroughly in other proceeding(s) but raised here to preserve the argument for appeal.

Appellant requests COTA grant reconsideration and enter an order striking all of the order, with the one exception of the issue of the validity of the signature, as being outside the authority of COTA, an unlawful attempted exercise over matters not statutorily given to them, that those are without force and effect and further, that COTA reverse the order and find jurisdiction. Appellant so requests on the basis iterated herein and because:

(1) this agency has acted beyond the jurisdiction conferred by any provision of law;

(2) this agency has erroneously interpreted or applied the law;

(3) this agency has engaged in an unlawful procedure or has failed to follow prescribed procedure;

(4) the persons taking the agency action were improperly constituted as a decision-making body or subject to disqualification;

(5) this agency action is based on a determination of fact, made or implied by the agency, that is not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act; or

(6) this agency action is otherwise unreasonable, arbitrary or capricious.

Submitted,

Digitally signed by Linda Terrill
Date: 2012.10.29 15:31:14 -05'00'

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Certificate of Mailing

I, Linda Terrill, do hereby certify that a true and correct copy of the above was served electronically upon opposing counsel on the 29th day of October 2012 to the electronic address of:

Kathryn.Myers@jocogov.org

Digitally signed by Linda Terrill
Date: 2012.10.29 15:31:02 -05'00'

Linda Terrill