



Memorandum

To: Mr. [REDACTED]

Date: August 26, 1996

From: Larry Augusta

Subject: Release of Information To Law Enforcement Agencies and the Grand Jury Pursuant to Section 408

This is to confirm our telephone conversation regarding the proper interpretation of the first sentence of the second paragraph of subdivision (b) of Revenue and Taxation Code Section 408 insofar as it governs the access of law enforcement agencies and county grand juries to information, abstracts and records in the assessor's office. Specifically, we discussed the issue of whether the phrase "...when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code..." limited the access of law enforcement agencies and the county grand jury, or only the access of "...the board of supervisors or their duly authorized agents, employees or representatives.." In grammatical terms, does the phrase in question modify the first two phrases or only the third phrase?

It is my conclusion that the phrase limits only the supervisors, and not the law enforcement agencies or the county grand jury. An Assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies and the county grand jury whenever the agencies or the county grand jury request such information, abstracts or access.

My research into past opinions on this issue led me to a memo written by Tax Counsel John H. Knowles to Herbert Roberts, Kern County Assessor, on July 2, 1975, in which Mr. Knowles also concluded that the phrase in question did not limit the access of the agencies and the grand jury, only the board of supervisors and their agents. Thus, this has been the long-standing view of the legal staff. A copy of that letter is attached for your information.

In addition to the analysis provided by Mr. Knowles, I wanted to provide further analysis in order to address additional questions that have arisen regarding the proper interpretation.

First, I reviewed Section 25303 of the Government Code. Section 25303 sets forth the authority of the board of supervisors to supervise the official conduct of all county officers. It does not govern the authority of law enforcement agencies, or the county grand jury, and it contains the following disclaimer: "This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county. The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county." While the term "law enforcement agencies" includes many more agencies than the sheriff or the district attorney, for our purposes I look at the disclaimer as confirmation that the section defines only the authority and jurisdiction of the board of supervisors, not that of the grand jury or the law enforcement agencies. In other words, it grants the board of supervisors supervisory powers they would not otherwise possess. The county grand jury and law enforcement agencies derive their investigative authority from other provisions of law.

Second, I reviewed such legislative history as I could find in the files of our Legislative Unit. The provision in question was added as subdivision (c) by AB 80 in 1966 (Stats 1st Ex. Sess., Ch. 147; §36). It became the second paragraph of subdivision (b) as part of a rewrite of §408 in 1993.

AB 80 was a comprehensive assessor practices reform measure which grew out of scandals in certain assessor's offices in the preceding year. The purpose of the access to information section (new subdivision (c), now (b)), was to facilitate investigation by certain enumerated officials of questionable practices by the assessor. Prior to that time, the confidentiality statutes prevented law enforcement agencies from having access to taxpayer records in the possession of the assessor. Thus, I have concluded that the intent of the section was to broaden the authority of the enumerated agencies to inspect records in the assessor offices, and that it should be read with that broad intent in mind. It was not intended as a restriction on the otherwise broad investigatory authority of law enforcement agencies or the county grand jury.

In my review of our legislative history file, I discovered comments made by our staff to the author's office. One comment

was that the way proposed subdivision (b) was worded, it appeared law enforcement agencies and grand juries may have access to records only when conducting an investigation pursuant to Section 25303. BOE staff suggested clarifying language, but it was not adopted. Thus, this unclear language was pointed out to the Legislature, but no change was made. I can only speculate as to the reason why no change was made, but there are many possibilities. A conclusion that the legislature wanted to restrict the access is not warranted because of the many reasons, including many non-substantive reasons, the phrase could have been left as originally drafted. I conclude that the above analysis outweighs the view that the intent was restrictive.



LAA:ba

cc: Mr. Jim Speed - MIC:63
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Mr. L. Gene Mayer
Legal Section

July 2, 1975

Mr. Herbert E. Roberts
Kern County Assessor
1415 Truxtun Avenue
Bakersfield, California 93301

Attention: Mr. T. J. Kaizer
Chief Appraiser

Dear Mr.

Re: Subsection (c) of Section 408 of
the Revenue and Taxation Code

Your letter of May 30, 1975, asked several questions about the referenced subsection, which requires the assessor to disclose information and to permit access to records in his office to various named agencies. This subsection was added as part of the assessor-reform legislation of 1966 known as AB 80. (Stats. 1966, 1st Extra. Sess., ch. 147.) As pointed out in California Supreme Court in State Board of Equalization v. Watson, 68 Cal.2d 307, 312:

"By such amendments the Legislature manifested a clear intent to deny to local assessors their former power of withholding records from governmental agencies having an interest in inspecting them. That right of inspection is an essential part of the tax-reform program, and must be scrupulously inspected."

We will respond to your questions in the order presented.

1. Does the requirement to "disclose information . . . to law enforcement agencies, the County Grand Jury, the Board of Supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the Assessor's Office pursuant to Section 25303 of the Government Code . . ." mean that the named groups, Grand Jury, etc. may only have access to Assessor's Records under Section 25303 of the Government Code?

Answer: No. The reference to section 25303 of the Government Code only modifies actions taken by the board of supervisors, as this section sets forth the board of supervisors' duty to supervise the official conduct of county officers, particularly those charged with assessing, collecting, safekeeping, management, or disbursement of the public revenues.

July 2, 1975

2. If Section 25303 is not the only condition for access to Assessor's records, by what other authority may those agencies have access?

Answer: Law enforcement agencies such as the police have authority to investigate crimes pursuant to the provisions of the Penal Code. The county Grand Jury has broad authority pursuant to the Penal Code to look into the possible commission of crimes and other misconduct. The State Board of Equalization's authority, which was broadened by AB 80, is provided in Government Code section 15612, which was at issue in the Watson case. The Controller has authority to audit assessor's records pursuant to various subvention programs; for example, Government Code section 16114.

3. Which agencies are considered "law enforcement agencies" under Section 408 C?

Answer: I believe the reference to law enforcement agencies means agencies investigating crimes such as the city police, the county sheriff's office, the State Department of Justice, plus perhaps federal and state narcotics agencies and the F.B.I.

4. What are some examples of ". . . other duly authorized legislative or administrative bodies of the state . . .?"

Answer: Some examples of legislative or administrative bodies which might be authorized to investigate matters to which access to the assessor's records is necessary and proper are legislative committees, the State Auditor, and any other agency having specific statutory authority.

5. Where would ". . . their authorization to examine such records" be found?

Answer: Any agency claiming to have authority should be able to cite the statute by which such authority was granted.

6. What action or penalties might result from disclosure of information contrary to Section 408?

Answer: While I do not find any specific penal sanction in the Revenue and Taxation Code for improper disclosure of confidential information by the assessor or his employees, there, of course, is the sanction of adverse publicity should records be improperly disclosed.

Very truly yours,

John H. Knowles
Tax Counsel