



(916) 445-4598

March 10, 1983

Honorable Jack Clay
Assessor of Inyo County
P. O. Box 6
Independence, CA 93526

Dear Mr. Clay:

You asked for our comments on an allegation contained in a recent assessment appeal application that it was unlawful for the county assessor to contract with an outside expert to assist in the valuation of property for tax assessment purposes, and that such a contract violated Section 451 of the Revenue and Taxation Code. We believe these allegations are without merit.

Section 31000 of the Government Code permits the county board of supervisors to contract for special services on behalf of any county officer or department with persons trained, experienced, expert, or competent to perform special services. Since the assessor is a county officer, (Government Code Section 23003) he or she falls within the category of public entities for which special services by contract can be provided.

The 1967 California Attorney General's opinion cited by the claimant stands for the proposition the county cannot contract with a private organization to appraise all the land and improvements in the county in lieu of having the assessor fulfill his statutory obligations. That opinion is not applicable in this case where the assessor is only seeking assistance from an expert to appraise a property which requires special expertise. This procedure was approved by the court in County of Tuolumne v. State Board of Equalization (1962) 206 Cal.App. 2d 352. Indeed, the Attorney General's opinion concedes that "situations may arise where a specialist must be hired to assist the assessor in appraising one or more parcels of property which will require particular technical skills not possessed by the assessor or any of his deputies and assistants, (50 Ops.Cal.Atty.Gen. 61, 64.) The weight of case law supports the hiring of specialists in particular situations, (see H.D. Madley & Co. v. McWay, (1924) 70 Cal.App. 439; Montgomery Ward & Co. v. Welch (1936) 17 Cal.App. 2d 127.)

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We believe the suggestion that the contract is a violation of Section 451 is likewise unsound. As an agent of the assessor, the private contractor performing the appraisal work to assist the assessor in arriving at a value is subject to the same restrictions as the assessor. This is the same rule I would apply to deputies and other employees of the assessor's office. (See, for example, Bank of America v. Ryan (1962) 207 Cal.App. 2d 698.)

Very truly yours,

Lawrence A. Augusta
Assistant Chief Counsel

LAA:jlh

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Legal Section

Mr. Glenn L. Rigby

March 3, 1983

Barrie Griffith

Revenue and Taxation Sections 405 and 451

Did the assessor violate Revenue and Taxation Code Section 405 which prescribes the assessor's duties as including the responsibility for assessing all property in the county, the 1967 California Attorney General's Opinion which holds that a county may not contract with private persons to appraise property for tax assessment purposes, and the spirit of Revenue and Taxation Code Section 1720 which expressly prohibits the Equalization Appraisal Commission from contracting with private organizations by contracting with a private person for the purpose of appraising county properties for tax assessment?

Revenue and Taxation Code Section 405 states, in pertinent part, that "[a]nnually, the assessor shall assess all the taxable property in his county, except state-assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date" (Rev. & Tax. Code, Section 405(a)). In order to perform this duty, "[t]he assessor shall periodically appraise all property not subject to the provisions of Article XIII A of the Constitution to substantiate the judgment of its full cash value or, when provided for by law, its restricted value for uniform assessment purposes" (Rev. & Tax. Code, Section 405.5). Although the valuation of property for tax purposes is the duty of the assessor (Tax Factors, Inc. v. County of Marin (1937) 20 Cal.App. 2d 79, 85 [56 P.2d 656]), the assessor is not required to personally determine the value of the property if he can gain sufficient knowledge or evidence of its value from other sources (Montgomery Ward & Co. v. Welch (1936) 17 Cal.App. 2d 127, 61 P.2d 790). One such possible source can be from a private appraiser.

Under Government Code Section 31000, the County Board of Supervisors "may contract for special services on behalf of the following public entities: the county, any county officer or department, or any district or court in the county. Such contracts shall be with persons trained, experienced, expert or competent to perform the special services. The special services shall consist of services, advice, education or training for such public activities or the employees thereof." Because the assessor is a county officer (Government Code Section 23003), he falls within the category of public entities for which special services by contract can be provided.

The 1967 California Attorney General's Opinion cited by the claimant as holding that the assessor can not contract with a private person for the purpose of appraising county properties is inapposite. That opinion holds invalid a proposed contract by the county with a private organization to appraise all of the land and improvements in the county and to develop the material necessary to meet the assessor's statutory obligation to assess all taxable property in the county and to prepare the local assessment roll (50 Ops.Cal. Atty.Gen. 61). The opinion cites County of Tuolumne v. State Board of Equalization (1962) 206 Cal.App.2d 352 [24 Cal.Rptr. 113] in which the court held that an assessor's contract with an engineer for assistance with the determination of value was not improper. In Tuolumne the court stated: "We fail to see anything wrong with this procedure, as a tax assessor could hardly be expected to have more than a superficial knowledge of the value of property so complex as the...structures here involved. The assessor did the intelligent thing by hiring an engineer who had assessed other works of a similiar nature.... Assessors in metropolitan counties engage the services of experts to assess specialized properties, and we cannot see the distinction [made that] the specialists in metropolitan counties are regular employees on the payroll of the county assessor, while in this case the Tuolumne assessor hired an 'outside' engineer to do the job." The court goes on to explain how the use of an outside appraisal does not violate the statutory requirement of Section 405 that the assessor value the property stating that "when the assessor adopted and placed on the assessment rolls the value which resulted from the engineer's work, it became the official act of the assessor and likewise an official record of Tuolumne County" (County of Tuolumne v. State Board of Equalization, supra, at p. 371-372). The Attorney General's opinion further states that "situation's may arise where a specialist must be hired to assist the assessor in appraising one or more parcels of property which will require particular

technical skills not possessed by the assessor." While the county cannot contract out all of the property valuation, the county is not prevented "from authorizing the assessor to employ specialists to assist him in determining the value of property in cases where special knowledge, training and experience are required...." The courts have approved other instances of contracts by the board of supervisors with third parties to obtain information to assist county officers to perform their duties. (See, for example, Skidmore v. County of Amador (1936) 7 Cal. 2d 37 [59 P.2d 819] in which the court approved the county's employment of experts to examine public records to discover unlisted taxable property since the assessor was not himself required by statute to do so; H.D. Hadley & Co. v. McVay, (1924) 70 Cal.App. 438 [233 P. 409], in which the court held that the board of supervisors did not exceed their powers by contracting with third parties to obtain a cruise and estimate of timber on certain patented lands; Skidmore v. West (1921) 186 Cal. 212 [199 P. 497] in which the court upheld a contract by the county to furnish information for the supervisors in regard to lands sold to the state for taxes.)

In contrast, the courts emphatically rejected those contracts by the county in which third parties were to perform the statutory duties of county officers. In Tax Factors, Inc. v. County of Marin, supra, 20 Cal.App. 2d at p.85, a contract to make a valuation of all assessable property in Marin County was declared void because the third party "was merely attempting to do and perform those things that the assessor is legally bound to do and perform." Two subsequent Attorney General Opinions (54 Ops. Cal.Atty.Gen. 373) restate the proposition that under Government Code Sections 3100 et seq., counties can contract for and employ persons to provide services requiring special knowledge, training and experience which would assist the assessor in valuing property.

The claimant asserts that the spirit of Revenue and Taxation Code Section 1720 which expressly prohibits the Equalization Appraisal Commission from contracting with private organizations for appraisal is violated by the assessor's contract with a private person for purpose of appraising county properties. Because Section 1720 relates to the delegation to private interests of the appraisal functions of a county appraisal commission, that section does not pertain to the assessor's duty under Section 405.

Did the assessor violate Revenue and Taxation Code Section 451 and related secrecy statutes relating to confidential information furnished to the assessor by the claimant by making such information available to a private person outside the assessor's office?

Revenue and Taxation Code Section 451 requires the assessor to hold secret "all information requested by the assessor or furnished in the property statement." Recognizing the complexity of the assessor's duties, however, both the statutes and case law permit the assessor to contract with private persons to assist with his appraisal responsibilities (See discussion, supra). Such a private person becomes an agent of the assessor (Rest., 2d Agency, Section 1) and the principles of agency apply. As an agent, the private person becomes authorized to do any acts which his principal, the assessor, can do, except those to which the principal must give his personal attention. (Civ. Code, Section 2304). Since the assessor has the authority to review any information furnished by the claimant, the agent has like authority to review such information in order to accomplish the purpose for which the information was provided. (Civ. Code, Section 2304). The agent's review of information provided by the claimant therefore does not violate the secrecy requirements of Section 451.

Other than the law of agency, there appears to be no specific California case law or statutes which relate specifically to the issue of whether confidentiality is violated by the assessor's disclosure of confidential information to his agent. Evidence Code Section 1040 does, however, establish the law of privilege for the assessor as follows:

(a) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.

(b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing such information, if the privilege is claimed by a person authorized by the public entity to do so and:

(1) Disclosure is forbidden by an act of the Congress or a statute of this state;...

Evidence Code Section 912, subdivisions (c) states that

(c) A disclosure that is itself privileged is not a waiver of any privilege.

Interpretation of this code section is provided by Senate Committee on the Judiciary, comment which states that subdivision (c) means that "[a] privilege is not waived when a revelation of the privileged matter takes place in another privileged communication." Having the privilege, the assessor does not violate that privilege of the confidentiality of tax information by providing such information to his agent within the context of the privileged principal-agent relationship. Likewise, both the assertion of the privilege and the fiduciary relationship which exists between a principal and his agent bars the agent from disclosing confidential information acquired through the agency relationship. (Bank of America v. Ryan (1962) 207 Cal.App. 2d 698, 706; Rest., 2d Agency, Section 395.

EG:jlh