290.0033

(916) 324-6594

November 9, 1984

Mrs. [redacted]

Dear Mrs.

This is in reply to your memorandum of September 26, 1984 in which you ask that we comment on the legal opinion of Deputy County Counsel David Frank that the County Planning Department is entitled to inspect your confidential files.

In accordance with your request, I have reviewed Mr. Frank's opinion. Although Mr. Frank acknowledges that under Revenue and Taxation Code Section 408(a), assessor's records which are not required by law to be kept or prepared by the assessor are not public records and shall not be open to public inspection (except as provided in subdivisions (b) and (c)) he contends first that disclosure to the county planning director does not constitute "public inspection" within the meaning of Section 408(a). Mr. Frank cites Parrott v. Rogers (1980) 103 Cal. App. 3d 377 in support of his contention.

In Parrott, the court held that disclosure of city records by a city official to another official of the city ("citizens' assistant") was not "public disclosure" proscribed by the Public Records Act since the "citizens' assistant" was conducting an investigation authorized by the city charter for purposes of reporting or commenting to the city council upon the functioning of city government. By "parity of reasoning", Mr. Frank concludes that disclosure of the assessor's confidential records to the planning director in this case is not prohibited by Section 408(a) because such a disclosure is not a "public inspection" within the meaning of that section.

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Assessor

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As indicated by copies of correspondence from the legal staff previously forwarded to you, it has been our position that disclosure of confidential records to anyone, including government officials, not listed in Section 408(c) is prohibited under Section 408(a). Thus, at least by inference, we have consistently taken the view that disclosure to any government official amounts to "public inspection" within the meaning of Section 408(a). Our position is supported not only by the language of Section 408 itself, but also by State Board of Equalization v. Watson, 68 Cal. 2d 307, wherein the California Supreme Court stated at page 312:

> "There is no doubt that members of the general public have no right of access to such records; but section 408, which so provides, contains an explicit exception...Subdivision (c) of that section, added by the 1966 property tax reform legislation...commands that 'The assessor shall disclose information, furnish abstracts or permit access to all records in his office' to certain named governmental agencies,...By such amendments the Legislature manifested a clear intent to deny local assessors their former power of withholding records from governmental agencies having an interest in inspecting them." (Emphasis added.)

From the foregoing, it appears that the Legislature intended that any disclosure to a governmental agency or official was a "public inspection" under Section 408 and thus prohibited. Were that not its intent, there would have been little purpose in adding subdivision (c) to Section 408. Moreover, since Section 408 was not before the court in Parrott, the decision in that case is of little relevance, if any, to the issue in this case. Accordingly, in my opinion, disclosure to the planning director of records in the assessor's office not required by law to be kept or prepared by the assessor would amount to a "public inspection" within the meaning of Section 408(a). Since the planning director is not listed as a governmental official to whom the assessor "shall disclose information, etc." under Section 408(c), such disclosure is prohibited.

Mr. Frank further argues that the planning agency's supervisory and regulatory duties over land use and planning in the county are comparable to the Board of Equalization's statewide supervisory duties in the field of property taxation and that the planning agency is therefore entitled to access to the assessor's confidential records just as the Board was in State Board of Equalization v. Watson, supra. This argument ignores the fact that when Watson was decided, the Board was listed in Section 408(c) as one to whom "[t]he assessor shall disclose information...or permit access to all records in his office...." As indicated above, neither the planning director nor the planning department is included in Section 408(c) either expressly or by implication and Mr. Frank does not contend otherwise.

In short, I respectfully disagree with Mr. Frank's conclusion that the planning director is entitled to access to the information he seeks.

Enclosed for your information are copies of additional correspondence consistent with our position as indicated above.

Very truly yours,

Eric F. Eisenlauer
Tax Counsel

EFE:fr

Enclosures

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