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OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	
	:	
of	:	No. CV 75/344
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EVELLE J. YOUNGER	:	MARCH 30, 1976
Attorney General	:	
DERRY L. KNIGHT	:	
Deputy Attorney General	:	
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THE HONORABLE CHARLES R. MACK, COUNTY COUNSEL  
OF THE COUNTY OF YOLO, has requested an opinion on the  
following question:

Is the clerk of a county board of equalization  
required to set for hearing an application filed outside  
the filing period specified by section 1603, Revenue and  
Taxation Code, and section 305(d), Title 18, California  
Administrative Code, to determine whether the local board  
of equalization has jurisdiction to hear the application  
for reassessment.

Our conclusion is as follows:

The local board of equalization itself has the  
ultimate responsibility to rule on the question of its  
own jurisdiction. however, it would be proper if the board  
established for the clerk certain specific guidelines for  
determining which applications were untimely filed, and  
authorize the clerk to notify such applicants of such fact  
and advise them that they may request a hearing pertaining  
only to the issue of the board's jurisdiction.

## ANALYSIS

The California Constitution, article XIII, section 16, provides in pertinent part as follows:

"Except as provided in subdivision (g) of Section 11, the county board of equalization, under such rules of notice as the county board may prescribe, shall equalize the values of all property on the local assessment role by adjusting individual assessments."

Chapter 1 of Part 3 of Division 1 of the Revenue and Taxation Code 1/ (§§ 1601-1721) implements this constitutional provision pertaining to equalization by county boards of equalization. Section 1603 pertains to applications for reduction in an assessment, providing as follows:

"(a) A reduction in an assessment on the local roll shall not be made unless the party affected or his agent makes and files with the county board a verified, written application showing the facts claimed to require the reduction and the applicant's opinion of the full value of the property.

"(b) In the case of a county of the first class, the application shall be filed between the third Monday in July and September 15. An application that is mailed and postmarked September 15 or earlier within such period shall be deemed to have been filed between the third Monday in July and September 15.

"(c) In the case of a county of the second to ninth class, inclusive, the application shall be filed between July 2 and September 15. An application that is mailed and postmarked September 15 or earlier within such period shall be deemed to have been filed between July 2 and September 15.

"(d) In all other counties, the application shall be filed between July 2 and August 26. An application that is mailed and postmarked August 26 or earlier within such period shall be deemed to have been filed between July 2 and August 26."

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1. Hereinafter all references are to the Revenue and Taxation Code unless otherwise specified.

The State Board of Equalization has adopted a regulation known as Property Tax Rule 305, Title 18, California Administrative Code, which in subdivision (d) incorporates the requirements of section 1603 and inserts the names of the applicable counties as specified by the Government Code. 2/ Subdivision (d) of Property Tax Rule 305 provides as follows:

"(d) The application shall be filed with the clerk. In Los Angeles County an application for a change of an assessment made during the regular assessment period must be filed with the clerk between the third Monday in July and September 15. In San Diego, Alameda, San Francisco, Orange, Santa Clara, San Bernardino, Sacramento, and San Mateo counties the application must be filed with the clerk between July 2 and September 15. In all other counties the application must be filed with the clerk between July 2 and August 26. An application for a change of assessment made outside the regular assessment period must be filed with the clerk no later than 60 days after the date on which the assessee was notified of the assessment pursuant to section 1605 of the Revenue and Taxation Code. Except as provided in Revenue and Taxation Code sections 619.2, 620 and 620.5 [pertaining to certain personal property of a person not required to file a property statement and real property purchased after lien date], the board has no jurisdiction to hear an application unless filed within the time specified. . . . An application filed by personal delivery to the clerk must be received by the clerk by 5:00 p.m. of the last day within the filing period. An application filed by mail that has the postage prepaid, is properly addressed and is postmarked with the date of the last day or with the date of an earlier day within the period shall be deemed to have been filed within the period. If the postmarked date is later than the last day of the period, the application shall be deemed to have been filed within the period if proof satisfactory to the board establishes that it was mailed on the last day of the period or on a day earlier within the period." (Emphasis added.)

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2. See Government Code sections 28020-28085 regarding classification of counties.

The emphasized language of Property Tax Rule 305 presents quite directly the question which has been posed--namely the clerk's authority to reject an application for reassessment filed under section 1603 (as further detailed in Rule 305(d)) where the application is filed outside the specified filing period. More specifically, must a late filing applicant be afforded a hearing by the local board of equalization regarding whether or not the board has jurisdiction to hear the application for reassessment?

It should be noted initially that a taxpayer has a right to a hearing on his property tax assessment, and if an application for a hearing is denied for insufficient legal reason, there is a denial of due process. Midstate Theatres, Inc. v. Board of Supervisors, 46 Cal.App.3d 204, 208 (1975).

The clerk's role in the application for reassessment process necessarily is ministerial, inasmuch as only the local board of equalization is empowered to pass on the sufficiency of applications. Midstate Theatres, Inc., supra at 212. The Midstate Theatres case involved a situation where the Stanislaus County Counsel had rejected an application filed pursuant to Property Tax Rule 305 because it did not show the "facts relied upon to support the claim that the board should order a change" in the assessment of value of the subject property. In passing on the Stanislaus County procedure, the court stated:

"[I]n our opinion the procedure followed by the county in rejecting applications for refunds was illegal and unauthorized by law. The procedures were established by the assessor, county counsel and the clerk of the board without the advice or consent of the board itself. Under these informal arrangements, all applications are sent to the assessor, rather than to the board, for review as to sufficiency. The assessor, the taxpayers' adversary, then makes the determination as to sufficiency and directs the clerk of the board to reject the application if he, the assessor, deems the application insufficient. Only if the assessor is in doubt does he consult with the county counsel, who serves as legal adviser to both the assessor and the board. These procedures are in conflict with the constitutional duty of the board of supervisors to act as a board of equalization and to equalize the valuations of taxable property (Cal. Const., art. XIII, § 9 [current art. XIII, § 16]), the assessor and county counsel having usurped the board's function of passing on the sufficiency of the applications. In County of Sacramento v. Assessment Appeals Bd. No. 2, supra, 32 Cal.

App.3d at page 663, the court said: 'Any quasi-judicial body, such as the assessment appeals board, has the right to pass upon its own jurisdiction in the first instance. (United States v. Superior Court (1941) 19 Cal.2d 189, 194-195.) It is not to be denied by directions given by the county counsel to its clerk not to calendar a request for equalization, or a ukase that it has no jurisdiction to proceed.'

"The holding herein, of course, is not to be construed to prevent the assessor and county counsel from making recommendations to the board or advising applicants as to what their recommendations may be." Midstate Theatres, Inc. v. Board of Equalization, supra at 212.

Accordingly, only the local board of equalization has the right to pass upon its own jurisdiction (as granted by Cal.Const., art. XIII, § 16) in the first instance. The clerk of the board is without authority in that regard.

The opinion in the Midstate Theatres case does, however, suggest a possible resolution to the practical problem of handling untimely filed applications. The court notes that the Stanislaus County "procedures were established by the assessor, county counsel and the clerk of the board without the advice or consent of the board itself." (Emphasis added.) Yolo County might avoid the defect in the Stanislaus County procedure if the board of equalization, in the exercise of its quasi-judicial function, issued carefully drawn instructions to the board's clerk for the processing of late filed applications. The clerk could then review the objective data within the specific guidelines established by the local board, such as date of mailing, date stamped into the clerk's office, etc., to determine whether an application has been filed untimely. In those situations where the clerk determines that an application has been untimely filed, the clerk could then notify the applicant in writing of such determination. The clerk's letter could also advise the applicant that if he disagrees with the clerk's determination, he may petition the board to reconsider the decision regarding the timeliness of the application. The board could then either deny a petition for reconsideration or grant a hearing pertaining to the issue of the timeliness of the application. Such a procedure, based on objective guidelines to the clerk, issued by the local board, would provide a court with a basis for holding that the application was properly handled and that the applicant had been afforded due process of law.

In conclusion, only the local board of equalization has the right to pass upon its own jurisdiction in the first instance. However, the board might establish certain specific guidelines for the clerk to follow in determining which applications were untimely filed, and direct the clerk to notify such applicants of such fact and that they may petition the board to reconsider the decision. The board itself has the ultimate responsibility to rule on the question of its own jurisdiction.

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