Mr. Glenn L. Rigby January 22, 1980

James M. Williams

Appeals Board's Jurisdiction

Your memo of December 27 indicated that you question the conclusion that an appeals board does not have jurisdiction to hear a legal issue only. On its face the conclusion is incorrect as stated because the courts have held:

> Any quasi-judicial body, such as the assessment appeals board, has the right to pass upon its own jurisdiction in the first instance. County of Sacramento v. Assessment Appeals Bd. No. 2, 32 Cal. App. 3d 654 (1973); accord Midstate Theatres, Inc. v. Board of Supervisors, 46 Cal. App. 3d 204, 212 (1975).

Since the duty of either the Board of Supervisors or the assessment appeals board, sitting as a board of equalization for a county, is to equalize the value of property by adjusting individual assessments (Cal. Const., Art. XIII, Sec. 16), it follows that any alleged overvaluation invokes the jurisdiction to equalize. This jurisdiction empowers the board to determine for itself whether these are questions of fact or matters pertaining to valuation which the board has special competence to decide, Starkist Foods, Inc. v. Quinn, 54 Cal. 2d 507, 511 (1960), or which might be resolved in the taxpayer's favor, thereby making further litigation unnecessary, Stenocord Corp. v. City and County of San Francisco, 2 Cal. 3d 984, 987 (1970).

There is no appellate decision of the California courts which holds that a board of equalization has no jurisdiction to decide purely legal issues. In fact, there are many such cases in which the taxpayer has first resorted to the board (presumably to insure administrative exhaustion in view of Stenocord) and later has had the appellate court pronounce that relief need not have been sought before the board. In reviewing these decisions of the board, the courts have applied an independent

Equalization

standard which gives no weight thereto, Board of Supervisors v. Archer, 18 Cal. App. 3d 717, 724 (1971). As a practical matter, a board is routinely required to decide legal issues in situations where the facts are not in dispute, i.e., which is the proper method of appraisal in the valuation of a specific property.

Although it may seem to be a fruitless act in that the decision of the board is preordained by constitution, statute, regulation or court precedent, it is, nevertheless, inescapable that any alleged overvaluation entitles the applicant to his day before the board. Having reached this conclusion, it is then possible to consider the two more troublesome and underlying questions; first, does every application require a full evidentiary hearing before the board, and secondly, what are the constraints on a recalcitrant board that refuses to apply a statute or regulation that is patently unambiguous and directly on point.

In the first situation, 59 Ops. Cal. Atty. Gen. 182 and Midstate suggest a streamlined procedure whereby the board could issue carefully drawn instructions to its counsel and clerk for the processing of single, legal issue applications. Those that meet with the selected criteria could be consolidated and acted upon by the board in one, limited hearing. Such a procedure would meet the minimum requirements of procedural due process as specified by Midstate. If, however, in this instance or in an individual hearing the board refuses to follow the advice of its counsel on a legal issue, the second underlying question comes into play.

Decisions of a board of equalization may not be arbitrary, in excess of discretion or in violation of the standards prescribed by law when the board rules on a legal question, Bret Harte Inn, Inc. v. City and County of San Francisco, 16 Cal. 3d 14, 23 (1976). Cal. Const., Art. III, Sec. 3.5, provides:

> An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
>
> (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional....
>
> (b) To declare a statute unconstitutional.

> (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute....

Taken together, the foregoing should provide sufficient restraints on a reasonable board. In practice, however, the assessor and board counsel have been confronted by unreasonable and obstinate boards that have either patently disregarded the legal standards or more subtly have interpreted language in a manner that avoids application of the standard. In these instances, it would seem that the options are limited to court challenge or mere acquiescence. Upon reflection, a parallel can be drawn to the choices a litigant faces when confronted with a similar decision of a trial court. The problem is rooted in the fact that the burden falls upon the aggrieved party to challenge the decision maker. A possible solution may be had by a legislative shift of the burden. For example, recently the Los Angeles County Assessor refused to follow the original package doctrine and later refused to allow the transshipment exemption. His position has been upheld in Michelin and Zee Toys, but the burden was placed on the challenging taxpayers to appeal despite the fact the Board and major of counties were on the other side of the issue. In response, AB 3669, Ch. 1188, Stats. 1978, added Section 538 to the Revenue and Taxation Code, which, in effect, simply shifted the burden to the assessor to establish the validity of his position when he proceeds contra to existing legal standards.

This solution may not seem applicable to a board because in the assessor context sanctions are provided by way of attorney fees and costs to the aggrieved taxpayer. However, difficult as though it may seem, a statute could be drawn that would function in a similar manner and require extraordinary appropriations from the supervisors to the assessor and his counsel. It would foster a similar result.

JMW:fr

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March 28, 1980

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Dear Mr. Fallon:

Assessor's Allocation of Value
Between Land and Improvements

Per our recent telephone conversations we have researched the question as to whether or not an applicant for an assessment appeal has an absolute right to be heard by the board when the only ground stated is an allocation of value that differs only from the assessment in apportionment but not in total value. We have concluded that the issue is one of jurisdiction and it should not be governed by a procedural rule such as 324(b).

The subject matter jurisdiction of a county board of equalization is defined by the mandate of California Constitution Article XIII, Section 16 to wit: equalize the values of all property on the local assessment roll by adjusting individual assessments. The courts have held that it is the board's duty to determine their jurisdiction, Sacramento County v. Assessment Appeals Board, 32 Cal. App. 3d 654. Since California Constitution Article XIII, Section 13 directs that land and improvements shall be separately assessed and that the board is mandated to adjust assessments, it is our view that subject matter jurisdiction is established for an appropriate appeal.

However, you will note that the board's primary duty is to equalize values and this has a direct bearing on the rationale behind Section 13. The purpose therein is to establish the separate values that are necessary only when special assessments are applied to the assessor's roll. In such instances, the special rate would apply only to the value of the land and not the improvements. Here it is clear that the exercise of jurisdiction by the board to equalize the value of land would result in relief to the applicant by way of a reduced special assessment.

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In the case of those applicants before your board there is no showing that a reallocation will result in any relief from Santa Clara County ad valorem tax or special assessment. Since the law will not require the performance of fruitless acts, it is our view that this is the type of appeal wherein the county board should exercise its prerogative to decline jurisdiction.

Very truly yours,

James M. Williams
Tax Counsel

JMW:fr

cc: Mr. Byron D. Athan
Deputy County Counsel