

Memorandum

To : Mr. David J. Gau, Chief
Policy, Planning & Standards Division
Property Taxes Department

Date: June 16, 1999

From : Lou Ambrose
Tax Counsel

Subject: Preliminary Hearings – Request for Legal Opinion

This is in response to your memo of April 16, 1999 to Assistant Chief Counsel Larry Augusta requesting a legal opinion concerning a resolution passed by the County Assessment Appeals Board. Through this resolution, the board adopted a rule by which the clerk may schedule a preliminary hearing if requested by one of the parties to an assessment appeal. The resolution requires a hearing notice that must include a statement that the failure to attend the preliminary hearing will result in the denial of the application for lack of appearance. However, the notice of denial for lack of appearance shall include a statement that the applicant may file a written request for reconsideration within 60 days of the denial notification. You question whether an assessment appeals board has authority to adopt such a resolution and, if so, whether the resolution may implement a policy to deny an application for lack of appearance at the prehearing.

As explained below, a county board of supervisors, and not the assessment appeals board, is vested with constitutional authority to adopt rules of procedures governing the conduct of an assessment appeals board. The failure by the board of supervisors to properly adopt the resolution/rule renders it void and unenforceable. For that reason, a response to your second question is unnecessary because the validity of the provisions of the rule is not in issue.

Legal Analysis

AAB Authority to Adopt Rules

Can an assessment appeals board adopt a resolution? Article XIII, section 16 of the California Constitution provides that county boards of supervisors shall adopt rules of notice and procedures for county assessment appeals boards.

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Section 16 of Article XIII of the Constitution provides for promulgation of local rules governing the conduct of assessment appeals proceedings. That section provides in pertinent part that

County boards of supervisors shall fix the compensation for members of assessment appeals boards, furnish clerical and other assistance for those boards, *adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions*, and may provide for their discontinuance.

Prior to the revision of Article XIII in 1974, the foregoing provision appeared in former section 9.5 in the same terms. Thus, the plain meaning of the language of section 16 specifically provides that a board of supervisors shall adopt rules of notice and procedures and does not authorize an assessment appeals board to adopt rules. It is well-settled that where the plain meaning of language is clear, courts should not depart from that interpretation. *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 131. Therefore, it is our view that an assessment appeals board has no legal authority to adopt a resolution establishing a local rule that provides for preliminary hearings.

In view of the foregoing conclusion that the rule is legally invalid *ab initio*, it is unnecessary to respond to your second question concerning the validity of one of its provisions.

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