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June 8, 1988

The Honorable Emil G. Shubat
Assessor of Sutter County
P.O. Box 1555
Yuba City, CA 95992

Dear L.

This will confirm our conversation on May 31, 1988 regarding the question of when an assessor may set the fees for providing information to the public. In connection with this discussion you furnished to me copies of an April 27 memorandum to County Counsel Darrell Larsen from Personnel Director David Mackowiak, Mr. Larsen's opinion dated May 23, 1988, and your memorandum to Mr. Larsen on this subject dated May 26, 1988.

The provisions relating to disclosure of assessor's records and the requirements for the payment of fees in connection with such disclosure are found at Revenue and Taxation Code section 408 and following. As recognized in Mr. Larsen's opinion, section 408 generally provides that any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor are not public documents and are not open to public inspection. In this connection, section 409 contains a general fee requirement specifying that if the assessor provides information or records which the assessor is not required by law to prepare or keep then the "county" may require that a fee reasonably related to the actual cost of providing that information be paid by the party receiving it. Thus, the general rule is that to the extent the assessor does disclose information the fees for that disclosure may, within the specified limits, be established and imposed by the county.

In addition to this general rule, however, the Legislature has enacted special provisions dealing with specific types of information. Section 408.1 requires that the assessor maintain a list of property transfers which have occurred within the preceding two-year period. Subdivision (d) requires that the list be open to public inspection and provides that the "assessor" may require the payment of a fee to reimburse the agency for the administrative cost incurred in such inspections. The use of the term "assessor," as distinguished from the term "county" used in section 409, indicates a legislative intent that with respect to

the property transfer lists, the assessor, and not the county, establish the inspection fees for this specific type of information. Subdivision (e) provides that the section has no application to any county with a population of under 50,000 people, as determined by the 1970 federal census. Thus, if the 1970 census for Sutter County reflected a population of 50,000 or more, the provisions of section 408.1 apply and they permit you to establish the inspection fees for property transfer lists.

Section 408.3 is another special section providing that property characteristics information maintained by the assessor is a public record open to public inspection. Subdivision (c) states, in part, that notwithstanding any other provision of law, "if the assessor provides property characteristics information at the request of any party, the assessor may require that a fee . . . be paid by the party receiving the information." The subdivision further provides that "all revenue collected by the assessor for providing information under this section shall be used solely to support, maintain, improve, and provide for the creation, retention, automation, and retrieval of assessor information." This language expresses a clear intent on the part of the Legislature to empower the assessor, as distinguished from the county, to establish and collect fees for disclosure of any property characteristics information. Moreover, the Legislature has specifically limited the uses to which the fees collected by the assessor may be used. That is, the use is limited solely to the support, maintenance, improvement and provision of assessor information systems.

Subdivisions (e) and (f) of section 408.3 provide:

> "(e) Except as provided in subdivision (f), this section shall apply only to a county with a population which exceeds 715,000.
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> (f) In any county with a population of 715, 000 or less, the assessor may make property characteristics information open to public inspection."

Mr. Larsen's opinion concludes that section 408.3 has no application in Sutter County which has a population of less than 715,000 and that any fee established for disclosure of property characteristics information is subject to section 409. He states, therefore, that approval of the county (i.e. the Board of Supervisors) is required for the setting of fees for this type of information.

After reviewing the language of section 408.3 and its legislative history, we must respectfully disagree with Mr. Larsen's conclusion. We believe that the correct interpretation of subdivisions (e) and (f) is to provide assessors in counties with

populations of 715,000 or less with the option of either not providing any property characteristics information or, in the alternative, providing such information pursuant to the provisions of section 408.3 including those provisions relating to the establishment and collection of fees by the assessor. This intention is made clear by the language of subdivisions (e) and (f). Although subdivision (e) provides that the section only applies to counties with populations over 715,000, it specifically recognizes subdivision (f) as an exception to this limitation. As the exception to subdivision (e), subdivision (f) allows the assessor the option of making property characteristics information subject to public disclosure. In exercising this option, the assessor falls within the exception recognized in subdivision (e). In subdivision (c), the Legislature has made it clear that whenever the assessor provides property characteristic information it is the assessor who will establish and collect the fee, notwithstanding any other provision of law, including section 409. Thus, a careful reading of section 408.3 does not support Mr. Larsen's conclusion.

Section 408.3 was added by Chapter 1511 of the Statutes of 1986 (SB 1653, Campbell) which was enacted on September 30, 1986. A review of the Board's bill analysis of SB 1653, as amended July 2, 1986, indicates that the amendment of subdivisions (e) and (f) was viewed as making the provisions of 408.3 optional in the smaller counties. More importantly, this view is reflected in the official Legislative Counsel's Digest of Chapter 1511, which states in part:

> "This bill would supplement the above provisions by specifying that information relating to property characteristics, as specified, is a public record and open to public inspection. This bill would make these supplemental provisions applicable in all counties with a population in excess of 715,000 and would permit their application in any county with a lesser population.
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> "This bill would permit the assessor of each affected county to require the payment of a fee, as specified, for providing property characteristics information in the assessor's office to persons requesting the information. This bill would restrict the use of the revenues from the collection of the authorized fee to purposes connected with assessor's information."

The above quoted language makes clear that the Legislature intended to make the provisions of section 408.3 fully applicable in the smaller counties if the assessor elects to disclose

property characteristics information. In our view, therefore, if you elect to make such information public, you are empowered to establish and collect the fees imposed upon the persons receiving the information. Moreover, the fees collected by you must be used for the purposes specified in section 408.3.

In summary, section 409 provides generally that fees for assessor information shall be established by the county. Express exceptions to this rule are found, however, in section 408.1, relating to property transfer information (if the county had a 1970 population of 50,000 or more) and section 408.3, with respect to property characteristics information either where the county is mandated to provide such information or the assessor elects to make such information public.

Please feel free to contact me if you have any questions regarding the above discussion.

Very truly yours,

Richard H. Ochsner
Assistant Chief Counsel

RHO:cb
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cc: Mr. James J. Delaney
Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton