



CALIFORNIA NEWSPAPER PUBLISHERS ASSOCIATION
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March 3, 2011

Ms. Sherrie Kinkle
State Board of Equalization
Property and Special Taxes Department
450 N Street
P.O. Box 942879
Sacramento, California 94279-0064

Re: **Comments in Support of Public Disclosure of Possessory Interest Information Submitted to Assessors**

Dear Ms. Kinkle:

I am writing on behalf of the California Newspaper Publishers Association (CNPA) to express the Association's support for the public disclosure of reports prepared by state and local agencies that are submitted in compliance with California Revenue and Tax Code Section 480.6.

Pursuant to Section 480.6, state and local agencies are required to report information about possessory interests to assessors so that the assessors can properly appraise and tax the possessory interests. The Board created Form BOE-502-P (Annual Usage Report) to be used by assessors to obtain information about possessory interests from the agencies that are required to report the information.

Form BOE-502-P contains a statement that reads: "This is a written request made pursuant to Sec. 480.6 of the Revenue and Taxation Code . . . This report is not a public document. The information contained herein will be held secret by the Assessor (Sec. 451 Rev & Tax Code); it can only be disclosed to the district attorney, grand jury, and other agencies specified in Sec 408 of the Rev & Tax Code. Attached schedules are considered to be part of the report."

Section 451, which is cited as authority for assessors holding this information in secret states, "All information requested by the assessor or furnished in the property statement shall be held secret by the assessor. The statement is not a public document and is not open to inspection, except as provided in Section 408."

The information that is contained in the Annual Usage Report is not information that is requested by assessors instead it is information that is required by law to be reported to the assessors. It is therefore not prohibited from being disclosed pursuant to Section 451. Moreover, the California Constitution requires a narrow interpretation of Section 451 in any analysis that could limit the right of public access to Annual Usage Report information. Specifically, Article I, Section 3 (b)(2) of the California Constitution provides, "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.

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The narrow interpretation of the application of Section 451 to information contained in the Annual Usage Report as required by Article I, Section 3 (b)(2) can lead to only one conclusion: The secrecy provision of Section 451 cannot be applied to the information that is required to be reported pursuant to Section 480.6 and any information contained in the Annual Usage Reports is required to be publicly disclosed.

The Board staff's legal opinion issued February 8, 2011, reaches the same conclusion: Annual Usage Reports are subject to disclosure as a public record. The opinion recommends that the form should be changed to strike the "secret" admonition and replaced with one that indicates that the report and its attachments are public records. CNPA wholeheartedly agrees with this conclusion.

CNPA is troubled, however, by a statement at the bottom of page 4 of the opinion that is inconsistent with the overall analysis and conclusion. In the last paragraph on page 4 the opinion states that "any possessory interest information provided by a public agency on a change in ownership statement is not subject to public disclosure."

Thus, after concluding that possessory interest information contained in an Annual Usage Report is publicly disclosable, the opinion states that assessors may hold in secret the very same information that would otherwise have to be disclosed if it is simply placed in a different folder. In other words, the opinion gives carte blanche to a state or local agency to comply with Section 480.6 by conveying possessory interest information to an assessor in a Preliminary Change in Ownership Statement or a Change in Ownership Statement instead of an Annual Usage Report and thereby avoid public disclosure of the Possessory Interest information. This would produce an absurd result that is not only inconsistent with Article I, Sec 3 of the State Constitution but also prohibited by the Supreme Court in its decision in *Commission on Peace Officers Standards and Training (Post)v. Superior Court*, 42 Cal4th 278 (2007).

The Supreme Court in *POST* confronted an issue similar to that raised on page 4 of the Opinion: whether certain identifying information about police officers that was publicly disclosable could nonetheless be concealed from the public and disclosed only under certain statutorily prescribed circumstances based on where the information was stored.

The Supreme Court rejected the idea that the disclosability of a record hinged on where the record was located rather than the content of the record:

"We consider it unlikely the Legislature intended to render documents confidential based on their location, rather than their content. We commented on a similar question of statutory interpretation in *Williams v. Superior Court* (1993) 5 Cal. 4th 337 at p. 355. There we addressed the Act's exception for law enforcement investigatory files. We . . . stated that **the law does not provide that a public agency may shield a record from public disclosure, regardless of its nature, simply by placing it in a file labeled investigatory.**" (Emphasis added) *POST*, supra at p. 291.

Additionally, the Court in *POST* examined the interplay of two statutes that, on their face, seemed to work at cross-purposes and concluded,

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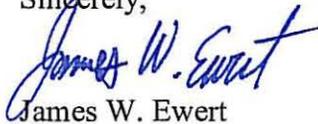
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“ . . . [O]ur task is to select the construction that comports most closely with the Legislature’s apparent intent, with a view to promoting rather than defeating the statute’s general purpose, and to avoid a construction that would lead to unreasonable, impractical, or arbitrary results.” *Post supra* at p. 290

It is difficult to conjure up a more unreasonable, impractical or incongruous result than an interpretation of existing law that would permit a requester to obtain Possessory Interest information from a state or local agency but would be denied access to the very same information held by an assessor because the information is tucked into a Preliminary Change in Ownership Statement or a Change in Ownership Statement.

CNPA respectfully requests that the Board rejects the interpretation articulated in the last paragraph on page 4 of the February 8, 2011 Opinion when it considers the confidentiality issue for the Form BOE-502-P and any related policies.

Sincerely,



James W. Ewert

CNPA Legal Counsel

cc: Honorable Jerome Horton
Honorable Betty Yee
Honorable George Runner
Honorable Michelle Steel
Ron Redfern, CNPA President, Publisher, The Press-Enterprise
Karlene Goller, CNPA Governmental Affairs Committee Chairwoman, Vice President and Deputy General Counsel,
Los Angeles Times
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