

Memorandum

To : Honorable Dean Andal

Date: May 22, 2000

From : Timothy W. Boyer
Chief Counsel

Subject : *Request for a Legal Opinion on Confidentiality under Revenue and Taxation Code Section 833(c)*

This is in response to your request for a legal opinion dated May 16, 2000. In that request, you pose three questions. The questions and our responses are set forth below.

1. When the auditor or the assessor of the county or city obtains BOE records pursuant to Revenue and Taxation Code section 833(c), is the auditor or the assessor bound by the same or similar confidentiality provisions as the BOE?

Yes.

Subdivision (a) of section 833 of the Revenue and Taxation Code provides as follows:

Except as provided herein, all information required by the board or furnished in the property statement shall be held secret by the board. Information and records in the board's office which are not required to be kept or prepared by the board are not public documents and are not open to public inspection.

This statute is buttressed by Government Code section 15619. The terms and conditions of section 15619 prohibit both the board and board staff from divulging "any information, other than the assessment and the amount of taxes levied, obtained . . . from any company. . . ." In addition, Evidence Code section 1040 provides a privilege for official information that appears to be applicable to the information contained in property statements. (See Witkin, 2 Calif. Evidence 3d §1225 (Bancroft-Whitney, San Francisco); *Gallagher v. Boller* (1964) 231 Cal.App.2d 482, 489-490; see also 68 Op. Atty Gen. Cal. 209 (1985).) Pursuant to section 1040:

- (1) As used in this section, "official information" means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.
- (b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official

information, if the privilege is claimed by a person authorized by the public entity to do so and:

- (1) Disclosure is forbidden by . . . a statute of this state
(Emphasis added.)

Thus, not only is the board required to hold all taxpayer information furnished in property statements in secrecy, but such information is also privileged under Evidence Code section 1040. An exception to this requirement of confidentiality is found in subdivision (c) of Revenue and Taxation Code section 833:

Except as provided in Section 38706, the board may provide any assessment data in its possession to the assessor of any county. When requested by resolution of the board of supervisors of any county, or the city council of any city which prepares its own local roll, the board shall permit the auditor or the assessor of the county or city, or any duly authorized deputy or employee of that officer, to examine any and all records of the board.

Subdivision (d) provides that the board shall disclose information to “law enforcement agencies, grand juries, and other duly authorized legislative or administrative officials of the state pursuant to their authorization to examine these records.” Subdivision (e) relates to the disclosure of certain information of the tax officials of other states, provided that they execute a written secrecy agreement. Upon receiving a request for confidential information under subdivisions (c) or (e), the “board shall promptly notify the state assessee to which the request relates”

Local assessors have a confidentiality statute of their own. Revenue and Taxation Code section 451 provides that “all information requested by the assessor or furnished in the property statement shall be held secret by the assessor.” The exceptions to this rule are set forth in section 408. Among those permitted to obtain local assessment information from assessors under section 408 are the board of supervisors, the county grand jury, the tax collector, and various state governmental agencies. Thus, the specific persons and entities permitted to view and obtain county assessment data from local assessors is different from those entitled to obtain state assessment information from the board. In addition, Revenue and Taxation Code section 408 provides a far broader group of potential information recipients than does section 833. Notably, under section 408, the local board of supervisors may receive county assessment data from the assessor, while section 833 provides only that local assessors and auditors – and their authorized deputies and employees -- may obtain state assessment data. (See Board Property Tax Annotation 260.0040, C 8/20/96.)

Turning now to your precise question, once an assessor has acquired assessment data under the provisions of section 833(c), is the assessor also bound by the restrictions of section 833? In our opinion, the answer is yes. Documents that are confidential and privileged – such as the property statements of state assessees – remain so as long as the privilege is not waived and they do not become public information. (Witkin, 2 Calif. Evidence 3d, *supra* at §1075; See Evidence Code section 912(a); Marcus The Perils of Privilege: Waiver and the Litigator, 84 Mich. L. Rev.

1605 (1986); *Wilson v. Superior Ct. of Sacramento Co.* (1976) 63 Cal.App.3d 825; *People v. Tockgo* (1983) 145 Cal.App.3d 635.) While a voluntary disclosure to a third party often is enough to find a waiver of a privilege, there is no such waiver if the disclosure is not voluntary. (Witkin, 2 Calif. Evidence 3d, *supra* at §1080; See *Andrade v. Superior Court of Los Angeles Co.* (1996) 46 Cal.App.4th 1609; *In re Steinhardt Partners, L.P.* (1993) 9 F.3d 230.)

In this case, the very statute that makes the assessment data confidential – namely, section 833 – also provides for the board’s disclosure of the data to county assessors. Accordingly, when the board provides such information to a county assessor it is not voluntary; accordingly, there is no waiver of the privilege. The mere fact that the information has been provided to a designated recipient of the information under the express terms of the statute does not abrogate the confidentiality of the information protected by the statute nor expand the group of potential recipients of such protected information. The county assessor receives the protected information under the same statute as the board and, in our opinion, is under the same duty of confidentiality and limitations in the scope of potential disclosure as the board. While there is no direct case authority stating explicitly that county assessors are bound by the provisions of section 833, it is our opinion that, if both the board and a county assessor receive confidential data under section 833, then they both are bound by its restrictions and limitations.

In addition, even if the state assessment information is in the hands of a county assessor under section 833(c), both the duty of confidentiality provided by section 833(a) and the privilege of nondisclosure provided by section 1040 are still held by the board. And, according to the express terms of Evidence Code section 1040(b), the board may prevent a county assessor from breaching such privilege.

In summary, if a county assessor or auditor has obtained information from the board under section 833(c), then, in our opinion, that local official is not permitted to disclose the information to any third parties not specifically mentioned in section 833.¹ If the board obtains information indicating that state assessment data possibly may be disclosed to unauthorized third parties by a county assessor – or has been so disclosed – then the board should immediately assert its privilege in writing to the county assessor and consider going to court seeking a writ or similar court order preventing any further unauthorized disclosure. (*Procurier v. Superior Ct. of Monterey Co.* (1973) 35 Cal.App.3d 211.)

Thus, if the board believes that one or more county assessors are contemplating the release of privileged state assessment data, we would recommend that, at a minimum, we advise them in writing of our position on the matter and instruct them that, even though the data might be in their hands, we are a holder of the privilege and will aggressively assert our privilege to protect the secrecy of our confidential data.

2. Since section 833(a) specifically identifies and authorizes only the auditor and the assessor, or any duly authorized deputy or employee of that officer, to examine the records of the

¹ There is one possible exception to this rule. It can be argued that it is not a violation of the confidentiality statute for an assessor or auditor to disclose the information to its legal counsel as long as such disclosure is itself privileged. (See Witkin 2 Evidence 3d, *supra* at §§ 1084 and 1085.) The assessor or auditor also may deputize such legal counsel.

board, can the auditor or the assessor share the information with other city or county employees or officials, i.e., city council or the board of supervisors?

No. The county assessor can only share state assessee information that has been obtained under section 833 with those persons and entities specified in section 833; with the possible exception of the county counsel as discussed in Footnote 1.

The confidentiality statute for county assessors does not include an exception for members of city councils. (See Revenue and Taxation Code section 408(b).) Thus, even the local confidentiality statute forbids the disclosure of assessment data “not required to be kept or prepared” to a city council. While section 408 may permit the disclosure of certain assessment data to the local board of supervisors, there is no such exception in section 833 for state assessees. And, as indicated above, it is our opinion that the limitations of section 833 bind both the board and any local assessor who has obtained state assessment information from the board under section 833(c). Accordingly, in our opinion, such a county assessor or auditor who had obtained such confidential state information under section 833(c) would not have the authority to share the information with either a city council or board of supervisors.

3. Can any of the information obtained by the auditor or the assessor pursuant to section 833(c) be disclosed to the press.

For the reasons set forth above, the answer is no. Generally, for confidential taxpayer records to become available to persons or entities not statutorily authorized to examine them, it must first be determined that events have transformed the records into public information. For example, the taxpayer itself may have widely published and disseminated the information contained in the records so that such information can no longer be considered to be secret or confidential.

If you have any questions, please call Robert Lambert at 324-6593.

TWB:jd

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