



STATE BOARD OF EQUALIZATION

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September 28, 2011

The Honorable George Runner
 Second District
 500 Capitol Mall, Suite 1750
 Sacramento, CA 95814

**Re: *Alternate Assessment Appeals Board Members
 Assignment No.: 11-122***

Dear Senator Runner:

This is in response to your request for a legal opinion. You ask whether, pursuant to Revenue and Taxation Code¹ sections 1622.6 and 1612.7, the provisions to appoint an alternative assessment appeals board to hear an application for a reduction in the assessment on the local roll (Application for Changed Assessment) when the applicant is also a current member of a county board of supervisors that sits as the county board of equalization must be used in your situation described below. In our opinion, the section 1622.6 provisions may not be used to set up an alternate assessment appeals in such a situation.

Facts

In 2009, Mr. X filed three Applications for Changed Assessment with the County Clerk of the Board of Equalization to appeal the taxable values of three properties that he owns in the county. After filing, Mr. X was elected to be a member of the County Board of Supervisors. Since then, he has not been able to come to an agreement with the County Assessor (the Assessor) regarding the properties' taxable values. County does not have any appointed assessment appeals boards; rather, the Board of Supervisors sit as the County Board of Equalization to hear property equalization issues.

Mr. X requested that the Clerk of the Board of Equalization initiate the process under section 1622.6 to have the presiding judge of the County Superior Court appoint a special alternate assessment appeals board to hear his applications. We understand that this request has been denied.

Law and Analysis

Sections 1601 through 1630 cover the rules on equalization of property by a county board of equalization. Section 1601, subdivision (a) defines "county board" for purposes of Part 3, Chapter 1, Article 1 (sections 1601 through 1615) as "a county board of supervisors meeting as a

¹ All "section" references are to the Revenue and Taxation Code, unless otherwise indicated.

county board of equalization or an assessment appeals board." Thus, when used throughout these provisions, the term "county board" can mean either: (i) the board of supervisors meeting as a board of equalization; or (ii) an assessment appeals board. The statute clearly distinguishes between a board of equalization comprised of supervisors, on the one hand, and an assessment appeals board, on the other.

Section 1603 sets forth the rules for filing an Application for Changed Assessment. Part 3, Chapter 1, Article 1.5 of the Revenue and Taxation Code includes sections 1620 through 1630. Under section 1620, a county board of supervisors may by ordinance create assessment appeals boards for the county to equalize taxable property values. The supervisors may create up to five assessment appeals boards. (Rev. & Tax. Code, § 1621.) Under section 1622, the superior court presiding judge must select the three members to comprise an assessment appeals board from the persons nominated by the board of supervisors. Alternatively, the county board of supervisors may directly appoint the members of an assessment appeals board by majority vote. (Rev. & Tax. Code, § 1622.1.) Up to two board of supervisors members who have served as a member of a county board of equalization may serve on an assessment appeals board. (Rev. & Tax. Code, § 1622.2.) As in section 1601, it is clear in these provisions that the Legislature intended to distinguish between an assessment appeals board and a board of supervisors sitting as a county board of equalization.

Section 1622.6 sets forth the circumstances under which an alternative assessment appeals board must be established due to a conflict of interest with an applicant. Section 1622.6, subdivision (a)(1) provides:

An application for equalization filed pursuant to Section 1603 by a person described in Section 1612.7... shall be heard before an assessment appeals board panel consisting of three special alternate assessment appeals board members appointed by order of the presiding judge of the superior court in the county in which the application is filed.

Section 1622.6, subdivision (b)(1) provides:

(b) (1) Notwithstanding subdivision (a), at the discretion of the clerk of the board, the applications may be heard before a special alternate board formed pursuant to this subdivision consisting of three special alternate assessment appeals board members who are qualified and in good standing in another county in California.

Section 1612.7 provides:

(a) The following persons shall notify the clerk of the board immediately upon filing an application for equalization pursuant to Section 1603 on his or her own behalf, or upon his or her decision to represent his or her spouse, parent, or child in an assessment appeal:

(1) A current member of an assessment appeals board, or any alternate member, in the county in which the board member or alternate member serves.

(2) A current assessment hearing officer in the county in which the hearing officer serves.

(3) A current employee of the office of the clerk of the county board of equalization or assessment appeals board in the county in which the person is employed.

(4) A current employee of the county counsel who advises the assessment appeals board or represents the assessor before the assessment appeals board in the county in which the person is employed.

(b) An application for equalization filed pursuant to Section 1603 by a person specified in subdivision (a) or an application in which a person specified in subdivision (a) represents his or her spouse, parent, or child, shall be heard in accordance with Section 1622.6.

Under this statutory scheme, an assessment appeals board panel consisting of three special alternate assessment appeals board members must be appointed to hear an Application for Changed Assessment filed by any person listed in section 1612.7. As set forth above, the people listed in section 1612.7 include the following: (a) a current assessment appeals board member or alternate member; (b) a current assessment hearing officer; (c) a current employee of the office of the clerk of the county board of equalization or assessment appeals board; and (d) a current employee of the county counsel's office who advises the assessment appeals board or represents the assessor before the assessment appeals board.

As a member of the Board of Supervisors in County, which also sits as the County Board of Equalization, Mr. X is not a person listed in section 1612.7. That section only includes members of an assessment appeals board, and as discussed above, the statutory scheme clearly distinguishes between a county board of supervisors meeting as a county board of equalization and an assessment appeals board. (See Rev. & Tax. Code, § 1601.) Section 1612.7 continues that distinction by including in the language of the statute clerk's office employees of either the county board of equalization *or* the assessment appeals board. (See Rev. & Tax. Code, § 1612.7, subd. (a)(3).) Throughout, it is clear that the Legislature distinguished between the two bodies and in so doing its inclusion of only members of an assessment appeals board in section 1612.7, subdivision (a)(1) may only be interpreted to be intentional. Because the language is unambiguous, we see no reason to interpret the language more broadly to include members of a board of supervisors sitting as a county board of equalization.

As to Mr. X's specific claim that as a member of the Board of Supervisors sitting as County's Board of Equalization his position is also as a "current assessment hearing officer" under section 1612.7, subdivision (a)(2), we disagree. An assessment hearing officer is a specific position appointed by a county board of supervisors governed by sections 1636 et seq., and would not include any member of the board of supervisors unless so appointed.²

We have reviewed other California property tax laws to determine whether any other conflict of interest provisions would prohibit Mr. X's appeals being heard by his fellow Board of Supervisors members sitting as the county Board of Equalization, and have found none. It appears, however, that general conflict of interest provisions would require only that

² Section 1636 provides that only the persons meeting the qualifications to be a member of an assessment appeals board under section 1624 may qualify to be a hearing officer.

Mr. X personally not participate in deciding his appeals unless his participation is legally required.³

The general Government Code section dealing with government employees and conflicts of interest is found at section 87100, which provides:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Government Code section 87103, subdivision (b) provides that a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial impact on any real property in which the official has a direct or indirect interest worth more than two thousand dollars. Therefore, Mr. X has a financial interest in any decision the Board of Supervisors makes regarding his appeals and accordingly he may not participate in making that decision. However, if for any reason his participation is legally required for the decision to be made, Government Code section 87101 allows his participation without violating the general conflict of interest provision set forth in 87100.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Matthew F. Burke

Matthew F. Burke
Tax Counsel III (Specialist)

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cc: County Supervisor, District

Honorable
County Assessor

Mr. David Gau MIC:63
Mr. Dean Kinnee MIC:64
Mr. Todd Gilman MIC:70

³ The general conflict of interest statutes provided here are for informational purposes only. Thus, we strongly recommend that Mr. X contact the County Counsel's office for specific guidance and requirements.