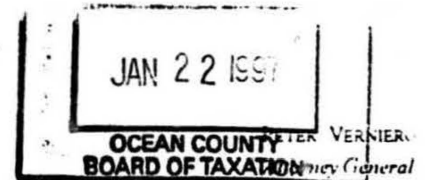


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January 7, 1997

Stephen M. Sylvester  
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Re: 97-0003 -- Whether Assessors are covered  
by L. 1995, c. 349, § 2, which requires  
Performers of Real Estate Appraisal  
Assignments to be Licensed.

Dear Assistant Director Sylvester:

You have asked whether the new requirements of L. 1995, c. 349, § 2, that persons performing real estate appraisals in New Jersey be licensed or certified, also apply to municipal tax assessors, who perform real estate appraisals in the course of their duties as assessors. It is our opinion that the law's new licensing requirements do not apply to municipal tax assessors because they do not perform appraisal assignments within the meaning of the statute, and are sufficiently regulated by a previously existing comprehensive scheme of statutory regulation.

**A. LAW**

Prior to its amendment by L. 1995, c. 349, N.J.S.A. 45:14F-21(c) required only persons who performed real estate "appraisal assignments" with respect to a "federally related transaction" to hold a New Jersey license or certification." As to all other real estate appraisals, licensure or certification was voluntary. Statement Accompanying Assembly Bill No. 1112 (Jan. 27, 1994); N.J.A.C. 13:40A-1.1.

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\*A certified appraiser is a person deemed "more knowledgeable ... and experienced" in real estate appraisals than a licensed appraiser. N.J.S.A. 45:14F-2.

## B. ANALYSIS

An assessor performs appraisals in the course of his duties of assessing property. An assessor has a statutory duty to value real property for tax purposes. N.J.S.A. 54:4-23; Switz v. Township of Middletown, 40 N.J. Super. 217, 230 (App. Div. 1956), modified on other grounds, 23 N.J. 580 (1957) (assessor's statutory duty to assess properties at true value is "mandatory and specific"). Valuation of real property is included in the definition of appraisal for licensing purposes. N.J.S.A. 45:14F-2. See also N.J.A.C. 18:17-3.3 (a)(1) which states that a person is deemed to "actually" perform the duties of an assessor if such person performs, among others, "normally or routinely ... appraisals of real property upon which assessed values are based."

Despite the performance of appraisals by tax assessors, we do not believe that the new licensing requirements apply to them. Assessors do not fall within the licensing statute because they do not perform "appraisal assignments." An appraisal assignment is defined as "an engagement." N.J.S.A. 45:14F-2. The term "engagement" is undefined. Therefore, its ordinary meaning is applicable. See N.J.S.A. 1:1-1 (words in statute to be construed by their given generally accepted meaning). "Engagement" is defined as a "contract or agreement characterized by exchange of mutual promises." Black's Law Dictionary 529 (6th ed. 1990).

There is no contract or agreement between the assessor and the municipality to appraise real property because an assessor's duty is statutory. See N.J.S.A. 54:4-1 et seq. The office of a tax assessor is legislative in nature. Ream v. Kuhlman, 112 N.J. Super. 175, 191 (App. Div. 1970), certif. denied, 59 N.J. 267 (1971). An assessor is an agent of the legislature, carrying out quasi-legislative activities. Id. at 190. His office is an "integral part" of the government, and is responsible for administering the statutory scheme of the "levy, assessment and collection of property taxes." Ibid. See also, Atty. Gen. Op. (May 13, 1992) -- "Request for Advice Concerning Whether a Municipality is Preempted by the Legislature From Passing an Ordinance Adding to a Tax Assessor's Statutory Duties and Responsibilities (opining that a municipality cannot impose additional duties on an assessor outside the statutory scheme because the "comprehensive and pervasive nature of the statutory scheme governing tax assessors is implicitly exclusive.>"). Therefore, the assessor is not performing an "appraisal assignment" as that term is defined in the appraiser licensing law.\*

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\*This may also be the reason why an assessor is not a "disinterested third party" for purposes of N.J.S.A. 45:14F-2.

Further, N.J.S.A. 45:1-1 of which N.J.S.A. 45:14F-1 (pertaining to appraisers) is a part, is entitled "Occupations and Professions." The licensing requirement is thus pursuant to a statute that regulates occupations and professions. Appraisals performed by the assessors are done as part of their regular, official duties as assessors. N.J.S.A. 54:4-23 states that a duty of an assessor is to evaluate (or appraise) the property. N.J.A.C. 18:17-3.3(1) states that appraisal performance is the function of a tax assessor. This obviously means that assessors are not independently, as a separate occupation or profession, performing appraisals. Therefore, the new law is inapplicable to them.

The proposition that the appraiser licensing law does not apply to assessors is also supported by legislative history. S249, which introduced the law regulating real estate appraisers (L. 1991, c. 68), had originally required mandatory licensing of all persons performing appraisal assignments (just as the new law now does). Section 5 of the Bill specifically exempted "a certified tax assessor employed by a county or municipal government ... whose appraisal activities are limited to appraisals in the course of his employment." A tax assessor was defined as a person serving as such holding a valid certified tax assessor certificate. See Section 2. An "appraisal assignment" was defined just as the new law now does ("an engagement for which an appraiser is employed..."). Although the Legislature must have been aware that the statutory nature of an assessor's duties did not equate them to an "appraisal assignment," it still provided for the specific exemption. This is evidence of the Legislature's specific intention of exempting assessors from the appraiser licensing requirements.

During its passage S249 was amended and the provision relating to assessors was dropped. The reasons for omitting the assessor-exemption provisions can be inferred from the nature of amendment. A Senate Committee Substitute for S249 revised the language of the Bill to mandate licensing only for appraisals in federally related transactions. See Sen. Comm. Substitute for S. 249, Statement Accompanying Sen. Comm. Substitute for S. 249 (Dec. 3, 1990). Assessors are not involved in appraisals for purposes of federally related transactions. See Reale v. Board of Real Estate Appraisers, 880 P.2d 1205, 1206 n.2 (Colo. 1994). A federally related transaction means any real estate-related financial transaction. 12 U.S.C. § 3350(4). A real estate-related financial transaction is in turn one that involves the sale, lease, purchase, investment in, or exchange of, real property; refinancing; and use of property as security. 12 U.S.C. § 3350(5). An assessor's duty is to assess local property for taxation. N.J.S.A. 40A:9-148.1.

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\*Assessors are appointed officials. N.J.S.A. 40A:9-146, 34 Michael A. Pane, New Jersey Practice § 231 (2d ed. 1993).

Thus, it must have been obvious to the Legislature that assessors were not (and could not be) involved in appraisals of federally related transactions, and any exemptions from the licensing requirements would be redundant. This was no doubt the reason why the Legislature dropped the provision relating to exemption for assessors.

The new law, which requires licenses of any person involved in real estate appraisal assignment, is an echo of the mandatory licensing provisions of S249 before its amendment. However, unlike that original bill, the new law fails to mention assessors. It would seem that this omission is a mere oversight, given that the Legislature provided for an express exemption in its initial bill for licensing appraisers although the statutory nature of an assessor's duty rendered such exemption unnecessary.

Further, the Legislature has consistently recognized that if a person is already licensed to perform an activity in the course of one profession or occupation, then such person need not possess a second license to perform the same activity. See e.g., N.J.S.A. 45:15-4 (attorneys need not be licensed as real estate brokers or salespersons, when they sell real estate within the scope of their law practice); Attorney General Formal Opinion No. 13 (1979) (no real estate license required for attorneys if real estate activities are "pertinent to and within the scope of their responsibilities in the practice of law"). See also N.J.S.A. 45:5B-7 (medical profession exempt from the licensing requirements for cosmetology and hairstyling, when these services are performed in the course of their medical profession or occupation); N.J.S.A. 45:15B-5(a) (medical profession or any other licensed professional, exempt from the licensing requirements applicable to social workers when social work is performed "within the scope" of the profession or occupation, and when these persons are "doing work of a nature consistent with the person's training"); N.J.S.A. 45:15B-5(d) (religious clerics exempt "when engaging in activities ... within the scope of the performance of [their] regular or specialized ... duties").

Consistent with the foregoing pattern of exempting persons from being licensed when they perform the licensed activity in the course of their other occupation or profession, it is our view that the Legislature intended to exempt assessors from the appraisal license requirement, and the omission of an express exemption, albeit an unnecessary provision, must have been accidental.

There are strong policy reasons supporting the regulation of assessors. See e.g., Reale, supra, 880 P.2d at 1216 (Erickson, J., dissenting) (appraiser licensing requirements should apply to assessors because property valuation "affects every taxpayer" and

the additional licensing requirement to meet this end would "ensure" that an assessor will properly perform his duties). Our Legislature has recognized that an assessor's assessment duties are of vital importance because they significantly affect the administration and collection of property tax, a major source of revenue for local government entities. To ensure the proper performance of these duties, a comprehensive statutory scheme already imposes extensive qualification requirements of assessors and provide for disciplinary measures for violation of duties. See Township of Madison v. Fiore, 112 N.J. Super. 23, 25-26 (App. Div. 1970) (citing and quoting from the Preamble to N.J.S.A. 54:1-35.25, the provisions relating to assessor qualification, that "no single factor is so important in insuring the competent and equitable administration of the property tax as that the tax assessment be made by a well-qualified person.").

Thus, assessors are held to high standards, in terms of education and qualification. N.J.S.A. 54:1-35.30 requires the holding of a tax assessor certificate as a prerequisite for appointment or reappointment as assessor. Tenure is unavailable in the absence of such a certificate. N.J.S.A. 54:1-35.32. An individual has to pass an examination to obtain the certificate. N.J.A.C. 18:17-1.1. Only an individual who has the requisite education, (four years secondary school, plus, four years college or full-time experience in real estate appraisal) qualifies for the examination. N.J.A.C. 18:17-1.3.

Assessors are treated as professionals. 34 Pane, supra, New Jersey Practice § 231. Accordingly, they have to meet high standards of professionalism in the performance of their functions. See e.g., A.G. Opinion No. 94-27 (S.C. 1994) (ad valorem tax appraisers have to maintain "high professional standards" to preserve the "credibility of the tax appraisal process."). Thus, they are subject to the Local Ethics Law, N.J.S.A. 40A:9-22.5. They are also subject to ethical guidelines imposed by the Director, Division of Taxation. See Handbook for New Jersey Assessors, Ex. I-1, I-Ex.1 (1989) (Code of Ethics adopted by the Association of Municipal Assessors of New Jersey); ¶ 103.111 at I-26 (rules For County Board of Taxation as to conduct of assessors).

Moreover, assessors are supervised in the performance of their duties by the County Boards of Taxation and the Division of Taxation. N.J.S.A. 54:3-16. The Director, Division of Taxation, is authorized to revoke or suspend an assessor's certificate for "dishonest practices, or willful or intentional failure, neglect or refusal to comply with the constitution and laws relating to the assessment and collection of taxes, or other good reason." N.J.S.A. 54:1-35.29. See also N.J.S.A. 54:1-36, 37 (same). The Director has the authority to promulgate rules to implement this statutory framework. N.J.S.A. 54:1-35.34. Thus, a tax assessor is

regulated to serve important public interests. To this end, the New Jersey Supreme Court has recognized that an assessor can be removed from his office if he violates a taxpayer's constitutional rights. General Motors v. City of Linden, 143 N.J. 336, 351 (1996).

The comprehensive regulation of assessors is further evidence that the appraiser licensing statute is inapplicable to assessors carrying out their statutorily mandated assessing functions. Both statutes differ as to the persons sought to be regulated, as well as the purpose in regulating such persons. Thus, persons pursuing certain occupations or professions (such as appraisers) are governed by N.J.S.A. 45:1-1 et seq. As previously noted, because an assessor performs statutorily imposed duties, he is not pursuing an independent profession or occupation for purposes of N.J.S.A. 45:14F-1. Further, the purpose of the licensing statutes is basically consumer protection. See e.g., Committee Statement Accompanying S. No. 497, L. 1978, c. 73, to N.J.S.A. 45:1-14 (uniform standards of disciplinary proceedings consistent with need for consumer protection); Boise Cascade Homes v. New Jersey Real Estate Commission, 121 N.J. Super. 228, 240 (Ch. Div. 1972) (law is to protect "public from fraud, incompetence, ... sharp and unconscionable practice"). The purpose of regulating assessors is to maintain public's trust in a government officer and the government and to preserve equity in assessment. In addition, the statutory goals for each law is accomplished by supervision and control by the Division of Taxation in the case of assessors, and by the Real Estate Appraiser Board, with respect to appraisers. Given the distinct scope and purpose of each law, the appraiser licensing statute cannot be considered complementary to the law governing assessors so as to regulate assessors in the performance of their official duties.

There already exists a distinct and complete body of law regulating assessors. Imposing the additional provisions of the appraiser licensing requirements would only result in an undue burden upon an assessor in the performance of his statutory duties. For example, an assessor would be governed by dual Codes of Ethics in the performance of his duties as assessor, if he is also subject to the law regulating real estate appraisers, which has its own Code of Ethics (see N.J.S.A. 45:14F-8(g)). This double dose of "checks and balances" is unnecessary and impractical. Further, an assessor would have to undergo the specific educational requirements for licensing (75 credits, N.J.A.C. 13:40A-3.3) or certification (120 to 165 credits, N.J.A.C. 13:40A-2.3, 2A.3), as well as required hours of experience (2000 hours in two to four years, N.J.A.C. 13:40A-3.4). There would not be sufficient time from the law's enactment date to the effective date (January 5, 1996 to January 4, 1997) to accomplish these requisites, just to be able to continue working as an assessor. This impracticality and

unnecessary hardship is further evidence that the Legislature did not intend to include assessors within the licensing law.

A similar problem would arise in the application of disciplinary proceedings for an improper appraisal. As already noted, an assessor's actions in the course of employment are subject to discipline by the Director, Division of Taxation. Thus, the Director can take action against an assessor for an improper appraisal. Subjecting an assessor to additional disciplinary proceedings by the Board, for improperly performing his or her duties as an assessor, would potentially result in double punishment. Not only that, there might arise conflicting opinions between the Board and the Division of Taxation as to the proper remedy in a particular case. This would lead to a bureaucratic tangle as to which decision is controlling. This could not have been the intent of the Legislature.

In conformance with this opinion that a license is not required for assessors performing appraisals as part of their statutory duties, it follows that the licensing law could apply if assessors conduct appraisals outside the scope of their statutory duties. Thus, for example, an assessor may be summoned as the township's expert witness in a litigation involving a property's assessment. See e.g., Hackensack Water Company v. Township of North Bergen, 18 N.J. Misc. 627, 629 (Bd. of App. 1940) (assessor was "technically competent to testify" as an expert witness for the municipality). In this instance, the assessor would be conducting an appraisal assignment for a government body, because he is being engaged by the municipality for the specific purpose of making an appraisal. The licensing law would apply to an assessor in such situations.\*

#### C. CONCLUSION

The appraiser licensing law does not apply to assessors merely because they perform real estate appraisals. Assessors do not perform "appraisal assignments" as the term is defined in the statute. Instead, assessors conduct appraisals as part of their official duties. Further, the licensing requirement is unwarranted because assessors are sufficiently regulated by a comprehensive set of laws and regulations, which are patterned to regulate government officials. The licensing requirement would apply, however, if

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\*Again, if an assessor is appearing as a witness to defend his or her own assessment, the licensing requirement should not apply, because the appearance is part of an assessor's duties. See N.J.A.C. 18:17-3.3(a)(4), (5) (an assessor's duties include representing the assessing office or the municipality before the court or the County Board of Taxation).

January 7, 1997  
Page 9

appraisals are conducted outside the scope of an assessor's statutory duty, such as when he or she is acting as an expert witness in a litigation.

Sincerely yours,

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