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OPINION	:	No. 80-317
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of	:	<u>December 9, 1980</u>
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SUBJECT: TAX-DEEDED LAND—This article deals with the right of a real property tax appraiser employed by a county assessor to purchase property within the county at a tax-deeded land sale. In addition, the article covers the authority (under Government Code section 1126(b)) of a county assessor to prohibit his or her employees from purchasing such land.

The Honorable L. B. Elam, County Counsel, County of Sacramento, has requested an opinion on questions which we have phrased as follows:

1. May a real property tax appraiser employed by a county assessor, lawfully purchase property within the county at a tax-deeded land sale?
2. Does Government Code section 1126(b) authorize a county assessor to prohibit his employees from purchasing property within the county at a tax-deeded land sale?

CONCLUSION

1. A real property tax appraiser employed by a county assessor may lawfully purchase property within the county at a tax-deeded land sale if he has not participated in or influenced the appraisal of the tax-deeded parcel, does not use county time or county facilities not available to the public generally and is not prohibited from making such purchase by a valid local regulation.

2. Government Code section 1126(b) authorizes a county assessor to prohibit his employees from purchasing property within the county at a tax-deeded land sale subject to the approval of and in accordance with any rules adopted by the board of supervisors of the county.

ANALYSIS

The law governing conflicts of interest in California originated in the common law and has been extended and modified by a number of statutes. Simply stated, the common law rule prohibits public officers and employees from acting for the public in any matters in which they have a private interest which might conflict with their public duties. (See 58 Ops. Cal. Atty. Gen. 345, 354–355 (1975); 59 Ops. Cal. Atty. Gen. 604, 613–614 (1976).)

General statutes which have amplified the common law rule include the Political Reform Act of 1974 (§ 87100 *et seq.*)¹ and section 1090. Section 87100 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.”

Section 1090 provides:

“Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.”

¹ Section references are to the Government Code unless otherwise indicated.

Specific conflict of interest statutes include Revenue and Taxation Code section 1365 which provides in part:

“(a) The county assessor and the employees of the assessor’s office shall not engage in any gainful profession, trade, business or occupation whatsoever for any person, firm, or corporation, or be so engaged in their own behalf, which profession, trade, business, or occupation is incompatible or involves a conflict of interest with their duties as officers and employees of the county. Conflict of interest shall include receipt of compensation or gifts from private persons or firms for advice or other services relating to the taxation or assessment of property.”

With this background, we address the first question—whether a real property tax appraiser employed by a county assessor may lawfully purchase property at a tax-deeded land sale within the county. Tax-deeded land sales are governed by Revenue and Taxation Code sections 3691 and 36981, which provide:

3691. “The tax collector may sell for lawful money of the United States or negotiable paper as the tax collector in his discretion may elect all of any portion of tax-deeded property without regard to the boundaries of the parcels in which it was deeded to the State, as provided in this chapter, unless by other provisions of law such tax-deeded property is not subject to sale. Any person, regardless of any prior or existing lien on, claim to or interest in such property, may purchase at said sale. . . .”

3698.5. “(a) The minimum price at which property may be sold pursuant to this chapter shall be an amount equal to not less than \$0 percent of the fair market value of such property.

“(b) For the purposes of this section, fair market value means the amount as defined in Section 110 as determined pursuant to an appraisal of such property by the county assessor within one year immediately preceding the date of the public auction, inclusive of the costs of appraisal, advertising, and recording. The fair market value of property as determined by the assessor pursuant to appraisal shall be conclusively presumed in favor of any purchaser or encumbrancer for value of such property.”

The assessor’s function in tax-deeded sales is to fix the minimum price by means of an appraisal. The tax collector makes the sale. In the larger assessor’s offices not all the appraisers will be involved with the appraisal of a tax-deeded parcel. In 63 Ops. Cal. Atty. Gen. 19 (1980), we concluded that Government Code section 1090 prohibited those

officers and employees who participated in or influenced the sale of surplus county property from purchasing such property. For the reasons stated in 63 Ops. Cal. Atty. Gen. 19 (1980), we conclude that by participating in the appraisal of a tax-deeded parcel, an appraiser in the assessor's office becomes disqualified to purchase the parcel at the sale under the provisions of Government Code section 1090.

Next we consider those appraisers who have not participated in or influenced the appraisal of the tax-deeded parcel. By virtue of his employment, an appraiser in an assessor's office has access to the records in that office, many of which are confidential. (See Rev. & Tax. Code, § 408 and 451.) This gives him access to information regarding property values in the county which is not available to the public generally. Of course, a particular appraiser may or may not have confidential information regarding a particular tax-deeded parcel.

Revenue and Taxation Code section 1365 prohibits county assessor employees from engaging "in any gainful profession, trade, business or occupation whatsoever" for others or in their own behalf which is "incompatible or involves a conflict of interest with their duties as officers and employees of the county. The statute does not define the quoted language nor have we found any cases construing the section. We must, therefore, apply rules of statutory construction to ascertain its meaning.

The applicable rules were summarized in *Moyer v. Workman's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230, as follows:

"We begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose; a construction making some words surplusage is to be avoided. When used in a statute words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." (Citations and quotations omitted.)

Webster's Third New International Dictionary (3d ed. 1961), page 302, defines "business" as purposeful activity, commercial or mercantile activity customarily engaged in as a means of livelihood, serious activity that requires time and effort, a particular field

of endeavor. The same work, at page 1560, defines “occupation” as an activity in which one engages, a way of passing time, the principal business of one’s life. The use of both these words together with “profession” and “trade” and the use of the words “any” and “whatsoever” in Revenue and Taxation Code section 136 S indicate the Legislature used these words in a broad sense to refer to activities other than an employee’s duties in the assessor’s office. The word “gainful” limits the scope of such activities to those engaged in for financial gain or profit. The proscription is against those activities in which financial gain is sought which are “incompatible” or involve a “conflict of interest” with the employee’s duties in the assessor’s office.

The Legislature provided some indication of its intent as to the meaning of “conflict of interest” in the last sentence of Revenue and Taxation Code section 1365(a): “Conflict of interest shall include receipt of compensation or gifts from private persons or firms for advice or other services relating to the taxation or assessment of property.” It seems clear from this example that a single transaction of receipt of money for the services specified would be within the proscription and thus a continuing course of conduct is not necessary to constitute the proscribed “profession, trade, business or occupation.” The use of the word “include” indicates that the Legislature contemplated a broader definition of conflict of interest than the example given.

To determine what other activities the Legislature considered to be in conflict with the duties of an assessor’s employee we find some aid in the rule of construction that similar phrases used in statutes on like subjects will be given the same interpretation in the absence of contrary indications of legislative intent. (*Hunstock v. Estate Development Corp.* (1943) 22 Cal. 2d 205, 210–211, *Estate of Hoertkorn* (1979) 88 Cal. App. 3d 461, 465–466.) Government Code section 1126 provides:

“(a) A local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his duties as a local agency officer or employee or with the duties, functions or responsibilities of his appointing power or the agency by which he is employed. Such officer or employee shall not perform any work, service or counsel for compensation outside of his local agency employment where any part of his efforts will be subject to approval by any other officer, employee, board or commission of his employing body, unless otherwise approved in the manner prescribed by subdivision (b).

“(b) Each appointing power may determine, subject to approval of the local agency, those outside activities which, for employees under its jurisdiction, are inconsistent with, incompatible to, or in conflict with their

duties as local agency officers or employees. An employee's outside employment, activity or enterprise may be prohibited if it: (1) involves the use for private gain or advantage of his local agency time, facilities, equipment, and supplies; or the badge, uniform, prestige or influence of his local agency office or employment or, (2) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than his local agency for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his local agency employment or as a part of his duties as a local agency officer or employee or, (3) involves the performance of an act in other than his capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other officer or employee or [sic] the agency by which he is employed, or (4) involves such time demands as would render performance of his duties as a local agency officer or employee less efficient.

“The local agency may adopt rules governing the application of this section. Such rules shall include provision for notice to employees of the determination of prohibited activities, of disciplinary action to be taken against employees for engaging in prohibited activities, and for appeal by employees from such a determination and from its application to an employee.”

(Cf. § 19251 relating to state officers and employees.) Subdivision (b) of section 1126 indicates the factors the Legislature considered significant in determining what outside activities were ‘inconsistent, incompatible or in conflict with’ the duties of local agency officers and employees. Since both Government Code section 1126 and Revenue and Taxation Code section 1365 (a) proscribe outside activities of public officers and employees which are incompatible or in conflict with their public duties, and we have found no contrary indications of legislative intent, we believe the rule of construction referred to above is applicable. We, therefore, conclude that the Legislature intended the phrase “incompatible or involves a conflict of interest with their [public] duties” in Revenue and Taxation Code section 1365 to have essentially the same meaning as the phrase “inconsistent with, incompatible to, or in conflict with their [public] duties” in Government Code section 1126(b). Thus, the factors the Legislature deemed significant in determining what activities are prohibited by Government Code section 1126(b) are likewise significant in determining what activities are banned by Revenue and Taxation Code section 1365.

Under Government Code section 1126(b) (1) an activity which involves the use for private gain or advantage of his local agency time or facilities would be a significant factor in establishing whether it conflicted with his local agency employment. It seems clear that the “local agency time” referred to in section 1126(b) is the time during which the employee is being paid to perform his local agency duties. But what are the “local agency facilities” referred to in the same section? In our view the term refers to those local agency facilities which are made available to an employee by virtue of his local agency employment and does not refer to those local agency owned facilities such as city or county highways, buildings, and records which are available for use by the public at large. (*Cf.* 53 Ops. Cal. Atty. Gen. 163, 171 (1970).)

Similarly, we believe the use of county time or facilities for private gain would be a significant factor in establishing whether a particular outside activity was incompatible with or involved a conflict of interest with the duties of an assessor’s employees under Revenue and Taxation Code section 1365. We conclude that an appraiser in an assessor’s office is prohibited by Revenue and Taxation Code section 1365 from purchasing property at a tax-deeded land sale if he utilizes, for such a purchase, either the time for which he is paid by the county to perform his county duties or county facilities, including information in the assessor’s office, which are not available to the public generally. On the other hand, we conclude that an appraiser in an assessor’s office who does not participate in or influence the appraisal of the tax-deeded ‘parcel and does not use county time or county facilities not available to the public generally, may lawfully purchase property within the county at a tax-deeded land sale unless such purchase is prohibited by a valid local regulation.

The second question is whether the county assessor has authority under Government Code section 1126(b) to prohibit his employees from purchasing property within the county at a tax-deeded land sale. This section authorizes the adoption of rules prohibiting outside activities of county employees if the proscribed activities fall within one of the four specified categories.

The third category in section 1126(b) authorizes a proscription of an activity which:

“... involves the performance of an act in other than his capacity as a local agency officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other officer or employee or the agency by which he is employed.”

In bidding on property at a tax-deeded sale, a county assessor’s employee is not acting in his capacity as a county employee. Since the bid must be accepted or rejected the bid is subject to the control of the tax collector. We believe the words “any other officer or

employee” refers to any officer or employee of the local agency by which the subject officer or employee is employed. Section 1125 defines “local agency,” as the term is used in-section 1126, to mean the “county” and would relate to the employer of a person working in a county assessor’s office. The tax collector would be “any other officer” of the agency by which the county assessor’s employee is employed.

We conclude that section 1126 authorizes a county assessor, as the appointing power, to prohibit the employees in his office from purchasing property within the county as a tax-deeded and sale subject to the approval of and in accordance with any rules adopted by the board of supervisors of the county.
