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OPINION	:	No. 81-204
of	:	AUGUST 28, 1981
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The Honorable John B. Clausen, County Counsel, County of Contra Costa, has requested an opinion on the following questions:

1. Is the requirement of Revenue and Taxation Code section 1641 that a county board of equalization establish assessed values at the value recommended by an assessment hearing officer inconsistent with a county board of equalization's constitutional duty to equalize assessed values provided in article 13, section 16, of the California Constitution?

2. If Revenue and Taxation Code section 1641 is unconstitutional, are county boards of equalization nevertheless required to enforce it by virtue of article 3, section 3.5, of the California Constitution?

3. Is an assessment hearing officer required by either case or statutory law to issue written findings of fact as part of his report and recommendation under Revenue and Taxation Code section 1640?

CONCLUSIONS

1. The requirement of Revenue and Taxation Code section 1641 that a county board of equalization establish assessed values at the value recommended by an assessment hearing officer is inconsistent with a county board of equalization's constitutional duty to equalize assessed values provided in article 13, section 16, of the California Constitution.

2. County boards of equalization are required to enforce section 1641 until a court determination on the issue as provided in article 3, section 3.5, of the California Constitution.

3. An assessment hearing officer is required by section 1611.5 of the Revenue and Taxation Code to include written findings of fact when requested by a party as part of his report and recommendation under section 1640 of the Revenue and Taxation Code.

ANALYSIS

When property is taxed by a state or local government, the taxpayer has a constitutional right to be heard at some stage of the proceedings before the tax becomes irrevocably fixed. (*Londoner v. Denver* (1908) 210 U.S. 373, 385–386.) This right is guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution. (*Ibid*.; *Universal Cons. Oil Co. v. Bryam* (1944) 25 Cal. 2d 353, 357.) Although there is a constitutional right to be heard, there is no concomitant constitutional right to be heard by a particular person or body, but it is left up to the state to determine the forum for the hearing. (*Londoner v. Denver*, *supra*, 210 U.S. at p. 385.) In California, the forum is an equalization hearing[1] before a county board of equalization as provided in article 13, section 16, of the California Constitution and sections 1601 to 1614 of the Revenue and Taxation Code.[2]

Prior to 1962 the sole body to hear the taxpayer's application was the county board of supervisors acting as a local board of equalization (see *Napa Savings Bank v. County of Napa* (1911) 17 Cal. App. 545, 548) under then section 9 of article 13 of the state Constitution. In 1962, section 9.5 was added to article 13 authorizing boards of supervisors to establish "tax appeals boards" to take over the equalization function. Article 13 was reorganized and rewritten by the California Commission on Constitutional Revision

[1] The basic authorization is for the county board of equalization to determine market value of property so that taxes will be "equalized" on similarly situated properties.

[2] All unidentified statutory references will be to the Revenue and Taxation Code.

and the new version was adopted by the voters in 1974. Under the current scheme, the equalization function is covered by section 16 of article 13 of the state Constitution. Section 16 provides:

> "The county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors*, shall constitute the county board of equalization for a county*. Two or more boards of supervisors may jointly create one or more assessment appeals boards which shall constitute the county board of equalization for each of the participating counties.
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> "Except as provided in subdivision (g) of section 11,[3] *the county board of equalization*, under such rules of notice as the county board may prescribe, *shall equalize the values of all property on the local assessment roll by adjusting individual assessments.*
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> " . . . . . ." (Emphases added.)

Procedures delineating the creation of assessment appeals boards may be found in sections 1620 to 1629. Both the county board of supervisors acting as a local board of equalization and assessment appeals boards are governed by the hearing procedures of sections 1601 to 1614. The action of a county board of equalization[4] is quasi-judicial in nature and its decisions on the value of property will not be overturned unless the record of the hearing does not support the county board of equalizations decision under the substantial evidence rule[5]. (*Damenghini v. County of San Luis Obispo* (1974) 40 Cal. App. 3d 689, 696; *Westlake Farms, Inc. v. County of Kings* (1974) 39 Cal. App. 3d 179, 183; *Madonna v. County of San Luis Obispo* (1974) 39 Cal. App. 3d 57, 61.)

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[3] This reference applies only to property owned by a local government located outside its boundaries.

This type of property is taxable and the equalization function is given to the State Board of Equalization.

[4] The reference in the opinion hereafter to "county board of equalization" will be to the board having the responsibility for the equalization function, either the county board of supervisors, acting as a local board of equalization, or an assessment appeals board.

[5] The substantial evidence rule determines the scope of review by a reviewing court for decisions of the county board of equalization. Under this rule the determination of the board on factual issues will not be overturned by the reviewing court if the record contains substantial evidence to support the board's determination. (*Hunt-Wesson, Foods, Inc. v. County of Alameda* (1974) 41 Cal. App. 3d 163, 169; see also *Bank of America v. Mando* (1951) 37 Cal. 2d 1, 5.)

The duties of the assessment hearing officer are covered by sections 1636 to 1641. The assessment hearing officer is to hear the evidence under the same rules as the county board of equalization and make a recommendation to that body. (§ 1639.) Prior to 1980, upon notification of the hearing officer's report, the applicant had the option of applying to the county board of equalization for a full hearing or asking that the hearing officer's recommendation be accepted. (§ 1640, 1641.) The county board of equalization could then accept the hearing officer's recommendation or reject it and set the application for a full hearing. (§ 1641.)

Chapter 1081, Statutes 1980, repealed sections 1640 and 1641 and enacted new sections with those section numbers. Section 1640 provides:

> "The clerk shall transmit by mail to the protesting party and shall transmit to the county board of equalization or assessment appeals board the hearing officer's report and recommendation on the assessment protest. The protesting party shall be informed that the county board of equalization is bound by the recommendation of the hearing officer."

Section 1641 provides:

> Upon the recommendation of an assessment hearing officer the county board of equalization or assessment appeals board shall establish the assessed value for the property at the value recommended by the hearing officer."

These changes would take away the discretion from the county board of equalization to disagree with the recommendation of the assessment hearing officer and would take away the applicant's right to request a full hearing before the county board of equalization. The question is whether this change in the law is constitutional in light of the language of section 16 of article 13 of the California Constitution.

The nature of the equalization proceeding, whether performed by a county board of equalization or an assessment hearing officer is to weigh evidence to determine the value[6] of individual properties. This is the sole purpose of the equalization hearing. (See § 1610.8.) In this regard section 16 of article 13 describes the equalization function as equalizing "the values of all property on the local assessment roll by adjusting individual assessments." Furthermore, section 16 provides that only a county board of equalization shall perform this function and that only the county board of supervisors acting as a local

[6] After the enactment of article XIIIA of the state Constitution in June 1978, the "value" to be ascertained may not be current market value, but a base year value. The base year value will usually be the market value at the tune the property changed ownership or was newly constructed.

board of equalization or an assessment appeals board "shall constitute the county board of equalization for a county." An assessment hearing officer does not for within this provision because such an officer is neither the board of supervisors nor an assessment appeals board as defined by section 1620 *et seq*.

The state Constitution places the responsibility to equalize assessments on the local roll in the county board of equalization. Neither the county board of equalization nor the state Legislature may abrogate this responsibility. It has been held that the board of supervisors may not delegate to others powers conferred upon it which call for the exercise of reason, judgment or discretion. (*Holley v. County of Orange* (1895) 106 Cal. 420, 424; *House v. Los Angeles County* (1894) 104 Cal. 73, 79, 17 Ops. Cal. Atty. Gen. 161, 163 (1951); see also *Skidmore v. County of Amador* (1956) 7 Cal. 2d 37, 39.) More particularly, it has been held that the county board of equalization could not delegate the ultimate responsibility to make the final decision to others but it could delegate fact finding powers to others. (*Universal Cons. Oil Co. v. Bryam*, *supra*, 25 Cal. 2d 353, 360; 54 Ops. Cal. Atty. Gen. 154, 157 (1971).)

It has also been held that the state Legislature cannot expand the meaning of a constitutional amendment by subsequent legislation, since an expansion would be equivalent to a constitutional amendment. (*Forster Shipbldg. Co. v. County of L.A.* (1960) 54 Cal. 2d 450, 456; *Stribling's Nurseries, Inc. v. County of Merced* (1965) 232 Cal. App. 2d 759, 762; 63 Ops. Cal. Atty. Gen. 524, 530 (1980).) Although the Legislature can clarify a constitutional amendment which has a doubtful or obscure meaning or which is capable of various interpretations (*Delaney v. Lowery* (1944) 25 Cal. 2d 561, 569), it cannot change the meaning intended by the constitutional framers. (See also *Nunes Turfgrass, Inc. v. County of Kern* (1980) 111 Cal. App. 3d 855; *Lucas v. County of Monterey* (1977) 65 Cal. App. 3d 947.)

Article 13, section 16, provides in very clear language that only a county board of equalization shall adjust the individual assessments to equalize the local assessment roll. We conclude that the California Constitution provides in article 13, section 16, that only a county board of equalization may be invested with the ultimate responsibility of weighing evidence and adjusting individual assessments for equalization of property taxes. The Legislature may not provide that an assessment hearing officer perform this function; therefore section 1641 is in conflict with the express terms of article 13, section 16, of the state Constitution.

The next question is whether, without a court adjudication of the constitutionality of section 1641, a county board of equalization may refuse to follow section 1641 in light of article 3, section 3.5, of the state Constitution. Section 3.5 as adopted in June 1978 provides:

"An administrative agency, *including an administrative agency created by the Constitution* or an initiative statute, has no power:

"(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless and appellate court has made a determination that such statute is unconstitutional;

"(b) To declare a statute unconstitutional.

"(c) To declare a statute unenforceable, or refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations." (Emphasis added.)

Section 3.5 of article 3 prohibits an "administrative agency" from refusing to follow a statute before an adjudication of unconstitutionality by a court. As we stated in 62 Ops. Cal. Atty. Gen. 788, 790–791 (1979):

"Section 3.5 does not define the term 'administrative agency.' In common parlance, the term 'administrative' pertains to the executive branch of government. (*Cf.* Webster's New Internat. Dict. (3d ed. 1961) p. 28.) Thus, it has been stated that acts which are in furtherance of the execution of debated legislative policies and purposes or which are devolved upon a public agency by the organic law of its existence are deemed as acts of administration and classed among those governmental powers properly assigned to the executive department. (*Hubbs v. People ex rel. Department of Public Works* (1974) 36 Cal. App. 3d 1005, 1008–1009; *Hughes v. City of Lincoln* (1965) 232 Cal. App. 2d 741, 744–745; and *cf.* 61 Ops. Cal. Atty. Gen. 159, 180 (1978).)

"In its stricter connotation, an 'administrative agency' is a governmental body, other than a court or legislature, invested with power to prescribe rules or regulations or to adjudicate private rights and obligations. (2 Cal. Jur. 3d Admin. Law § 2, pp. 2 19–220; 3 Davis, Administrative Law Treatise (1958) § 1.01, p. 1.)[8][7]

[7] [8]Administrative agencies, in the exercise of their adjudicatory powers, proceed as quasi-judicial bodies as distinguished from a court. (*Chinn v. Superior Court* (1909) 156 Cal. 478, 481–482, *Stevens v. Board of Education* (1970) 9 Cal. App. 3d 1017, 1021.) Although such an agency may be constitutionally authorized to exercise a form of judicial power, it does not follow that it

A county board of equalization falls both of the foregoing definitions of administrative agency. First, assessment of property for tax purposes is a function of the executive branch of government. (*Domenghini v. County of San Luis Obispo*, *supra*, 40 Cal. App. 3d at p. 696.) These tax proceedings have four steps: (1) assessment, (2) equalization, (3) setting of tax rates, and (4) collection. (*Bandini Estate Co. v. Los Angeles* (1938) 28 Cal. App. 2d 224, 227.) The county board of equalization is a part of the administration of the property tax laws and, like the assessor, board of supervisors (acting in its rate-setting role), and tax collector, performs one of the functions required to administer the laws. It does not follow that, merely because its sole function is quasi-judicial in nature that the county board of equalization is not a part of the legislative scheme for administration of the property tax laws. Indeed, its quasi-judicial role is what brings a county board of equalization within the stricter of the two definitions of administrative agency. The board adjudicates private rights in the sense of determining an individual's value for property tax purposes and prescribes rules and regulations to that end.

A county board of equalization falls squarely within the express terms of section 3.5 of article 3 because it is an administrative agency created by the Constitution. We therefore conclude that a county board of equalization is an administrative agency within the terms of section 3.5 and as such is bound by the provisions of section 3.5 of article 3 of the state Constitution. Under this section a county board of equalization must establish the assessed value for the property at the value recommended by the hearing officer" until such time as a court determines that section 1641 is unconstitutional.

The next question, one only peripherally related to the first two, is whether an assessment hearing officer is required to issue written findings of fact after rendering a decision. The purpose of such findings has been pointed out many times by the courts of this state. In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515, the state Supreme Court held that implicit in a court review of administrative actions is a requirement that the agency which renders the challenged decision must make sure that there is a bridge in the analytic gap between the raw evidence and the ultimate decision or order. As stated in Counts of *Amador v. State Board of Equalization, supra*, 240 Cal. App. 2d 205, concerning equalization hearings:

> "Findings on material issues delineate the basis for an administrative agency's decision. Inadequate findings impede the parties' recourse to the courts and thwart the latter in the performance of their review obligations. . . Aside from their aid to the litigants, findings are needed to aid the courts in determining whether there is sufficient evidence to support them and to

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is a judicial tribunal in the strict sense. (*People v. Western Airlines, Inc.* (1954) 42 Cal. 2d 621, 631–632.)

> enable the courts to determine whether the decision is based upon lawful principles." (*Id*., at p. 216.)

The major function of findings, therefore, is to enable a reviewing court to determine whether or not an agency has abused its discretion in taking action.

The first issue which surfaces is whether written findings are required by case law in equalization hearings. The *Topanga* court held that in a zoning dispute findings are required as a matter of law even if there is no statute requiring them. However, the findings required by *Topanga* need not be formal written findings. In the absence of a statutory requirement, administrative findings will be deemed adequate if they are sufficient to apprise interested parties and the courts of the bases for administrative action. (*Mountain Defense League v. Board of Supervisors* (1977) 65 Cal. App. 3d 723, 731; *San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal. App. 3d 584, 596.) An agency's actions will be held adequate if there is sufficient information in the decision or order to enable a reviewing court to examine the agency's mode of analysis. (*Gallegos v. State Bd. of Forestry* (1978) 76 Cal. App. 3d 945, 951–952; *Hadley v. City of Ontario* (1974) 43 Cal. App. 3d 121, 128.)

These same concepts apply to equalization hearings. The case of *Midstate Theatres, Inc. v. County of Stanislaus* (1976) 55 Cal. App. 3d 864, 877, adopted the *Topanga* rationale for findings in equalization hearings, that there must be some information bridging the gap between evidence and conclusion, but the court did not hold that written findings are required as a matter of case law in such hearings. Indeed, other cases suggest that in the absence of a statute written findings are not required in equalization hearings. The court in *County of Amador v. State Board of Equalization, supra*, 240 Cal. App. 2d 205 found that previous cases did not require written findings when the State Board of Equalization merely adopted or confirmed the assessor's action. In that case the assessor had properly described his method for the record and therefore "[t]he absence of formal findings did not prevent or impede judicial review because the assessor's description of his valuation method supplied an acceptable of unacknowledged) substitute." (*Id*., at p. 221; see also *Westlake Farms, Inc. v. County of Kings, supra*, 39 Cal. App. 3d at p. 187.) The court in Amador found that when the State Board of Equalization adopts a value different from that of the assessor there must be a basis for a court to determine whether or not the decision is arbitrary.

Case law, then, requires both a county board of equalization and an assessment hearing officer to inform interested parties and courts of the bases of its actions. This does not require written findings of fact; therefore any requirement for them to issue written findings must come from statutory law.

Section 1637 provides in part:

> Hearings before an assessment hearing officer shall be *conducted pursuant to the provision of Article I (commencing with section 1601) of this chapter* governing equalization proceedings by a county board of equalization or an assessment appeals board. . .” (Emphasis added.)

Within article 1, section 1611.5, provides:

> *“Written findings of fact of the county board shall be made if requested in writing by a party up to or at the commencement of the hearing.* . . The written findings of fact shall fairly disclose the board’s determination of all material points raised by the party in his petition and at the hearing including a statement of the method or methods of valuation used in appraising the property.
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> “. . . . . .” (Emphasis added)

Property Tax Rule No. 308 (tit. 18, Cal. Admin. Code), promulgated by the State Board of Equalization under the authority of Government Code section 15606, provides: that either the applicant or the assessor may request findings of fact under section 1611.5.

Section 1637 requires that the provisions of article 1, of which section 1611.5 is a part, apply to hearings held before an assessment hearing officer. There is no express exclusion in section 1637 for the written findings requirement of section 1611.5. Thus, it is our conclusion that section 1637 requires written findings if requested by a party for hearings held before an assessment hearing officer.

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