



Committee on Professional Ethics

Opinion #504 - 2/6/79 (68-78)

Topic: County attorney; conflict of interest

Digest: Improper for county attorney to represent real property owner in assessment review proceeding.

Code: Canon 9;
EC 5-15, 8-8;
DR 5-105.

QUESTION

May a county attorney represent private property owners in administrative or judicial proceedings to review real property assessments?

OPINION

The State Board of Equalization and Assessment was recently presented with a similar question and responded in the negative. 5 Op. Counsel SBEA 94 (1976). While this Committee differs somewhat in its analysis of the problem, we have also reached the conclusion that it would create an improper conflict of interest for a county attorney to undertake the representation of private property owners in administrative or judicial proceedings to review real property assessments.

DR 5-105 of the Code of Professional Responsibility proscribes undertaking or continuing employment if it would be likely to involve an attorney in representing differing interests. See also, EC 5-15. In addition, EC 8-8 admonishes lawyers who are public officers, whether full or part-time, not to engage in activities in which their professional interests (e.g., representation of outside clients) are or foreseeably may be in conflict with their official duties. See also, Canon 9.

The property owner's goal in any proceeding to review an assessment is the reduction of his real property taxes. The county's interest in any such proceeding, whether or not it be a named party in the proceeding, is necessarily the preservation of its tax base by supporting the maximum tax for the property in question. At the threshold, then, it would appear that the interests of the property owner and the county are adverse.

We understand that the county is not ordinarily a party to an assessment review proceeding and that it could therefore be argued that there would be no direct adversarial relationship between the county and the real property owner unless the unusual procedure provided in Section 512(a) of the Real Property Tax Law were invoked. This argument in our opinion, however, ignores the fact that county real property taxes are levied based upon assessments which are made by municipalities within the county's boundaries and, further, that the county is bound by such assessment determinations. See, Real Property Tax Law, §§ 900, et seq.

A position contrary to that which we now advance would not recognize the intimate involvement of counties in assessment matters currently mandated by the State Board of Equalization and Assessment. See, 9 NYCRR 189.16. It would also ignore the present statutory mandate for county participation in the revaluation programs being undertaken statewide pursuant to Sections 506 and 507 of the Real Property Tax Law.

The New York State Court of Appeals has indicated that questions similar to the one posed here cannot be answered without looking at the whole scheme of real property taxation as manifested in the legislative framework provided for this purpose by the Real Property Tax Law and related statutes. More specifically, the Court of Appeals, albeit dealing with a different factual circumstance, has concluded that real property tax problems must not be dealt with by "focus[ing] in on only one aspect of a larger more complex picture." Rose v. Eichhorst, 42 N.Y.2d 92, 97 (1977).

Given the realities of the assessment process as well as its effect in point of law, and consistent with the broad perspective adopted by the Court of Appeals in viewing such matters, we believe that any challenge to a municipality's assessment must be deemed directed, not only against the interests of the assessing municipality, but also against those of the county in which the municipality is located.

For the reasons stated, the question posed is answered in the negative.
