STATE OF CALIFORNIA

190.0055

STATE BOARD OF EQUALIZATION
LEGAL DIVISION (MIC:82)
450 N STREET, SACRAMENTO, CALIFORNIA
P. O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001
(916) 323-7713

MEMBER
First District
BRAD SHERMAN
Second District, Los Angeles
ERNEST J. DRONENBURG, JR.
Third District, San Diego
MATTHEW K. FONG
Fourth District, Los Angeles
GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

March 11, 1994

Mr.
San Luis Obispo County Counsel
Attn: Mr. Deputy
County Government Center, Room 386
San Luis Obispo, CA 93408

In Re: Jurisdiction of Assessment Appeals Board, Rule 302.

Dear Mr.

This is in response to your letter of February 8, 1994, to Mr. Verne Walton in which you request our opinion concerning the extent of the jurisdiction granted to the Assessment Appeals Board for determining the eligibility of a claimant's property for the welfare exemption under the limitations embodied in Property Tax Rule 302.

According to the facts provided, the [illegible] Association recently exercised an option to renew a lease for 25 years with the City of San Luis Obispo, owner of the property. Certain provisions of the lease restrict the Association's use of the property to the "promotion, development, and exhibition of arts and crafts on a non-profit basis," but do not restrict the sale of art supplies on the property. Based on the lease provisions and a factual determination that one wing of the building was not used for sales of art work, the assessor found 15% of the land and 15% of the improvements to be eligible for the exemption. The Association apparently objected and appealed the assessor's determination to the Assessment Appeals Board.

During the hearing, the question arose as to whether the Assessment Appeals Board had jurisdiction, in light of Property Tax Rule 302, to consider or to make findings on the factual issues regarding the portions of the Association's property eligible for exemption. The Assessment Appeals Board now seeks our opinion as to whether it has the power within its

jurisdiction to increase or decrease the percentage exemption from that allowed by the assessor.

For the reasons hereinafter explained, we believe that jurisdiction to make determinations and findings on the eligibility of property for the welfare exemption lies exclusively with the State Board of Equalization and the assessor.

As you are aware, pursuant to Revenue & Taxation Code Section 254.5, the welfare exemption is administered jointly by the State Board of Equalization and by county assessors. In general, a claimant for the exemption files its completed claim and supporting documents with the assessor, the assessor prepares a filed inspection report for the property which is the subject of the claim and forwards the claim, supporting documents, and report to the Board, and the Board reviews the claim and report, making the finding(s) as to the eligibility of the property for the exemption. Following its decision, the Board sends its finding sheet to the assessor with a copy to the claimant. At this point, the assessor may deny the claim of a claimant whose property the Board has found eligible for the exemption, but may not grant the claim of a claimant whose property the Board has found ineligible for the exemption. Section 254.5 does not provide any roll in the exemption process for an assessment appeals board, and there is no other statutory authorization which would allow an assessment appeals board to participate in this process or to make any determinations or findings concerning the eligibility of property for the exemption.

Consistent with the statutory scheme, Property Tax Rule 302 specifically states that the assessment appeals board's functions and jurisdiction shall not extend to grant or deny exemptions:

> * * * The board has no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied.

Were it otherwise, an assessment appeals board could, directly or indirectly, without statutory authorization, impact on the duties of the State Board of Equalization which, together with county assessors, is the agency charged with administering the exemption.

Based on the foregoing, in our view, the Assessment Appeals Board in the instant case has no jurisdiction to make findings on the factual issues concerning the portions of the Association's property that are eligible for the exemption. If the State Board of Equalization's finding is that a property is eligible for exemption but the assessor's finding results in denial of the

exemption, then a claimant may, under the applicable refund statutes, apply for a refund of the taxes paid on the property or the portion of the property denied exemption and request a hearing on the claim, which a county may or may not grant; and on the denial of the claim, the claimant may, under applicable suit for refund statutes, commence a refund action in Superior Court. If, on the other hand, the State Board of Equalization's finding results in denial of the exemption, a claimant may request a hearing on the claim, which the Board may or may not grant. If the denial stands, the claimant may apply for a refund of taxes, and upon denial, mandatory under Section 254.5, commence a refund action in Superior Court. In this circumstance, no county hearing on the claim for refund is appropriate, since the Board's finding precludes the county from finding otherwise. Such are the administrative remedies available by statute to claimants which have had their properties found ineligible for the exemption.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Sincerely,

Kristine Cazadd

Kristine Cazadd
Staff Counsel

cc: The Honorable Dick Frank
San Luis Obispo County Assessor

Mr. John W. Hagerty, MIC:63
~~Mr. Verne Walton, MIC:64~~
Ms. Jennifer Willis, MIC:70
Mr. Richard Ochsner

precednt\genexemp\94002.kec