

Opinion No. 95-1207 – June 20, 1996

Requested by: CITY ATTORNEY, CITY AND COUNTY OF SAN FRANCISCO

Opinion by: DANIEL E. LUNGREN, Attorney General
Clayton P. Roche, Deputy

THE HONORABLE LOUISE H. RENNE, CITY ATTORNEY, CITY AND COUNTY OF SAN FRANCISCO, has requested an opinion on the following question:

Does the Ralph M. Brown Act (Gov. Code §§ 54950-54962) apply to the hearings of a county board of supervisors when acting as the county board of equalization or to the hearings of an assessment appeals board?

CONCLUSION

The Ralph M. Brown Act (Gov. Code, §§ 54950-54962) does not apply to the hearings of a county board of supervisors when acting as the county board of equalization or to the hearings of an assessment appeals board.

ANALYSIS

Article XIII, section 16 of the California Constitution provides for the equalization of property values on local tax assessment rolls by county boards of equalization. It states:

"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 county 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.

"Except as provided in subdivision (g) of Section 11, 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.

"County boards of supervisors shall fix the compensation for members of assessment appeals boards, furnish clerical and other assistance for those boards, adopt rules of notice and procedures for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions, and may provide for their discontinuance.

.. The Legislature shall provide for: (a) the number and qualifications of members of assessment appeals boards, the manner of selecting, appointing, and removing them, and the terms for which they serve, and (b) the procedure by which two or more county boards of supervisors may jointly create one or more assessment appeals boards."¹

This constitutional provision has been implemented by the Legislature (Rev. & Tax. Code, §§ 1601-1645.5)² and by the State Board of Equalization (Cal. Code Regs., tit. 18, §§ 301-326; hereinafter "Rules"). Implementation by the Legislature, including the requirement that "county boards" shall meet to equalize assessments (§ 1604), can be traced back to 1939. (Stats. 1939, ch. 154.) The Legislature has regularly amended this statutory scheme over the past 50 years, including in its most recently completed session. (See, e.g., Stats. 1995, ch. 498.)

In 1953 the Legislature enacted the Ralph M. Brown Act (Gov. Code, §§ 54950-54962; hereinafter "Brown Act"), generally requiring local governments to hold their meetings in public. The Brown Act has been extensively amended by the Legislature through and including the 1995 legislative session. (See Stats. 1995, ch. 529.)

The question we are asked to resolve is which of these two statutory schemes, sections 1601-1645.5 or the Brown Act, or both, provides the procedural requirements to be followed for the hearings of a county board of supervisors when acting as the county board of equalization or alternatively of an assessment appeals board. We conclude that the hearings are governed by sections 1601-1645.5 rather than the Brown Act.

County boards of equalization and assessment appeals boards act in a quasi-judicial capacity, with their decisions and factual determinations accorded similar deference and respect as judicial decisions. (See *Shubat v. Sutter County Assessment Appeals Board* (1993) 13 Cal.App.4th 794, 800-801; *Cochran v. Board of Supervisors* (1978) 85 Cal.App.3d 75, 80; *Westinghouse Elec. Corp. v. County of Los Angeles* (1974) 42 Cal.App.3d 32, 42, fn. 6; *Madonna v. County of San Luis Obispo* (1974) 39 Cal.App.3d 57, 61; *A. F. Gilmore Co. v. County of Los Angeles* (1960) 186 Cal.App.2d 471, 476.) The procedures provided by sections 1601-1645.5 and the State Board of Equalization's Rules are tailored to provide quasi-judicial hearings, with administrative law judges often presiding. Board decisions are based

¹ "[S]ubdivision (g) of Section 11" concerns the taxation of real property owned by local governments. (Cal. Const., art. XIII, § 11, subd. (g).)

² All unidentified section references hereinafter are to the Revenue and Taxation Code.

upon evidence taken and submitted, and the hearings resemble those held under the State Administrative Procedure Act (Gov. Code, §§ 11500-11530). (See §§ 1604-1611.5, 1637-1641.1; Rules 301--326.)³ For example, section 1605.4 states:

"Equalization hearings shall be open and public *except that, upon conclusion of the taking of evidence, the county board may deliberate in private in reaching a decision.* An applicant may request the board to close to the public a portion of the hearing by filing a declaration under penalty of perjury that evidence is to be presented which relates to trade secrets the disclosure of which will be detrimental to the business interests of the owner of the trade secrets. If the board grants the request, only evidence relating to the trade secrets may be presented during the time the hearing is closed. (Italics added.)"⁴

In contrast, the Brown Act is tailored for the traditional type of meetings held by boards of supervisors, city councils, and other legislative or administrative bodies which normally conduct their business sessions in public. For example, legislative bodies of local agencies are required to designate a time for their regular meetings (Gov. Code, § 54954), post an agenda of the business they will conduct (Gov. Code, § 54954.2), permit an opportunity for members of the public to address the body (Gov. Code, § 54954.3), give public notice of any special meetings (Gov. Code, § 54956), and justify in open session that any proposed closed session is authorized (see, e.g., Gov. Code, §§ 54956.9, 54957.1, 54957.7). Of particular relevance to the issues presented herein, Government Code section 54953 states:

"All meetings of the legislative body shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter...." (Gov. Code, § 54953.)

³ In this respect we note that the Bagley-Keene Open Meeting Act (Gov. Code, §§ 11120-11132, the counterpart of the Brown Act for state agencies, states:

"Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to [Gov. Code, §§ 11500-11530]." (Gov. Code, §11126, subd. (d).)

⁴ Similarly Rule 313 provides in part:

"(i) Hearings shall be open except that:

"(1) Upon conclusion of the hearing, the board may take the matter under submission and deliberate in private in reaching a decision, and

"(2) the board may grant a request by the applicant to close to the public a portion of the hearing relating to trade secrets...."

Government Code section 54962 additionally provides:

"Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code or sections 37606 and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency."

There is no mention in the Brown Act of county boards of equalization or county assessment appeals boards. Accordingly, nothing in the Brown Act authorizes the holding of a closed session by either board.⁵

While we need not detail every difference between the procedural requirements of sections 1601-1645.5 and those of the Brown Act, it is evident that the Legislature has never considered the Brown Act, with its "exclusivity" provisions, to be applicable to county boards of equalization or assessment appeals boards. Otherwise, the Legislature would not have continued to amend sections 1601-1645.5 after the Brown Act's enactment.

We thus cannot interpret Government Code sections 54953 and 54962 in a manner that would render meaningless the requirements of sections 1601-1645.5. The Legislature's intent is clear, as demonstrated by its continued refinement of the latter statutory scheme. Statutes "must be given a reasonable and common sense interpretation . . . which, upon application, results in wise policy rather than mischief or absurdity." (*People ex rel. Deukmejian v. Che, Inc.* (1983) 150 Cal.App.3d 123, 132.) "Where reasonably possible, we avoid statutory constructions that render particular provisions superfluous or unnecessary." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 459.) "[W]hen a special and a general statute are in conflict, the former controls." (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 420.) "[T]he special act will be considered as an exception to the general statute whether it was passed before or after such general enactment." (*In re Williamson* (1954) 43 Cal.2d 651, 654; accord, *People v. Gilbert* (1969) 1 Cal.3d 475, 479-480.)

⁵ In contrast, Government Code section 11126, subdivision (x) provides with respect to the State Board of Equalization:

"Nothing in this article [§§ 11120-11132] shall be construed to prevent the State Board of Equalization from holding closed sessions for either of the following:

"(1) When considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization.

"(2) For the purpose of hearing confidential taxpayers appeals or data, the public disclosure of which is prohibited by law."

In sum, considering (1) the statutory development of sections 1601-1645.5 as they have coexisted with the Brown Act for over 40 years and (2) the need to avoid anomalous and absurd results, we conclude that the Brown Act does not apply either to the hearings of a county board of supervisors when acting as the county board of equalization or to the hearings of an assessment appeals board.

Opinion No. 96-103 – June 20, 1996

Requested by: MEMBER OF THE CALIFORNIA SENATE

Opinion by: DANIEL E. LUNGREN, Attorney General
Anthony S. Da Vigo, Deputy

THE HONORABLE ROBERT G. BEVERLY, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following question:

Is a voluntary nonprofit or proprietary agency provider of in-home supportive services performed by the agency's employees, which does not have a contract with a county to perform such services, eligible to be paid for such services by the State of California?

CONCLUSION

A voluntary nonprofit or proprietary agency provider of in-home supportive services performed by the agency's employees, which does not have a contract with a county to perform such services, is not eligible to be paid for such services by the State of California.

ANALYSIS

The in-home supportive services program (IHSS) of the Department of Social Services (DSS) provides supportive services to aged, blind, and disabled persons who are unable to perform such services themselves and who could not remain safely in their homes unless the services were so provided. (Welf. & Inst. Code, §§ 12300-12314.)⁶ The program, which is partly funded by federal block grants, is administered by county welfare departments under the supervision of DSS. (§ 12306, subd. (b); 42 U.S.C. §§ 1397-1397e.) The services, which the recipients would normally perform for themselves except for their functional limitations, include personal care services, heavy cleaning, medical appointment accompaniment, yard hazard

⁶ All references hereafter to the Welfare and Institutions Code are by section number only.



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February 16, 1996

Mr. Clayton Roche
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RE: Opinion No. 95-1207

Dear Mr. Roche:

At the request of Mr. Rodney O. Lilyquist, Senior Assistant Attorney General, the staff of the State Board of Equalization is pleased to submit for your consideration its analysis of the following question submitted to the Attorney General by San Francisco City Attorney Louise Renne.

"Does the Ralph M. Brown Act (Gov. Code, Section 54950 et seq.) apply to a county board of equalization (Cal. Const., art. XIII, Section 16; Rev. & Tax. Code, Section 1601 et seq.)?"

In our view the Ralph M. Brown Act (the "Brown Act") applies only to legislative bodies. County boards of equalization are not legislative bodies; rather, they are quasi judicial bodies. Accordingly, they are not subject to the provisions of the Brown Act.

The Brown Act was adopted to ensure that public business is conducted in public by guaranteeing the public's right to attend meetings of public agencies. (Freedom Newspapers, Inc. v. Orange County Employees Retirement System Bd. Of Directors (1993) 6 Cal.4th 821.) The major objective of the Act, which provides powers and duties common to cities, counties, and other agencies with regard to open meetings, is to facilitate public participation in all phases of local government decision making and to curb misuse of the democratic process by secret legislation of public bodies. (Cohan v. City of Thousand Oaks (1994) 30 Cal.App.4th 547.)

To that effect, Government Code Section 54953 provides that all meetings of the legislative body of a local agency shall be open and public; and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided by statute. The term "local agency" means a county, city, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency. (Government Code Section 54951.)

Section 54952 of the Government Code, as amended by Stats. 1993, Chapter 1138, defines the term "legislative body" as follows:

"(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body...."

At first blush, then, it would appear that subdivision (b) of § 54952 would make the Brown Act applicable to local boards of equalization. However, local boards of equalization are not local bodies created by state or federal statute, nor are they created by charter, ordinance, resolution, or formal action of a legislative body. They are judicial bodies created by the California Constitution.

Section 16 of Article 13 of the California Constitution provides for the creation of local boards of equalization. Pursuant to its provisions, a county board of supervisors or one or more assessment appeals boards created by the county board of supervisors constitutes the county board of equalization for a county. It is the role of the county board of equalization to equalize the values of all property on the local assessment roll by adjusting individual assessments.

Revenue and Taxation Code Section 1620 restates the constitutional provision and provides that the board of supervisors of any county may by ordinance create assessment appeals boards for the county to equalize the valuation of taxable property within the county for the purpose of taxation. (Revenue and Taxation Section 1622.2.)

In furtherance of the constitutional provisions, the Legislature has established separate procedural requirements for hearings by local boards of equalization in Articles 1 and 2 (commencing with Section 1601) of Chapter 1 of Part 3 of Division 1 of the Revenue and Taxation Code. These provisions establish a legislative scheme for local boards of equalization separate from the Brown Act: Meetings of a county board of equalization are conducted pursuant to Section 1604 of the Revenue and Taxation Code; Notice of the time of meetings is done by publication in a newspaper. (Revenue and Taxation Code Section 1601); Section 1605.4 of the Revenue and Taxation Code provides that hearings are open and public; Section 1605.6 of the Revenue and Taxation Code sets forth the requirements for notice to the taxpayer.

The courts have also recognized that a county board of equalization acts in a judicial capacity and can make its orders only on the basis of legal evidence. (A. F. Gilmore Co. v. Los Angeles County (1960) 186 Cal.App.2d 471.) The decisions of county assessment appeals board are entitled to the same deference and respect due a judicial decision. (Shubat v. Sutter County Assessment Appeals Board No. 1 (1993) 13 Cal.App.4th 794.) When a county board of supervisors, sitting as an equalization board, exercises quasi-judicial powers, the factual determinations are entitled to the same deference due to judicial decisions. (Cochran v. Board of Supervisors of Del Monte County (1978) 85 Cal.App.3d 75.)

The California Constitution in fact classifies county boards of equalization as vested with judicial power. The special expertise in property valuation assignable to county boards of equalization justifies their classification as judicial bodies. (Westinghouse Electric Corp. V. County of Los Angeles (1974) 42 Cal.App.3d 32.) The decision of a county board of

equalization is final and subject to review by the courts only for excess of jurisdiction, errors of law, abuse of discretion, or insufficiency of the evidence. (Madonna v. San Louis Obispo County (1974) 39 Cal.App .. 3d 57.)

Your office has opined that the action of a county board of equalization 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 equalization's decision under the substantial evidence rule. (64 Ops.Atty.Gen. 690 (1981) (citations omitted).)

Moreover, pursuant to the authority granted by Government Code Section 15606(c) and (f), the State Board of Equalization has determined by regulation that local boards of equalization act in a judicial capacity and act only on the basis of evidence. Local boards of equalization have no jurisdiction to grant or deny exemptions or to consider allegations that claims for exemption from property taxes have been improperly denied. Local boards of equalization have no legislative power. (18 California Code of Regulations Section 302.)

Pursuant to the above discussion, it is our view that county boards of equalization are judicial bodies to which the provisions of the Brown Act do not apply.

If you have any questions regarding our discussion, please contact Ms. Blanca M. Breeze at 322-2977.

Very truly yours,

E.L. Sorensen, Jr.
Chief Counsel

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