

(916) 323-7715

March 6, 1984

Attention: Mr. James Reed
Assistant Assessor

Dear Mr. Reed:

This is in response to your February 14, 1984, letter to Mr. Verne Walton wherein you requested our opinion regarding the confidentiality of certain data which might be included in a shared data base for single family residences and commercial/industrial properties:

"As you know, this is an exchange program of shared data between the County and Damar Corporation. For this to take place, Damar requires information from our database for such items as land use, number of structures on the parcel, number of units, square foot of building and year built. Previously, these items have been considered by this office to be confidential information, however, many Southern California Counties are now cooperating the Damar Corporation and releasing this information."

Presumably, such characteristics are utilized when valuing properties by comparison with sales of other properties: the more property characteristics available with respect to possible comparables, the more accurate and reliable the comparables actually used.

As you are aware, Revenue and Taxation Code Section 408 is intended to maintain the confidentiality of information and records in the assessor's office. Except as otherwise provided in Section 408 (b) or (c), any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor are not public documents and are not open to public inspection. See Opinion of the Attorney General No. 69/135, OAG 194, copy enclosed in this regard

Assuming the above-mentioned exceptions are not applicable, your records of property characteristics are not public documents, are not open to public inspection, but are confidential since the assessor is not required to prepare or keep them (§ 408(a)).

Revenue and Taxation Code Section 408.1, however, as added by Stats. 1980, Ch. 1349, is an exception to the "general rule", and provides, in part:

" (a) The assessor shall maintain a list of transfers of any interest in property....

* * *

" (c) The list shall contain the following information:

* * *

"(7) Additional information which the assessor in his discretion may wish to add to carry out the purpose and intent of this section....

"(d) The list shall be open to inspection by any person....

* * *

Stats. 1980, Ch. 1349, which added the present Section 408.1, filled the void left by the repeal of the former Section 408.1 (Stats. 1976, Ch. 671). Subdivisions (a) and (c)(7) of both Sections 408.1 are identical. Thus, resorting to Stats. 1976, Ch. 671, the purpose and intent of Section 408.1, as evidenced by the Assembly Committee on Revenue and Taxation Staff's analysis, is as follows:

"Although taxpayers can obtain the assessor's comparables in the exchange of information procedures, these comparables will tend to support the assessor's position. What the taxpayer cannot get is the sales data in possession of the assessor which is not used and which may tend to support the taxpayer's position. The only way the taxpayer can obtain this information is an independent study of comparable sales. This is a costly and time consuming task. The objective of this bill is to make this data, which is generally in the possession of the assessor, available to the taxpayer."

Since the purpose and intent of Section 408.1 is to provide an additional means by which persons can obtain information as to comparable properties; since the more information one has, the better able he is to determine whether other properties are comparable properties; and since Section 408.1(c)(7) allows an assessor to add additional sales information to the list to carry out such purpose and intent, we believe that an assessor could include his records of property characteristics, or portions thereof, on the Section 408.1 list. In that event, being "public" data or information, the records or portions thereof could be included in a share data base where they would be available to all, as they would be on the Section 408.1 list.

You requested our opinion also regarding the confidentiality of other data:

"...San Bernardino County is in the process of entering into a countywide automated mapping system where several county departments will be using shared information from existing data bases. The Assessor's data base is the central building block for this system...."

Again, if such data is included in the Section 408.1 list, pursuant to Section 408.1(c)(7), the data, being "public" data or information, could be included in a shared data base.

If not so included, however, such data could not be included in a shared data base. See Opinion of the Attorney General No 69/135, above, and September 22, 1981, letter from James J. Delaney to San Francisco County Assessor Samuel Duca, copy enclosed, in this regard.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr
Enclosures
cc: Mr. Verne Walton

bc: Mr. Gordon P. Adelman