



October 25, 1982

Dear Mr. \_\_\_\_\_:

This is in reply to your letter to Glenn Rigby of October 11, 1982 regarding an Inspection Warrant issued to the \_\_\_\_\_ County Building Inspector.

The Inspection Warrant was issued pursuant to CCP Section 1822.50 Et. Seq. and authorizes and orders the County Building Inspector "to make full and complete inspection of the confidential files in the possession of the Assessor's Office of the County of \_\_\_\_\_ relative to the following:

For any violation of the building and use laws for which the [he is] required or authorized by law to make inspection .....

The Declaration in support of the Inspection Warrant provides essentially that the declarant has no records indicating that building permits were issued with respect to the parcels in question and that it is therefore necessary to inspect the confidential files of the Assessor in order to "obtain information regarding possible illegal building and possible proof of violation of Measure J. Ordinance No. 2765" of \_\_\_\_\_ County.

Code of Civil Procedure Section 1822.50 defines an inspection warrant as follows:

An inspection warrant is an order, in writing, in the name of the people, signed by a judge of a court of record, directed to a state or local official, commanding him to conduct any inspection required or authorized by state or local lay or regulation (diagnosis added) relating to building, fire, safety, plumbing, electrical, health, labor, or zonings.

Section 1822.57 provides that "Any person who willfully refuses to permit an inspection lawfully authorized by warrant issued pursuant to this title is guilty of a misdemeanor."

Code of Civil Procedure Section 1822.50 was enacted in 1968 to comply with the rule stated in Camara v. Municipal Court, 367 U.S. 523 and See v. City of Seattle, 387 U.S. 541 and is applicable only to situations falling within the scope of that line of cases. People v. Firstenberg, 94 Cal. App. 3d 570, 583. Camara held that warrantless administrative searches for the purpose of securing compliances with a municipal housing code violated the Fourth Amendment Guarantee of Privacy. In See, which involved a routine inspection to secure compliance with a local fire code, the court extended Fourth Amendment protection to administrative searches of portions of commercial premises not open to the public. It is thus apparent that the purpose of CCP Section 1622.60 was to protect fourth amendment rights of persons whose premises were subject to inspections authorized or required by law. Section 1822.50 therefore imposed a limitation on public officials who are otherwise authorized or required by law to make inspections. It does not, however, confer a right or impose a duty to inspect where none existed before.

Concededly, the County Building Inspector may be authorized or even required to inspect the premises specified in his declaration in this came subject to the limitations of CCP 1822.50 et.

Seq.<sup>1</sup> Here, however, the Building Inspector is not seeking to inspect the premises specified in the Inspection Warrant and Declaration. The \_\_\_\_\_ seeks to inspect the confidential records of the Assessor relating to the specified premises. There is no law of which I am aware which authorizes this inspection much less requires it. Indeed, Revenue and Taxation Code Section 498 prohibits it.

Section 408 (a) provides in relevant part that:

“Except as otherwise provided in subdivisions (b) and (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 shall not be open to public inspection...”

Section 408 (c) lists various persons and public officials to whom the Assessor shall permit the inspection as exceptions to the rule stated in Section 406 (a), however, county-building inspectors are not among those listed.

By definition, an inspection warrant commands an official to take any inspection authorized or requires by law. Here the inspection warrant commands the Building Inspector to make an inspection which is not authorized or required by law and is, in fact, prohibited by law. Accordingly, the Inspection Warrant issued in this case is illegal under CCP Section 1822.50. Since an inspection of the Assessor’s confidential records is not and was not lawfully authorized by the Inspection Warrant, refusal to permit the inspection does not constitute a misdemeanor under CCP 1822.57.

Very truly yours,

Eric F. Eisenlauer  
Tax Counsel

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<sup>1</sup> Note, however, that CCF 1822.51 provides that an inspection warrant shall be issued only upon cause, supported by affidavit and further provides that the affidavit shall contain either a statement that consent to inspect has been sought and refused, or facts or circumstances reasonably justifying the failure to seek such consent. The Declaration in this case contains neither and is thus deficient. It is therefore at least arguable that the Inspection Warrant is invalid on that ground.