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ATTORNEY GENERAL  
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November 20, 1991

FILE NO. 91-040

REVENUE:  
Board of Review  
Procedures for Filing  
Complaint

Honorable Craig H. DeArmond  
State's Attorney, Vermilion County  
7 North Vermilion Street  
Danville, Illinois 61832

Dear Mr. DeArmond:

I have your letter wherein you inquire whether the county board of review may establish a rule requiring residential property owners to produce an independent appraisal or the sale prices of three comparable residences in order to file a complaint for review of an assessment. For the reasons that follow, it is my opinion that the board of review may not establish or enforce such a rule.

The powers and duties of the board of review are set forth in section 108 of the Revenue Act of 1939 (Ill. Rev. Stat. 1990 Supp., ch. 120, par. 589), which provides, in part:

"In counties containing less than 1,000,000 inhabitants, the board of review shall, in any year, whether the year of the general assessment or not:

\* \* \*

(4) On complaint in writing that any property described in such complaint is incorrectly assessed, the board shall review the assessment, and correct it, as shall appear to be just, \* \* \*

\* \* \*

"

The board of review is authorized by section 13 of the Revenue Act of 1939 (Ill. Rev. Stat. 1989, ch. 120, par. 494) to promulgate rules relating to its duties. Section 13 provides, in part:

"The county assessor, board of appeals, board of assessors and the boards of review shall make and publish reasonable and proper rules for the guidance of persons doing business with them and for the orderly dispatch of business.

\* \* \*

"

In opinion No. 82-055 issued December 15, 1982 (1982 Ill. Att'y. Gen. Op. 169), Attorney General Fahner advised that section 13 authorized a board of review to publish a rule setting a deadline for applications for property tax exemptions, where such a deadline was not established by any

statute. In Citizens Federation of St. Clair County, Inc. v. Brown (1985), 134 Ill. App. 3d 1054, the court held that a board of review had authority to adopt procedures for the use of hearing officers to assist it in handling an unusually large number of complaints expeditiously. The extent of the power of a board of review to establish procedural rules has not otherwise been addressed.

The only requirements set out in section 108 of the Revenue Act of 1939 regarding complaints to a board of review are that the complaints be in writing, that they describe the property claimed to be incorrectly assessed and that they be filed within the time provided by law. Because section 13 of the Act specifically authorizes boards of review to promulgate rules, I concur with the conclusion expressed in opinion No. 82-055 that the provisions of section 108 are not exclusive; additional procedural requirements may be established by a board of review with respect to applications for property tax relief.

Section 13 requires that rules published for the guidance of persons doing business with the board of review and for the orderly dispatch of business be "reasonable and proper". Your letter does not set forth in detail the rules proposed by your board of review. There are two aspects of any such rules, however, which must be measured against the standard of reasonableness: firstly, whether requiring an

appraisal or three comparable sales prices in order to file a complaint is reasonable and proper; and, secondly, whether applying the requirement only to residential property owners and not to other taxpayers is reasonable and proper.

With respect to the first aspect, whether the production of specific evidence may be required as a prerequisite to the filing of a complaint raises significant due process issues. Because fair cash value is the statutory basis for assessment, a requirement that persons complaining that an assessment is incorrect produce some evidence of the fair cash value of this property in order to sustain their complaints would not be unreasonable. There is a difference, however, between requiring some proof for the granting of relief and requiring that specific types of proof be made a part of the complaint. Section 108 of the Revenue Act of 1939 establishes a strict deadline for the filing of complaints. In many instances, that deadline is only 30 days after the publication of the assessment list. Given the relatively short period of time permitted, it is questionable whether requiring the filing of any evidence with the complaint would be reasonable, since most owners of residential property will have to consult experts to obtain such evidence. The opportunity to be heard is a requirement of due process. (Chicago Sheraton Corp. v. Zaban (1978), 71 Ill. 2d 85, 91-92). If the proposed rule could effectively prevent homeowners from filing

complaints within the statutorily prescribed time, it would result in a denial of due process.

Even more fundamentally, I would characterize the proposed rule as a rule of evidence, rather than a rule of procedure "for the orderly dispatch of business." In many cases, there may be probative, material forms of evidence that an assessment may be invalid other than a formal appraisal or comparable sales data. For example, the actual purchase price of the property within a reasonable time of assessment, photographs of the property, a comparison of the subject property with similar property assessed at a lower figure or an owner's own testimony could be considered in most cases. Such evidence may be persuasive where an assessment is patently erroneous, such as where there has been a typographical error or a decimal point misplacement. Yet the proposed rule would preclude the use of such readily-available evidence unless the taxpayer invests the time and money necessary to obtain the specific forms of proof required by the board of review. For these reasons, it is my opinion that a rule which requires the filing of specific types of evidence with a complaint for review of an assessment would not be reasonable or proper, but would deny due process of law to affected taxpayers by placing an unreasonable burden upon their right to be heard.

Given my conclusion, it is not necessary to address the second aspect of this analysis at length. I would note

however, that any proposed rule must also be evaluated with respect to its impact upon the guarantee of equal protection of the law. According to your letter, the proposed requirement would apply only to residential property owners. Generally, classifications relating to taxation will be upheld if they are reasonable. (Thorpe v. Mahin (1969), 43 Ill. 2d 36, 46; Mlade v. Finley (1983), 112 Ill. App. 3d 914, 919.) Provided that a reasonable basis does exist for establishing a requirement which is applicable to residential property owners only, the requirement would not necessarily violate homeowners' equal protection rights.

In conclusion, it is my opinion that a county board of review has the authority to adopt rules relating to proceedings before it, but it may not require that specific evidence be filed with a complaint that property has been incorrectly assessed. Any rules adopted must appropriately protect the due process and equal protection rights of the taxpayers whom they affect.

Respectfully yours,



ROLAND W. BURRIS  
ATTORNEY GENERAL