



**ILLINOIS STATE
BAR ASSOCIATION**

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Thomas D. Coopridner
Linda M. Barbera-Stein
Pete Fleming
Lake County Board of Review
18 North County Street, 7th Floor
Waukegan, IL. 60085-4335

Re: Practice of Law and Real Estate Tax Appeals

Dear Chairman Coopridner and Members Barbera-Stein and Fleming:

The Illinois State Bar Association (ISBA) is a voluntary not-for-profit association representing approximately 32,000 Illinois lawyers. We are aware that the Lake County Board of Review is in the process of promulgating a rule which would confirm that taxpayers may be represented at the Board of Review only by Illinois licensed attorneys. This letter is in support of the proposed rule, which is in accord with well-settled law in Illinois regarding the preparation, filing and prosecution of complaints before boards of review.

Powers between the three branches of government in Illinois are organized in a way that exclusively allocates to the Illinois Supreme Court the power to determine what is and is not the unlicensed practice of law. As such, the executive and legislative branches of government cannot promulgate rules that purport to allow non-attorneys to practice law.¹ The Supreme Court has held that filling in a board of review complaint form and

¹ "The General Assembly has no authority to grant a layman the right to practice law . . . [A]ny rule adopted by the commission, purporting to bestow such privilege upon one not a duly licensed attorney at law, is void." People ex rel. Chicago Bar Ass'n v. Goodman, 366 Ill. 346, 352 (Ill. 1937).

appearing at a hearing as an advocate before any board of review is the practice of law.² This holding has never been reversed or called into question.

For many decades, nonlawyers in Illinois have sought to assist taxpayers in minimizing their property tax liability by preparing, filing, and prosecuting complaints before local boards. Nonlawyers argue that such prohibited activities should be permitted due to concerns regarding consumer access to representation, competition in the market, the fact that the conduct has been adopted by some boards of review, the supposed simplicity and non-adversarial nature of proceedings before the Board, and the practices that have been adopted in other states. The unbroken line of cases in Illinois have met and steadfastly rejected these arguments.³ This of course does not prohibit realtors, appraisers, architects, engineers, and other professionals from testifying as experts concerning the issues of the case.

In 1992 the ISBA adopted a formal position on this matter. That position remains valid today. A copy is attached for your consideration. The Lake County Board of Review's prospective rule change is firmly supported by the law in this state.

Very truly yours,



John E. Thies
President

CC: Aaron Lawlor, Chairman Lake County Board
Marty Paulson, Clerk, Lake County Board of Review

Enclosure

² "[A]fter Ebert or his secretary filed those valuation complaints, Ebert was appearing for oral argument before the tax board. Both the unsupervised completion of the complaint and the appearance before the administrative tribunal constituted the unauthorized practice of law." In re Yamaguchi, 118 Ill. 2d 417, 426 (Ill., 1987).

³ In an Illinois Supreme Court case rejecting the preparation of real estate deeds and other muniments of title by real estate professionals, the Court noted that "Mere simplicity cannot be the basis for drawing boundaries to the practice of a profession." Chicago Bar Ass'n v. Quinlan & Tyson, Inc., 34 Ill 2d 116, 120 (Ill., 1966). In addition, in the seminal case of In re Yamaguchi, the Court noted that the fact that a particular practice had developed by real estate professionals and which was acquiesced in by a tax board was insufficient justification for a rule that trespassed upon the practice of law. Yamaguchi, 188 Ill. 2d at 427.

ISBA POLICY ON REAL ESTATE TAXATION PRACTICES

At its meeting on April 3, 1992, the Board of Governors of the Illinois State Bar Association unanimously adopted this opinion.

OPINION OF THE ISBA COMMITTEE ON REAL ESTATE TAXATION PRACTICES

Introduction

The Committee on Real Estate Taxation Practices consists of members of the State Taxation and Real Estate Law Section Councils of the ISBA, of the ISBA Standing Committee on the Public Protection from the Unauthorized Practice of Law, and of the Real Estate Tax and Unauthorized Practice of Law Committees of the CBA. The Board of Governors of the Illinois State Bar Association (ISBA) and the Board of Managers of the Chicago Bar Association (CBA) (referred to jointly as "the Boards") created the Joint Committee. The Boards' directive to the Joint Committee is to investigate practices in the real estate tax assessment protest process, brought to their attention by members of the public and of the bar, concerning the possible unauthorized practice of law by persons who are not licensed to practice law in this State and who appear as representatives of property taxpayers before county supervisors of assessments, county assessors and county boards of review or appeal. The Joint Committee is to report its findings and recommend appropriate action. The Joint Committee has convened on various occasions and reviewed documents, interviewed witnesses and obtained such other information as might bear upon the unauthorized practice of law in the real estate tax assessment protest process. The Joint Committee has also examined the relevant statutory provisions governing the assessment protest process and the case law regarding the unauthorized practice of law in this State.

As each county in Illinois has different procedures, the Joint Committee on Real Estate Taxation Practices has been unable, from the material available, to determine statistically the scope of non-attorney representation. Anecdotally, the Committee has received information that individual non-attorney entrepreneurs are advertising to provide services to property taxpayers seeking to contest or protest their bills. Further, the Joint Committee has learned that other non-attorneys, specifically accounting firms, do presently, or seek to, perform services to property owners in such tax protest matters. Because of the differing practices statewide, it is often difficult to distinguish valuation/appraisal services from legal representation. As such, representatives of the Illinois Certified Public Accountants Society have suggested that the Joint Committee join in sponsoring legislation to establish a separate licensure of property tax valuation consultants who would be authorized to perform services, including the representation of property owners. This license would not be required for attorneys or CPAs. The Joint Committee voted not to support such proposed legislative action feeling it was beyond the scope of the Joint Committee's charge.

It is the Joint Committee's conclusion that the representation of property owners in tax protest proceedings by non-attorneys exists and is expanding.

While the Joint Committee recognizes other jurisdictions have reached different conclusions, no submission to the Joint Committee has presented any contrary legal authority in Illinois that would contradict the legal conclusions herein.

Summary Of The Joint Committee's Activity and Findings

The Joint Committee has identified practices that constitute the unauthorized practice of law. These practices may be briefly summarized in the following three categories:

- 1) persons not licensed or otherwise authorized to practice law who hold themselves out to the public as independent fee tax consultants, property tax consultants or property valuation consultants, and who, for a fee, provide advice and render services, including appearing and interceding on behalf of others, as taxpayers' representatives before township assessors and supervisors of assessments; and/or filing valuation complaints on behalf of taxpayers and appearing before assessors and boards as taxpayers' representatives; and/or appearing before assessors and boards as taxpayers' witnesses or expert witnesses but who, with the exception of signing the valuation complaint, conduct themselves in every respect as taxpayers' representatives;
- 2) Corporations or organizations, including non-attorney partnerships or professional services corporations, which may include attorney employees, who hold themselves out as able to perform and who do perform the above described activities;
- 3) persons or entities who, for a fee, purport to train others as property tax or valuation "consultants" purportedly qualified and authorized to act as taxpayers' representatives before assessors and boards in the manner set forth in paragraphs 1 and 2 above.

IT IS THEREFORE THE OPINION OF THE JOINT COMMITTEE THAT:

- * In paragraphs one and two set forth above, the proper giving of such advice or proper rendition of such services requires the use of a degree of legal knowledge or skill;
- * Persons and organizations including persons described in paragraphs one and two are therefore engaged in the unauthorized practice of law in this State, 705 ILCS 205/1 (West, 2001) and 705 ILCS 220/1 (West, 2001);
- * Proceedings instituted by such persons or organizations may be meaningless or voidable;
- * The training (or franchising) of unlicensed persons to engage in the activities set forth above constitutes the aiding and abetting of the

unauthorized practice of law and may be separately punishable by contempt of court;

- * The doing of any of the acts described in paragraph 1 above by the persons also described therein may involve a violation of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 (West, 1997); and
- * Attorneys employed by such persons or organizations described in paragraphs one, two and three assisting in these activities are aiding in the unauthorized practice of law, Illinois Rules of Professional Conduct, Rule 5.5(b).

MEMORANDUM IN SUPPORT OF THE JOINT COMMITTEE'S FINDINGS

Due Process Standards

The assessment of real estate for tax purposes consists of the valuation of individual properties. People ex rel. Tennyson v. Texas Co., 406 Ill. 120 (1950). Individual grounds based on a particular set of potentially disputed facts are at the base of each individual's protest to the assessment made against the individual's property. Advanced Systems, Inc. v. Johnson, 126 Ill. 2d 484 (1989). Due process accords an individual landowner protesting the amount assessed against his own property "the right to support his allegations by argument however brief; and, if need be, proof, however informal." Londoner v. City & Council of Denver, 210 U.S. 373, 376 (1908). When individual interests are at stake and specific facts are in dispute, trial-type procedures, including the taking of evidence subject to cross-examination, are required. Advanced Systems, Inc. v. Johnson, 126 Ill. 2d 484 (1989), relying on United States v. Florida East Coast Ry. Co., 410 U.S. 224 (1973), and 2 K. Davis, Administrative Law, §§12.2, 12.3 at 409-13 (2d ed. 1979). The Illinois statutes that govern the assessment protest process implicitly recognize the foregoing principles.

Statutory Protest Provisions

The chief assessing officer in each of the 102 counties of Illinois is either a supervisor of assessments or a county assessor, depending on the aggregate size of the population in a county. 35 ILCS 205/3a (West, 1997) and 35 ILCS 205/4-5B (West, 1997). A supervisor of assessments has the same authority as township or multi-township assessors to make changes or alterations in the assessment of property. 35 ILCS 205/95 (West, 1997). In addition, a supervisor of assessments "upon application of any taxpayer, or upon its own motion" may revise and correct an assessment of real property. 35 ILCS 205/96 (West, 1997). A county assessor may "on complaint in writing in proper form by any taxpayer, and after affording such taxpayer an opportunity to be heard thereon", revise and correct an assessment of real property. 35 ILCS 205/97 (West, 1997).

The work of a supervisor of assessments and a county assessor is subject to review,

correspondingly, by a board of review or a board of appeal. 35 ILCS 205/8 (West, 1997). A board of review may "upon application of any taxpayer or upon its own motion" revise the assessment of real property of any taxpayer. 35 ILCS 205/107 (West, 1997). Similarly, a board of appeals may "on complaint that any property is over assessed or under assessed, or is exempt, review and order such assessment corrected." 35 ILCS 205/113 (West, 1997). Whether by a board of review or appeals, no assessment of any person's property may be increased "unless such person or his agent, if either be a resident or has a place of business in the county, shall first have been notified in writing and been given an opportunity to be heard." 35 ILCS 205/108, 116 (West, 1997).

Before a board of review, "[a]ll complaints of errors in assessments of real property shall be in writing and shall be filed by the complaining party." 35 ILCS 205/108 (West, 1997). Before a board of appeals "[a]ll such complaints shall be in writing, shall identify and describe the particular property, shall otherwise comply with the rules in force, shall be signed by the complaining party or his attorney, and shall be filed with the board in duplicate." (emphasis added) 35 ILCS 205/117 (West, 1997). Boards of review or appeals are empowered to administer oaths and summon any assessor or deputy or other person to be examined under oath with respect to a valuation at issue. 35 ILCS 205/126 (West, 1997). A person who fails to appear as summoned or who is summoned and refuses to submit to or answer the inquiries of a board of review or appeals is guilty of a petty offense. Id.

The Unauthorized Practice Of Law

Whether a person is engaged in the practice of law is not determined by the tribunal involved (e.g., a court or an administrative agency) but by the character of the work required to appear before such a tribunal. People ex rel. Chicago Bar Association v. Goodman, 366 Ill. 346 (1937). If by their nature acts require a lawyer's training for their proper performance, it does not matter that there may have been widespread disregard of the requirement or that considerations of business expediency would be better served by a different rule. Chicago Bar Association v. Quinlan & Tyson, Inc., 34 Ill. 2d 116, 214 N.E.2d 771 (1966). While an all-encompassing definition of what constitutes the practice of law is impossible to formulate, the definition has been offered that "[p]racticing as an attorney or counselor at law, according to the laws and customs of our courts, is the giving of advice or the rendition of any sort of service by any person, firm or corporation when the giving of such advice or rendition of such service requires the use of any degree of legal knowledge or skill." People ex rel. Illinois State Bar Association v. Schafer, 404 Ill. 45, 50 (1949).

There is a distinction between the appraisal of property, the service as an expert witness on valuation, and the representation of a property owner in seeking adjustment or protest of property taxation.

In the real estate tax assessment protest practice, the completion of a tax valuation complaint by a real estate agent before a board of appeals constitutes the unauthorized practice of law. In re Yamaguchi, 118 Ill. 2d 417 (1989). The appearance of a non-

attorney for oral argument before a board of appeals hearing a valuation complaint also constitutes the unauthorized practice of law. Id. Such proceedings, instituted by non-attorneys or non-licensed attorneys, are void and/or may be voidable. Fruin v. Northwestern Medical Faculty Foundation, Inc., 194 Ill. App. 3d 1061, 551 N.E.2d 1010 (1st Dist. 1990); Macken Real Estate Management Corp. v. Adams, 56 Ill. App. 3d 426 (1977). Statements and representations made to the County Assessor can constitute judicial admissions. In re Application of the County Treasurer (Ford Motor Company, Appellant), 131 Ill. 2d 541, 546 N.E.2d 506 (1989).

It should be noted that while the supervisors of assessors, county assessors, and boards of review and appeal are empowered to receive complaints, hold hearings thereon and revise assessments, no statutory specification or distinction is made of the arguments or proofs that may be presented to any such supervisor, assessor or board. Indeed, the Ford case, supra, recognizes that even though the actions of the County Assessor are entitled to de novo review by the Board of Appeals, statements made to the County Assessor may constitute judicial admissions. Thus, those acts that by their nature constitute the unauthorized practice of law before a board of appeals also constitute the unauthorized practice of law when performed before a supervisor of assessors or a county assessor.

It must also be noted that any directive by supervisors, assessors or boards purporting to grant such persons the privilege to perform the above-described actions and to appear before them is beyond the authority of such persons and boards. Where the practice of law is involved, the judicial department, through the Supreme Court, has exclusive supervisory authority. See, People ex rel. Chicago Bar Association v. Goodman, 366 Ill. 346 (1937).

As indicated above, the presence or identity of a proceeding or tribunal is not determinative of whether the practice of law is involved. A person not licensed or authorized to practice law in this State may not represent another in negotiations regarding property valuations, in the execution of documents and settlements with respect to property valuations, or in advising another with respect to such other's rights of protest and review in the valuation process, whether to pursue such rights of protest or to determine what arguments to raise. Such acts performed by such a person also constitute the unauthorized practice of law.

It is true that "[m]any aspects of law practice are conducted through the use of forms," however, "by his training a lawyer is equipped to recognize this and when this is and when it is not the case." Chicago Bar Association v. Quinlan & Tyson, 34 Ill. 2d 116, 214 N.E.2d 771, 775 (1966). Where a form is required, the mere completion of which "can be readily be done by a stenographer" it still "requires a lawyer's advice to determine whether it will accomplish the desired result under all the circumstances." Id. Thus, a person not licensed or otherwise authorized to practice law in this State who fills in valuation complaints or other protest or settlement forms for others to file and present in their own stead is engaged in the practice of law.

An individual who determines whether certain facts present a cause of action under state

or federal statutes is engaged in the practice of law. People ex rel. Chicago Bar Association v. Goodman, 366 Ill. 346 (1937). Similarly, a person not licensed or otherwise authorized to practice law in this State, who holds himself out to the public as a property tax or valuation consultant and purports to represent another in negotiations before a township or county assessor or supervisor of assessments, may be called upon to determine whether certain facts present a case of over valuation and to advise another of what protest rights exist and whether or not to exercise such rights. Such a person is also engaged in the practice of law.

Individual non-corporate property owners may, by statute and common law, represent themselves pro se. However, a non-attorney may not properly represent another in any proceeding or process described herein. An attorney who aids a non-attorney, individual or entity in the unauthorized practice of law is in violation of the Illinois Rules of Professional Conduct, Rule 5.5(b) and may be disciplined, In re Yamaguchi, supra.

The prohibitions against the unauthorized practice of law exist to protect the public and predate most modern consumer protection laws. It is the obligation of the attorneys to exercise diligence in protecting the public. Protection of the public requires that only licensed attorneys provide legal services to the public. It is the opinion of the Illinois State Bar Association and the Chicago Bar Association that the conduct described herein is the practice of law and cannot legally be performed for others by non-attorneys.

Adopted by the Committee 12/12/91
Affirmed by the Committee 2/20/92