



## State of New Jersey

OFFICE OF THE STATE COMPTROLLER

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*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

PHILIP JAMES DEGNAN  
*State Comptroller*

April 30, 2019

### **VIA ELECTRONIC MAIL AND U.S. MAIL**

Hon. Sheila Y. Oliver  
Department of Community Affairs  
101 S. Broad Street  
Trenton, NJ 08625

Dear Lt. Governor Oliver:

The Office of the State Comptroller (OSC) conducted an examination related to the ethical implications of municipal tax assessors holding concurrent employment at revaluation firms within the state. OSC initiated this review after receiving a referral from another governmental agency. The information contained in the referral suggests that such concurrent employment is prevalent in municipalities in the state and that it could present, at the very least, the appearance of a conflict of interest in the manner in which revaluations are conducted.

To conduct our review, we obtained data from the Division of Taxation (Taxation) identifying the municipalities that performed revaluations in recent years. We also interviewed officials within Taxation and the Department of Community Affairs, Division of Local Government Services, Local Finance Board (DLGS/LFB), a County Tax Administrator, a municipal Business Administrator, and a municipal tax assessor.

OSC issues this letter for your consideration with recommendations to DLGS/LFB to address this potential conflict of interest.<sup>1</sup> OSC is also issuing recommendations to Taxation. A summary of our findings is set forth below.

### **I. Investigative Results**

Taxation provided OSC with a list of the 66 municipalities that performed revaluations during years 2015 through 2017, along with the names of the revaluation firms that conducted the work. Utilizing public and non-public resources, we identified at least five tax assessors who appear

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to work for, or have worked for, the revaluation firm hired to perform the revaluation in the town in which they were employed as assessors at the time. At least one of those individuals appears to have simultaneously worked as a town's assessor and for the revaluation firm that was hired to conduct the revaluation in the town.

## **II. Nature of the Conflict**

Witnesses told OSC that when a town undergoes a revaluation, the tax assessor acts as the "project manager" or "supervisor" of the revaluation. In that role, the assessor is required to oversee the revaluation and ensure all benchmarks and contract terms are completed on time and in accordance with professional standards. In this supervisory role, an assessor cannot reasonably maintain his or her objectivity and independence on behalf of the town while simultaneously performing work for the revaluation firm.

This conflict or appearance of a conflict would seemingly exist even if the assessor were to recuse him or herself from performing any actual work for the revaluation firm. In fact, witnesses told OSC that a recusal would not remedy the conflict as there are still a number of scenarios that could give rise to an inability of the assessor to properly discharge his or her responsibilities. For instance, the assessor could still receive a financial benefit from the revaluation firm by virtue of the contract having been awarded to the firm with which he or she is associated, even if the assessor is not actually performing any revaluation work.

A Business Administrator (BA) from one municipality told OSC that when his office reviewed revaluation documentation following the suspension of his municipal tax assessor due to a conflict, the BA learned that certain contract benchmarks had not been met. When the BA expressed his concern to the revaluation firm, the BA was advised "not to worry" and that "this happens all the time." The same BA gave another example regarding the potential impact from a conflict. Revaluations require the firm to conduct in-house inspections, which are sometimes difficult to schedule because the homeowner must be present. The BA told OSC that when he reviewed the revaluation reports for this town, he learned that the firm had conducted some "drive-by" inspections rather than the required in-home comprehensive inspections. In some instances, such an inspection may be appropriate where a homeowner failed to respond to a request to schedule an in-home inspection. On the other hand, a tax assessor's relationship with the firm could have caused him to acquiesce to or consciously overlook a potentially improper "drive-by" inspection.

A County Tax Administrator interviewed by OSC had similar concerns about firms meaningfully satisfying contract benchmarks where a tax assessor was working both sides of a project, lacked independence, or had an employment relationship with the revaluation company. The tax assessor interviewed by OSC had equivalent concerns.

### III. Legal Analysis

#### A. Governance of Tax Assessors by Local Government Services

Tax assessors hold a unique hybrid employment status, in that they have responsibilities to the citizens of the municipality, the municipal governing body, the County Board of Taxation and Tax Administrator, and the Director of the Division of Taxation. *See Casamasino v. City of Jersey City*, 158 N.J. 333, 344 (1999). With regard to ethical standards, municipal tax assessors are considered “local government officers” and, as such, are governed by the Local Government Ethics Law, N.J.S.A. 40A:99-22.1, *et seq.* and N.J.A.C. 5:35.1, *et seq.* *See also* N.J.S.A. 40A:9-146 (pertaining to municipal tax assessors) and Attorney General Opinion 96-0101 (finding tax assessors to be local government officers for purposes of Local Government Ethics Laws). The Local Finance Board within the Department of Community Affairs’ Division of Local Government Services has jurisdiction to govern, guide, and discipline the conduct of municipal tax assessors pursuant to the Local Government Ethics Law where those assessors are not otherwise regulated by a county or municipal code of ethics. N.J.S.A. 40A:9-22.4.

The following local government ethics rules appear to prohibit a tax assessor from simultaneously working for, or having a business interest in, the revaluation firm conducting the revaluation in the municipality in which the assessor is employed. N.J.S.A. 40A:9-22.5(a), (d), and (e). Specifically, subsection (a) prohibits a government officer, employee, or member of his immediate family from having “an interest in a business organization or engage in any business ... which is in substantial conflict with the proper discharge of his duties in the public interest.” Subsection (d) prohibits a government officer or employee from acting “in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.” And, finally, subsection (e) prohibits a local government officer or employee from undertaking “any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties.”

In view of the likely applicability of the foregoing ethics rules, OSC will be referring evidence to DLGS/LFB of potential conflicts for further investigation. These same ethics rules may also prohibit an assessor’s employment at any revaluation firm within the same county, or even the state, depending on the particular facts and circumstances, although OSC defers to DLGS/LFB to make that determination.

Attorney General Opinions appear to support a finding that this type of concurrent employment constitutes a conflict. For instance, one Opinion raised the issue of whether an assessor could simultaneously be employed by a real estate appraisal firm.<sup>2</sup> While not explicitly stating that this dual employment would create a conflict, the Opinion holds that such dual employment may

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<sup>2</sup> Attorney General Informal Letter Opinion: Proposed Conflict of Interest on the Part of an Assessor Simultaneously Employed by a Real Estate Appraisal Firm (10/4/79).

cause the assessor to violate *N.J.A.C.* 18:12A-1.9(1) which provides that “No assessor shall appear before the Board as an expert against another assessor of a taxing district within the State except to defend the assessment of his taxing district.” Municipal tax assessors routinely cooperate and exchange information with one another to aid in the assessment of properties. The aforementioned regulation was adopted, in part, to prevent an assessor from using such confidential information, directly or indirectly, against another assessor in the context of a taxpayer appeal. The Attorney General, in determining that an assessor’s concurrent employment at an appraisal firm may present a conflict of interest, reasoned that an assessor, “by virtue of his employment with the appraisal firm, may indirectly assist taxpayers in a tax appeal by involving himself behind the scenes in the appraisal of property which is the subject of the appeal.” AG Opinion, p. 3. Even if that assessor does not testify at the tax appeal, the Attorney General reasoned such conduct would be contrary to *N.J.A.C.* 18:12A-1.9(1). Moreover, at the time of this Opinion, the above described regulation that prohibited assessors from having any interest whatsoever in a revaluation firm engaged in revaluing properties in any taxing district within the county, was still in effect. *N.J.A.C.* 18:21A-1.18.

A second Attorney General Opinion addresses whether a conflict of interest arises when an assessor engages in real estate activities in the municipality where the assessor is employed. See Attorney General Opinion 96-0103 (7/8/96). The Opinion concludes that a conflict could exist because the assessor’s independence of judgment would be impaired if they were allowed to list, sell or appraise property in the same municipality in which they are the assessor because of an incentive to improperly change (or not change) the assessments on properties associated with their competitors. In reaching this conclusion, the Attorney General cites to the Assessor’s Handbook, and reiterated the assessor’s general obligation to “avoid work activities outside his position as assessor from which a strong presumption of conflict of interest could be drawn.” Opinion, p. 2 (*citing* Assessor’s Handbook). Interestingly, the Opinion goes on to note that assessors are governed by such rules as the Director of Taxation shall promulgate, which rules shall be enforced by the county tax board. The Attorney General also explained that tax assessors are subject to Local Government Ethics Law.

### **B. Governance of Tax Assessors by Division of Taxation**

Although Taxation also governs certain conduct of municipal tax assessors, Taxation informed OSC that assessors are not bound by Taxation’s ethical recommendations. Instead, Taxation informed OSC that, with regard to ethical violations, assessors fall within the purview of DLGS/LFB. The Handbook for New Jersey Assessors (Handbook), however, is prepared and issued by the Division of Taxation and reflects Taxation’s construction of governing statutes and regulations it is charged with administering. The Handbook specifically addresses conflicts of interest and outside activities, and states:

106. Conflict of Interest. 106.01 Assessors’ Outside Activities. Many assessors’ positions are not full-time. Certain outside occupations for assessors otherwise employed have been proscribed under the County Board of Taxation Rules for County Boards of Taxation. No assessor may appear before the Board as an expert witness against another assessor or taxing district within the State, except to defend the assessment of his/her own taxing district. *Assessors should avoid work activities*

*outside their position as assessor from which a strong presumption of conflict of interest could be drawn.* (emphasis added).

Courts have even held that the Handbook is entitled to "considerable deference." *Twp. of Dover v. Scuorzo*, 392 N.J. Super. 466, 474 (App. Div. 2007).

It is noteworthy that, decades ago, Taxation adopted a regulation that expressly restricted an assessor from having any interest in a revaluation firm doing business in the state. *See N.J.A.C. 18:12-4.5 and 18:12A-1.18* (1993). Under this same regulation, commissioners and employees of the board of taxation were likewise precluded from such employment. In 1994, however, Taxation amended this regulation to remove the restriction as it related to tax assessors. Interestingly, when Taxation sought its removal, and in response to a public member's concern that its removal would allow assessors to work for the very revaluation firm performing the revaluation in the assessor's town, Taxation relied existing ethics laws that would prohibit the conduct. Specifically, Taxation stated:

The Division disagrees with this objection as a possible consequence. Local government officials and employees are subject to the provisions of the Local Government Ethics Law, *N.J.S.A. 40A:9-22.1 et seq.* Assessors are local government employees. Under *N.J.S.A. 40A:9-22.5*, ***local government employees are prohibited from engaging in certain activities which conflict with the proper discharge of their duties in the public interest.*** 26 *N.J.R.* 1110 (emphasis added).

To date, the governing Taxation regulation which restricts employment at revaluation companies only applies to the commissioners and employees of boards of taxation. *See N.J.A.C. 18:12-4.5 and 18A:12-1.18.*

OSC's legal research has determined Taxation has clear authority to enact restrictions on the outside activities of tax assessors and, as such, OSC is issuing a separate letter to Taxation recommending that it take steps to reinstitute the previously removed regulation or take some other action to address this important issue.

Based upon the foregoing legal authority, OSC issues the following recommendations to DLGS/LFB.

#### **IV. Recommendations**

A. OSC recommends that the Local Finance Board within the Department of Community Affairs' Division of Local Government Services take whatever action it deems appropriate with regard to the information referred by OSC regarding potential conflicts. OSC will conduct a referral meeting with DLGS/LFB to provide such information.

B. OSC further recommends that DLGS/LFB consider any additional steps within its statutory and regulatory authority that can be taken to publicly notify local government officers and employees of the potential ethical implications associated with a municipal tax assessor holding concurrent employment at revaluation firms performing work in the state. In view of OSC's contemporaneous recommendation to Taxation to promulgate regulation(s) that would restrict a tax assessor's employment at a revaluation firm, OSC recommends that the Division of Local Government Services/Local Finance Board work with Taxation to the extent necessary and practicable.

If you have any question regarding this letter, please do not hesitate to contact my office. Our investigators would be happy to meet with your staff to further discuss the findings contained herein. Thank you for the courtesies and cooperation extended by DLGS/LFB during our review.

Respectfully,

By:   
Philip James Degan  
State Comptroller

cc: Tina Vignali, Esq., DLGS



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### **VIA ELECTRONIC MAIL AND U.S. MAIL**

John J. Ficara, Director  
Patricia Wright, Deputy Director, Property Administration  
Department of Treasury, Division of Taxation  
50 Barrack Street  
Trenton, NJ 08608

Dear Director Ficara and Deputy Director Wright:

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In view of the likely applicability of the foregoing ethics rules, OSC will be referring evidence to DLGS/LFB of potential conflicts for further investigation. These same ethics rules may also prohibit an assessor’s employment at any revaluation firm within the same county, or even the state, depending on the particular facts and circumstances. OSC defers to any findings made by DLGS/LFB following its review. Although DLGS/LFB has the authority to review and investigate complaints against tax assessors for alleged conflicts of interest as they arise, it does not issue regulations that would globally address or prevent this conduct.

#### **B. Governance of Tax Assessors by Division of Taxation**

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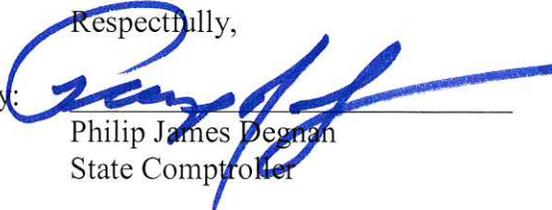
#### IV. Recommendation

OSC’s legal research has determined Taxation has clear authority to enact restrictions on the outside activities of tax assessors. Accordingly, until legislation is passed that will have a similar curative effect as that which is currently pending, OSC recommends that Taxation consider drafting and promulgating regulations that preclude an assessor from having any employment with or financial interest in a revaluation firm performing work in any municipality within the county in which the assessor serves.

If you have any question regarding this letter, please do not hesitate to contact my office. Our investigators would be happy to meet with your staff to further discuss the findings contained herein. Thank you again for your cooperation during our review.

Respectfully,

By:

  
Philip James Degnan  
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