



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>December 21, 2015</p>	<p>No. I15-013 (R15-017)</p> <p>Re: The authority of a County Board of Supervisors regarding the County Assessor's Office.</p>
--	--

To: **Sheila Polk**
Yavapai County Attorney

Questions Presented

- A. Does the Yavapai County Board of Supervisors ("BOS") have the authority to withdraw consent for previously approved cartography and property title personnel positions within the County Assessor's office and assign those positions to a newly formed department that reports to the BOS?
- B. Does the BOS usurp the County Assessor's authority in the following situations?
 1. By transferring cartography functions previously performed by the County Assessor to a county department that reports to the BOS?
 - a. May the County Assessor rely upon cartography services provided by a county department to fulfill her statutory duties or is the Assessor required to perform her own cartography functions or otherwise supervise those functions?
 - b. Does the assignment of assessor parcel numbers to parcels of property pursuant to the Arizona Department of Revenue ("ADOR") guidelines by a county department, usurp the authority of the County Assessor?
 - c. Does the assignment of tax area codes to parcels of property by a county department, usurp the authority of the Assessor?

2. By transferring property title functions previously performed by the County Assessor to a county department that reports to the BOS?
 - a. May the County Assessor rely upon property title functions provided by a county department to fulfill her statutory duties or is the Assessor required to perform her own property title functions or otherwise supervise those functions?
 - b. May a county department enter affidavit of value information into the County Assessor's database without usurping the County Assessor's statutory duties, when such entry is a verbatim account of the affidavit information?
 - c. Is there a usurpation of authority when affidavit of value information has been interpreted, adjusted or classified by the county department prior to entry into the County Assessor's database? Is there a usurpation if such data entry is done with the input of the County Assessor?
 - d. May a county department that reports to the BOS determine title and ownership of real property parcels or process splits and combination of parcels without usurping the Assessor's statutory duties?
3. If a[n] usurpation of authority has been found in numbers 1 or 2 above, does the County Assessor's ultimate ability to review and override any data entered into the Assessor's database by a county department change the analysis?

I. Summary Answers

The various questions articulated provide for a detailed review of what is, essentially, a singular primary question: Did the BOS act beyond its authority and usurp the County Assessor's authority when the BOS removed certain personnel from the County Assessor's control? The summary answer to that overriding question is yes, the BOS exceeded its authority.

The BOS does not have the authority to withdraw cartography and title personnel from the control of the Yavapai County Assessor ("Assessor") given that the functions of those personnel are necessary for an assessor to perform its statutory duties. Among other duties, an assessor is required to identify, by diligent inquiry, all real property in the county that is subject to taxation, to maintain uniform maps and records with assistance from ADOR, to report detailed property information on the tax roll, to account for all property in a county, and to supply

geographical information to various county taxing districts. Cartography and title functions are necessary to an assessor's performance of these and many other statutory duties.

II. Background

A. County Assessor Enabling Authority

Article 12, Sections 3 and 4 of the Arizona Constitution provide that county assessors are elected officials whose duties and powers are those "as prescribed by law." Arizona Revised Statutes ("A.R.S.") 11-541 similarly provides that county assessors "shall have the powers and perform the duties prescribed by law." Every assessor must hold an assessor's certificate issued or recognized by ADOR, which demonstrates that ADOR recognizes the assessor's competency. A.R.S. § 42-13006. Moreover, a county assessor is "liable for all taxes on taxable property within the county which, through the neglect of the assessor, remains unassessed." A.R.S. § 11-543. Thus, county assessors must perform, must be competent to perform, and must have the power and resources to perform their constitutional and statutory duties.

B. County Assessor's Duties

County assessors are tasked with "truly and fairly determin[ing] the valuation, without favor or partiality, of all the taxable property in [their] county at its full cash value." A.R.S. § 11-542 (assessor oath of office). Section 42-13051 provides:

A. Not later than December 15 of each year *the county assessor shall identify by diligent inquiry and examination all real property in the county that is subject to taxation and that is not otherwise valued by the department as provided by law.*

B. The assessor shall:

1. *Determine the names of all persons who own, claim, possess or control the property, including properties subject to the government property lease excise tax pursuant to chapter 6, article 5 of this title.*

2. *Determine the full cash value of all such property as of January 1 of the next year by using the manuals furnished and procedures prescribed by the department.*

3. List the property with the determined valuation for use on the tax roll and report to the department of education the determined valuations of properties that are subject to the government property lease excise tax pursuant to chapter 6, article 5 of this title.

C. *In identifying property pursuant to this section, the assessor shall use aerial photography, applicable department of revenue records, building permits and other documentary sources and technology.*

(Emphases added.)

With respect to their duty to identify property, county assessors must maintain uniform maps and records for their county with assistance from ADOR. A.R.S. § 42-13002(A)(3). ADOR is tasked with “exercis[ing] general supervision over county assessors in administering the property tax laws to ensure that all property is uniformly valued for property tax purposes.” A.R.S. § 42-13002(A)(1). An assessor must comply with the guidelines and manuals promulgated by ADOR when assessing property. A.R.S. § 42-11054(A)(1). In ADOR’s Assessment Procedures Manual (the “Procedures Manual”), ADOR describes an assessor’s duties as follows:

The County Assessor’s principle [sic] responsibilities include the location, inventorying and appraisal of all locally assessable property within their jurisdictions. The performance of these important functions requires a complete set of maps. Maps aid in determining the location of property, indicate the size and shape of each parcel, and can spatially reveal geographic relationships that contribute either negatively or positively to appraised values. In addition to the Assessors, many other governmental agencies, the general real estate community and the public rely on accurate maps. Computerized or digital mapping provides an accurate and cost effective method to map tax areas, appraisal maintenance areas and appraisal market areas.

Procedures Manual at 6.1.2. In furtherance of these duties the Procedures Manual tasks assessors as follows:

Assessors are responsible for discovering, listing and valuing all locally assessable properties within their jurisdictions. The discovery of real property (i.e., parcels of land and any improvements on them) is accomplished through:

1. Field Surveys.
2. The processing of Conveying Documents (Affidavits of Value, deeds, etc.).
3. The creation and processing of Plat Maps (a.k.a. cadastral maps).
4. Studying aerial and ground-based Photographs.
5. The processing of Building Permits.
6. The analysis of Ownership Status Maps (obtained from the State Land Department, the Bureau of Land Management, etc.).

Procedures Manual at 6.1.2-6.1.3.

As the Manual further explains:

“[A] well maintained cadastral mapping system (showing the extent and ownership of land) is essential to provide a standard, accurate *legal description*, which is needed for the accurate location, identification and inventory of property Property identification systems were designed and developed to produce a *legal description*, which prevents a specified parcel from being confused with any other parcel.”

Procedures Manual at 6.1.3 (emphasis in original).

Such duties and the resulting information enable county assessors to fulfill their statutory obligations to ensure that all property subject to the jurisdiction of the State is listed on the assessment roll and is cross-indexed. *See* A.R.S. §§ 42-15151 through 15153.

Many other corollary duties of an assessor as set forth throughout Title 42, Arizona Revised Statutes, depend upon or otherwise relate to an assessor's mapping and title duties.ⁱ Outside of Title 42, a county assessor has many duties that require the correct identification and mapping of property.ⁱⁱ Moreover, the assessor is a repository of documents and reports filed by other governmental entities relating to property locations for mapping, split, and ownership purposes, documents and reports that an assessor uses to perform its property valuation and assessment obligations.ⁱⁱⁱ Finally, numerous government bodies and individuals rely on the mapping and title records of county assessors to perform their obligations.^{iv}

Moreover, ADOR exercises general supervision over the assessors to ensure that all property throughout the State is fairly and uniformly valued. A.R.S. § 42-13002. ADOR has no authority over a county board of supervisors or its departments.

C. County Board of Supervisors

While Arizona statutes require a county board of supervisors to levy and equalize tax assessments (A.R.S. § 11-251(12)-(13)), they do not vest a county board with authority to identify property or to perform the mapping and titling functions necessary to assess property taxes. Arizona statutes presume that county boards rely upon the assessor's records when performing their duties. *See, e.g.*, A.R.S. §§ 40-344 (requiring the corporation commission, cities or towns, and board of supervisors to mail out notices to persons regarding the establishment of an underground conversion service area based on the records of the county assessor); 42-18303 (requiring county board of supervisors to rely on their county assessor's records related to common areas when selling property to a contiguous property owner).

III. Analysis

County assessors are elected officials responsible for identifying, mapping, and assessing all property in their counties for property tax and other purposes. They are also responsible for determining the ownership of property for tax and other purposes. These duties, as detailed above, derive from the Constitution and statutes. Consequently, it is beyond a county board of supervisors' authority to divest a county assessor of those duties.

Consistent with that premise, the Arizona Court of Appeals has recognized under analogous circumstances the inherent limitations on a county board of supervisors' authority. In *Romley v. Daughton*, 225 Ariz. 521 (App. 2010), the Maricopa County Board of Supervisors determined that the Maricopa County Attorney had a conflict of interest that prevented him from adequately representing the Board in most civil matters. The Board established a General Litigation Department to represent the County in most new civil litigation matters in place of the County Attorney, based on cases holding that a county board could hire outside counsel where a county attorney refuses to act, is incapable of acting, or is unavailable for some other reason. The Court of Appeals determined that although the County Board could employ outside counsel in situations in which an ethical conflict existed, the County Attorney still had the power and authority to represent the County in civil litigation matters:

[A] county board of supervisors would exceed its authority in effectively divesting the county attorney of his power to represent the county and its agencies without the requisite determination on a case-by-case basis of unavailability of the county attorney or a lack of harmony between the board and the county attorney.

Id. at 526, ¶ 25.

Similarly here, the Yavapai County Assessor must have the ability to identify and map properties and to determine the ownership of properties in order to fulfill her statutory duties relating to the valuation and assessment of property and her statutory obligations to other

governmental agencies. The BOS cannot remove cartography and property title personnel from the assessor's office without unlawfully divesting the assessor of mapping and title functions that she is required to perform under state law. Further, given that ADOR has no authority over a county board of supervisors, in contrast with its general supervisory authority over assessors, transferring these functions to a board of supervisors would obstruct ADOR's supervision of the assessment of property in Yavapai County.

A. Does the Yavapai County Board of Supervisors ("BOS") have the authority to withdraw consent for previously approved cartography and property title personnel positions within the County Assessor's office and assign those positions to a newly formed department that reports to the BOS?

No. For the reasons stated above, the BOS cannot preclude the County Assessor from controlling cartography and title departments necessary to the performance of the Assessor's duties. Given that cartography and title functions are necessary to the Assessor's performance of these duties, the Assessor must retain and control those departments.

B. Does the BOS usurp the County Assessor's authority in the following circumstances?

1. By transferring cartography functions previously performed by the County Assessor to a county department that reports to the BOS?

Yes. The BOS could not transfer cartography functions to a county department that is not controlled by the Assessor without impairing the Assessor's ability to perform her statutory duties, which specifically include maintaining uniform maps and records for the County with the assistance of ADOR. Moreover, ADOR's Procedures Manual, promulgated pursuant to A.R.S. § 42-11054, requires county assessors to create and maintain maps and related documents as part of their duties. Part 6, Procedures Manual, Eff. 3/1/11; *see also* A.R.S. § 42-13002(A)(3)(a) ("The department shall . . . [a]ssist county assessors [i]n maintaining uniform maps and

records.”). Moreover, as noted above, divesting the County Assessor of these tasks also prevents ADOR from overseeing the Assessors’ mapping and related assessment duties.

- a. **May the County Assessor rely upon cartography services provided by a county department to fulfill its statutory duties or is the Assessor required to perform its own cartography functions or otherwise supervise those functions?**

No. As set forth above, mapping properties and performing related cartography functions are duties the Assessor is statutorily obligated to perform in accordance with ADOR’s Procedures Manual. The BOS may not divest an assessor of those functions and of the personnel needed to perform those functions.

- b. **Does the assignment of Assessor parcel numbers to parcels of property pursuant to the Arizona Department of Revenue (the “Department”) guidelines by a county department usurp the authority of the County Assessor?**

Yes. Property identification is central to the Assessor’s duties, and numerous statutes require various entities to rely on the Assessor’s parcel number or otherwise address the assessor’s issuance of a parcel number. The Assessor plainly has the power to oversee and control the issuance of parcel numbers, including the execution of parcel splits and consolidations, as required by statute and ADOR’s Procedures Manual. *See, e.g., Premiere RV & Mini Storage LLC v. Maricopa Cnty.*, 222 Ariz. 440, 447 ¶ 29 (App. 2009) (holding that a split occurs, for tax purposes, when the assessor completes the process of identifying and valuing resulting parcels following sale of a portion of a parcel).

- c. **Does the assignment of tax area codes to parcels of property by a county department usurp the authority of the Assessor?**

Yes. Creating a department not controlled by the Assessor to assign tax area codes to parcels of property would directly impair the Assessor’s ability to perform her statutory duties and comply with ADOR’s Procedures Manual.

2. By transferring property title functions previously performed by the County Assessor to a county department that reports to the BOS?

Yes. Transferring property title functions to a county department that is not controlled by the Assessor would impair the Assessor's ability to perform her statutorily required duty to identify property and ownership for property tax purposes.

a. May the County Assessor rely upon property title functions provided by a county department to fulfill its statutory duties or is the Assessor required to perform its own property title functions or otherwise supervise those functions?

As set forth above, the BOS cannot divest the Assessor of the property title functions that an assessor is obligated to perform by statute and/or in accordance with ADOR's Procedures Manual. This question is thus moot.

b. May a county department enter affidavit of value information into the County Assessor's database without usurping the County Assessor's statutory duties when such entry is a verbatim account of the affidavit information?

No. As set forth above, statutes and ADOR's guidelines require the Assessor to maintain and update its database. Consequently, the BOS cannot usurp that function through one of its departments.

c. Is there a usurpation of authority when affidavit of value information has been interpreted, adjusted or classified by the county department prior to entry into the County Assessor's database? Is there a[n] usurpation if such data entry is done with the input of the County Assessor?

Yes. The BOS would significantly impair the ability of the Assessor to perform its duties by allowing a county department not controlled by the Assessor to interpret, adjust, or classify affidavit of value data. Divesting the Assessor of those functions would unlawfully usurp the Assessor's authority.

- d. May a county department that reports to the BOS determine title and ownership of real property parcels or process splits and combination of parcels without usurping the Assessor's statutory duties?**

No. The BOS would impair the Assessor's ability to perform its duties by allowing a county department not controlled by the Assessor to determine title and ownership of real property parcels or process splits or combinations of parcels. The Assessor is responsible for determining the names of all persons who own, claim, possess or control property in the County, and for processing parcel splits and combinations. Divesting the Assessor of those functions would unlawfully usurp the Assessor's authority.

- 3. If a[n] usurpation of authority has been found in numbers 1 or 2 above, does the County Assessor's ultimate ability to review and override any data entered into the Assessor's database by a county department change the analysis?**

No. As explained above, the Assessor can only fulfill her statutory duties by controlling the personnel who perform the functions necessary to those duties as well as the processes by which they perform those functions. The BOS would usurp those functions by relegating the Assessor to a "review and override" role. Moreover, by removing mapping and title personnel from the Assessor's authority, the BOS will have removed the Assessor's ability to review and analyze the data entered into the Assessor's database by BOS personnel.

IV. Conclusion

The BOS would unlawfully usurp the Assessor's statutory authority by eliminating cartography and title personnel positions within the Assessor's Office or by performing the Assessor's cartography and title functions through personnel who report to the BOS.

Mark Brnovich
Attorney General

ⁱ See, e.g., A.R.S. §§ 42-11009 (maintain public records related to property valuation and assessment); -11054 (follow standard appraisal methods and techniques as outlined by ADOR); -12052 (review assessment information on continuing basis to ensure proper classification of residential buildings and giving authority to assessors to enter into intergovernmental agreements with ADOR to exchange information related to same); -13004 (maintain data processing systems compatible with those of ADOR); -13151 through -13154 (identify and value golf courses); -13201 through 13206 (identify and value shopping centers); -13302 (process splits and consolidations of existing tax parcels); -13351 through -13355 (identify and value manufacturers, assemblers, and fabricators); -13401 through -13404 (identify and value common areas); -15054 (make investigations to ensure all property is included on assessor's property lists); -15151 (prepare the assessment roll in the form and containing the information prescribed by ADOR); -16251 through -16259 (perform administrative review of error claims); -17251 (compile the assessment roll); and -17257 (keep records related to boundaries of local taxing districts and assessment districts).

ⁱⁱ See, e.g., A.R.S. §§ 11-802 (requiring county assessor to advise county planning and zoning commissions); 15-442(C) (requiring county assessor and county superintendent to determine whether school district boundaries are in conflict with each other or other intersecting legal boundaries); 48-262(A)(1) (requiring county assessor to provide detailed list of all taxable properties within an area where one seeks a change in the boundaries of a district); 48-1594(B) ("The county assessor of each of the counties shall enter upon the rolls the property in the district assessed and taxed as required by this chapter, a description of such lands subject to assessment by the district, the name of each owner of property and the number of acres of land in each assessment, or if the owners of such lands are unknown, the lands shall be assessed to the unknown owner."); 48-3115 (requiring county assessor to enter on assessment roll a description of the lands of the subject irrigation or water conservation district and the acreage of such land).

ⁱⁱⁱ See, e.g., A.R.S. §§ 11-1135 (requiring county recorder to transmit records of deeds to county assessor); 11-321 (requiring board of supervisors to transmit copy of building permits and certificates of occupancy to assessor); 33-1902 (requiring owners of residential rental property to maintain records with the assessor); 37-253 (requiring state land department to report sales of land and a description thereof to county assessor); 37-254 (requiring state land department to notify assessor and tax collector of land that reverts to state so that assessor can cancel assessment of the land); 42-6206 (government lessors to provide assessor with list of development agreements, including locations of properties subject to agreements); 48-815.02(H) (requiring county board of supervisors to submit copy of signature sheets seeking dissolution of fire district to county assessor for verification of persons and property in district); 48-3604 (requiring board of flood control district to file map showing zone and boundary of district with county assessor); see also *Premiere RV & Mini Storage LLC v. Maricopa Cnty.*, 222 Ariz. 440 (App. 2009) (for tax purposes, tax parcel splits occur when Assessor completes the process of identifying and valuing the resulting parcels).

^{iv} See, e.g., A.R.S. § 37-1222 (requiring copy of county tax assessor's map for proposed land exchanges with federal government); 40-344 (requiring corporation commission, cities or towns, and board of supervisors to mail out notices to persons regarding establishment of underground

conversion service area based on the records of the county assessor); 42-18111 (county assessor's parcel number and description of property used for describing real property on delinquent tax list and notice of sale); 42-18202 (notice of intent to file foreclosure must be mailed to property owner of record based on records of county recorder or county assessor); 48-272 ("A special taxing district organized pursuant to this title that is submitting proposed district boundaries after November 1, 2007 shall include only entire parcels of real property within its proposed boundaries as determined by the county assessor and shall not split parcels."); 48-620 (as to improvement districts for underground utilities and cable television, ownership of property shall be determined by records of the county assessor or other public records); 48-1084.01 (assessments for road improvement districts based on each "separate assessor's parcel"); 48-2837 (requiring objections to extent of assessment district to show county assessor's parcel number); 48-3701 (defining "Parcel of member land" to be "any portion of member land for which the tax assessor for the county in which the member land is located has issued a separate county parcel number."); 48-4801 (defining "Parcel of water district member land" to be "any portion of water district member land for which the county assessor for the county in which the water district member land is located has issued a separate tax parcel number."); 49-762.07 (requiring owners or operators of solid waste facilities to submit notice that includes the county assessor's book, map and parcel number); 49-941 (requiring agencies and political subdivisions to send notices regarding hazardous waste to owners of real property as shown on the lists of the county assessor and ADOR).