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Opinion Comm.

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FILE # MBJ
RO-507-DM
ML 1077 33

ATTENTION:

Madeleine B. Johnson
Opinion Committee

I.D.# 19078

Ladies & Gentlemen:

RO-507

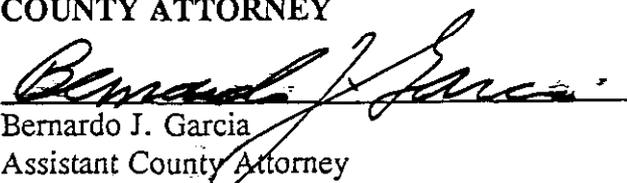
Mr. Barney Kessler, chairman of the Harris County Appraisal Review Board has requested advice regarding the following and related questions:

1. Can a member of the Harris County Appraisal Review Board represent a taxpayer in connection with the value of a certain tract or parcel of land when he is acting as receiver of the same tract or parcel of land pursuant to an order of a Harris County District Court? and
2. Does a Harris County Appraisal Review Board member violate Sec. 36.08, Texas Penal Code by representing property owners for compensation within his own appraisal district?
3. Can a member of the Harris County Review Board represent a taxpayer if he is entitled to a 6% commission on the sale of the property?

Please supply us with your opinion on the question presented at your earliest convenience. A memorandum brief is enclosed.

Very truly yours,

MIKE DRISCOLL
COUNTY ATTORNEY


Bernardo J. Garcia
Assistant County Attorney

c:

Barney Kessler
Chairman
Harris County Appraisal Review Board

Jim Robinson
Chief Appraiser
Harris County Appraisal District

First Assistant: Marsha L. Floyd - Bureau Chiefs: James E. McKnight, Admin. Services, Jerry B. Schank,
David Hurley - Division Chiefs: Dori A. Wind, Harold M. Streicher, Russell L. Drake, Mary J.
McKerall, Rock W.A. Owens, Frank E. Sanders, Richard S. Hill, Rosalinda Garcia.

MEMORANDUM BRIEF

RE: Can a member of the Harris County Appraisal Review Board represent a taxpayer in connection with the value of a certain tract or parcel of land when he is acting as receiver of the same tract or parcel of land pursuant to an order of a Harris County District Court?

Section 6.412¹ is titled "Restrictions on Eligibility of Board Members" and states in part:

(a) An individual is ineligible to serve on an appraisal review board if the individual is related within the second degree by consanguinity or affinity as determined under Article 5996h, Revised Statutes to an individual who is engaged in the business of appraising property for compensation for use in proceedings under this title or of representing property owners for compensation in proceedings under this title in the appraisal district for which the appraisal review board is established.

Subsection (b) further classifies an offense under this subsection as a Class B misdemeanor.

This section bars a person from serving on the appraisal review board if certain of that person's relatives represent property owners for compensation within appraisal district served by the board. The logical presumption is that this section does not prohibit a review board member from protesting his own property.

The question then becomes whether a review board is himself considered within the prohibited degrees of relation, or does section 6.412 otherwise bar the member from engaging in these activities?

In this regard, would section 6.412 prohibit a member, in his capacity as the court appointed receiver of a parcel of property, be prohibited from representing the property during a pending protest. There is no case law on the subject and it is only by a literal reading of §6.412 that it can be said that even in the case of a receivership, a review board member is prohibited from representing a property owner before the review board of which he is a member.

A receiver holds property for the benefit of the owner and the receiver's actions are generally in accordance with the best interests of the property owner. The receiver is also entitled to reasonable compensation for his services as receiver. It is this latter point which makes a review

¹ Section 6.412 was added to the Tax Code in 1989 and was further amended in 1991. The 1991 amendment made minor textual changes were are not relevant to the discussion at hand.

board member ineligible to serve on the review board or which conversely prohibits him from protesting any property other than his own before the review board of which he is a member.

In the situation at hand, the member had been appointed receiver by the judge of the 247th District Court of Harris County, Texas in 1984. The judge of the 247th ordered that the receiver sell the property using "prudent real estate practices" and that the proceeds be distributed between the husband and wife.²

Subsequently, the receiver was appointed to serve on the Harris County Appraisal Review Board in 1989 and again in 1991. During this time, two protests on the property were held- in 1990 and 1991. However, in both protests the review board member took no part in either the presentation or deliberation of the protests. District records reflect that in 1990 and 1991, the property owner initiated and appeared at the protest hearings.

The review board member who was the receiver of the property during this time had no contact with either district staff or review board members regarding the value of the property. It is unclear whether he was aware that the prior protests had taken place and there is no indication that the review board member properly excused himself from voting when the account was presented to the full appraisal review board for approval.

On December 9, 1992 the property owner notified the appraisal district that the review board member would be handling the protest and withdrew his approval of the 1992 market value which had previously been settled with a district appraiser.

It appears that the review board member, although a duly appointed receiver, was prohibited by Section 6.412 from representing a third party's property in a protest before the review board of which he is a member.

RE: Does a review board member violate Sec. 36.08, Penal Code by representing property owners for compensation within his own appraisal district?

Section 36.08, Penal Code bars a person who serves as part of an administrative tribunal from soliciting or accepting compensation or other benefits from a person who may be interested in

² The divorce decree provides that the proceeds be distributed as follows: after all *costs and fees incurred in the sale* are paid and the satisfaction of certain liens, then 55% goes to the wife and 45% to the husband.

proceedings before the tribunal. Section 36.08, Penal Code is titled "Gifts to Public Servant by Person Subject to His Jurisdiction" and states in part:

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of a tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

It appears that a member of a appraisal review board fits the definition of "public servant." Therefore, does a review board member violate this provision by representing property owners for compensation within his own appraisal district? This section does not include an acceptable level of gift but merely states "any benefit."

RE: Can a member of the Harris County Appraisal Review Board represent a taxpayer if he is entitled to a 6% commission on the sale of the property?

If the answer to either question is yes, would a review board member who was appointed by a court as receiver for a parcel of property be barred from appearing on behalf of the property before the board on which he sits? Section 6.412 (previously quoted) does not mention either a minimum or maximum limit of compensation.

It appears that the 6% commission that an ARB member would receive on the sale of real property is "compensation" as that term is used in this section. Although it might be argued that the 6% commission would include other services besides that of protesting the value of the property, the section does not provide an amount or percentage that would be considered negligible. By way of comparison, section 6.413 Tax Code provides that an interest of 10% or greater in certain contracts with tax units or appraisal districts is considered a *substantial interest* which would make an ARB member ineligible for appointment or service on an appraisal review board.

The omission in section 6.412 of a level of compensation, coupled together with the wording of section 36.08, Penal Code, would indicate that the review board member is prohibited from representing the property owner during any phase of a value protest regardless of the level of compensation to be received from the sale of property.

Although the handling of the protest may have amounted to a fraction of the total services performed in preparing the property for sale, the review board member is still prohibited from engaging in such activity. The review board member's actions are prohibited either by Section 6.412, Tax Code or expressly by Section 36.08(e), Penal Code. Additionally, the common law doctrine of incompatibility or the prohibition against occupying more than one office of emolument apply to a review board member of an appraisal district who is also a court-appointed receiver.