

August 23, 1960.

JOSEPH SOLIMINE, *Secretary*
Essex County Board of Taxation
Hall of Records, Room 201
Newark 2, New Jersey

FORMAL OPINION 1960—No. 26

DEAR MR. SOLIMINE:

We have the request of the Essex County Board of Taxation for an opinion as to its power and authority to entertain a petition filed on August 15, 1960 by a taxpayer of the Township of Maplewood concerning assessments in that municipality. The petition was filed by the taxpayer individually and "on Behalf of a Group of Taxpayers." We are also asked what procedure should be followed if the board of taxation has jurisdiction to entertain the petition.

The petition makes the following general charges:

1. That the "re-appraisal and assessment" of properties in Maplewood was improperly conducted; and
2. That the resulting assessments are improper, many properties being over-assessed and other properties under-assessed.

Petitioner asserts that "specific instances of inequalities are legion, and have been admitted as such by officials of Maplewood"; "that business properties in the Township are under-assessed, and that the burden of taxation is being borne by residential properties"; that a taxpayer was "told" not to advise "Trenton" (state tax authorities) of the true selling price of a certain property; and that hundreds of taxpayers have signed a petition to the municipal authorities and the county board of taxation seeking a reassessment.

The petitioner asks the county board of taxation to make an investigation and to reassess the properties in Maplewood or to "cause a reassessment of all the real property in the Township of Maplewood" in accordance with applicable laws.

Reference to numerous provisions in our tax laws relating to assessments is necessary in order to answer the questions you have posed. At the outset, notwithstanding the filing of the petition on August 15, 1960, we question whether the petition as presently drawn is of a nature that comes within the appeal sections under Article 4, Chapter 3 of Title 54, particularly N.J.S.A. 54:3-21. N.J.S.A. 54:3-21 permits the filing of a petition of appeal on or before August 15th in any tax year by a taxpayer "feeling aggrieved by the assessed valuation of his property, or feeling that he is discriminated against by the assessed valuation of other property in the county * * *." A taxing district also has the right to appeal under that section if it feels "discriminated against by the assessed valuation of property in the taxing district, or by the assessed valuation of property in another taxing district in the county * * *." This section relates to an appeal directed at individual items of taxable property. Such appeals seek to alter a specific assessment on a specific piece of property for the tax year in question. This statute requires that a copy of the petition of appeal shall be filed with the county board of taxation and also with the assessor, clerk or attorney of the taxing district, "setting forth the cause of complaint, the nature and location of the assessed property and the relief sought.

The petition shall * * * contain such further information as may be from time to time prescribed by rule of the board * * *." Where a municipality seeks to alter by this appeal the individual assessment of a property, notice must be given to the property owner, although such notice is not provided for in the statute. *Jersey City v. Division of Tax Appeals*, 5 N.J. Super. 375, 385 (App. Div. 1949), aff'd. 5 N.J. 433 (1950). The latter case recites that the City of Jersey City in one year filed 34,341 separate appeals.

The petition at hand may be regarded as failing to sufficiently specify the location of each parcel of property according to rules and regulations of your board for the purposes of treating this petition as an appeal from the assessment of each such property. In any case, the lack of notice to a property owner whose assessment might be changed by such an appeal would prevent the acceptance of this petition as an individual assessment appeal, as contemplated by N.J.S.A. 54:3-21. Thus, we view the appeal as a general complaint seeking an investigation, review and reassessment of all real property assessments in the Township of Maplewood.

The power to investigate and to order reassessments is expressly given to the (State) Director of the Division of Taxation. *See*: Articles 3 and 4, Chapter 1 of Title 54, specifically, R.S. 54:1-16 and 17; R.S. 54:1-18 to 32, inclusive. We do not consider the express grant of authority to the Director of the Division of Taxation to conduct investigations under circumstances specified in the statutes as exclusive or as a prohibition upon the power of county boards of taxation concurrently to investigate and review assessments and assessing practices for appropriate purposes.

Assessments are made with reference to their ownership and value on October 1st of a pre-tax year. N.J.S.A. 54:4-1. Each item of taxable property is listed by the assessor on a tax list and duplicate which is thereafter filed with the county board of taxation on January 10th in each tax year. N.J.S.A. 54:4-35. This latter statute provides that:

"The assessor shall begin the work of making assessments upon real and personal property on October first in each year and shall complete the work by January tenth following, on which date he shall attend before the county board of taxation and file with the board his complete assessment list, and a true copy thereof, to be called the assessor's duplicate, properly made up and legibly written in ink, *to be examined, revised and corrected by the board as hereinafter provided.*" (Emphasis added.)

Among the provisions for examination and revision of the tax lists is N.J.S.A. 54:4-47. This section refers to the process of equalizing, reviewing and correcting, "after investigation," individual property assessments. *City of Passaic v. Passaic County Board of Taxation*, 18 N.J. 371, 379 (1955). But these activities of the county board of taxation must be complete on or before May 1st in each year, when the tax duplicate is finally returned to the tax collectors of each taxing district. N.J.S.A. 54:4-55. Thereafter, changes in individual assessments can be made by the county board of taxation only as the result of appeals filed pursuant to N.J.S.A. 54:3-21.

Because of the numerous duties to be performed by the county board of taxation between January 10th and May 1st of each tax year, it is difficult, if not impossible, for the county board of taxation to engage in a broad program of investigating, revising and reassessing numerous individual assessments in any one taxing district, let alone the county as a whole. Thus, the courts have emphasized time and again that the

responsibility for accurate and fair assessments falls primarily upon the assessor of each taxing district. See: *Village of Ridgefield Park v. Bergen County Board of Taxation, et al.*, 31 N.J. 420, 432 (1960), where Chief Justice Weintraub stated that the county board of taxation "cannot be expected to assume the primary role of the assessors" and that the county board "had neither the time nor the funds for so massive an effort" as is required to correct assessment rolls through municipal-wide revaluations.

It is our view that all county boards of taxation have the power and authority at all times, in their discretion, to investigate and examine assessments in any municipality of the county in which the board has jurisdiction. Although such review cannot alter individual assessments except under N.J.S.A. 54:4-47 or where jurisdiction is conveyed to the county board by an appeal pursuant to N.J.S.A. 54:3-21, the board may well conclude that an investigation is warranted to perform its functions under R.S. 54:3-16, or to prepare for the functions it may perform in a subsequent year under N.J.S.A. 54:4-47.

R.S. 54:3-16 provides as follows:

"Each county board of taxation shall have supervision and control over all officers charged with the duty of making assessments for taxes in every taxing district in the county. Such officers shall be subject to, and shall, in making assessments, be governed by such rules, orders or directions as may be issued by the county board, in the enforcement of the objects of this title. Before making any such rules, orders or directions, the county board shall submit them to the state tax commissioner, and no rule, order or direction shall be considered adopted by the county board until approved by him."

It is implicit in the above statute that the county boards of taxation have the power to investigate assessing practices in order to promulgate or revise its rules and directions for the supervision of assessors. Likewise, the Director of the Division of Taxation has the power to investigate and examine assessing practices in order to pass upon rules and directions of the county boards. The power and authority to investigate assessing practices is also an incident to the authority given to the county boards of taxation and the Director of the Division of Taxation regarding removal of assessors for improper conduct. See: Article 6, Chapter 1, Title 54 (R.S. 54:1-36 et seq).

The power to investigate and review assessments and assessing practices is as much in the interest of assessors and municipal officials as it is in the interest of numerous complaining taxpayers. Under appropriate circumstances it may be as desirable to know that assessments have been properly made as to know that they have been improperly made. The power to examine and review assessments and to make rules to govern the conduct of assessors is directed toward the cure and improvement of assessing practices and not necessarily toward the condemnation or revision of specific assessments.

You are therefore advised that a county board of taxation has jurisdiction, within its discretion, to entertain the petition in question for the purposes indicated above. Having authority to review assessments and assessing practices, the board may employ a procedure which it deems reasonably appropriate to develop all pertinent facts for its study. The procedure should afford notice to all interested parties and the opportunity to be heard. The authority for review and the procedure to be followed

relates to the needs and concerns of the assessor as well as individual taxpayers and your board.

Very truly yours,

DAVID D. FURMAN
Attorney General

By: THEODORE I. BOTTER
Deputy Attorney General

October 17, 1960.

HONORABLE JOHN A. KERVICK
State Treasurer
State House
Trenton, New Jersey

FORMAL OPINION 1960—No. 27

DEAR MR. KERVICK:

You have requested our interpretation of N.J.S.A. 18:13-112.70(e) of the Teachers' Pension and Annuity Fund-Social Security Integration Act (P. L. 1955, c. 37) in applying the Social Security offset ceiling of December 31, 1959. *See also* N.J.S.A. 43:15A-59(d).

N.J.S.A. 18:13-112.70 provides:

"When a member who retires reaches age 65 or upon retirement of a member after the attainment of age 65, the board of trustees shall reduce the retirement allowance by the amount of the old age insurance benefit under Title II of the Social Security Act paid or payable to him whether received or not. Membership in the retirement system shall presume the member's acceptance of and consent to such reduction. However, such reduction shall be subject to the following limitations:

* * *

"(e) *Any increase in the amount of the old age insurance benefit under Title II of the Social Security Act to take effect after December 31, 1959, shall be disregarded in determining the amount of such reduction from the retirement allowance.*" (Emphasis supplied.)

We are concerned in this opinion with the maximum offset to be made from state employees' retirement allowances by reason of the 1958 increase in federal Social Security benefits. The act of August 28, 1958; P.L. 85-840; 72 Stat. 1013, 1020. This federal legislation provided for an across-the-board increase in Social Security benefits and in addition thereto, it also increased the maximum eligible average monthly salary of all insured individuals from \$350 per month to \$400 per month, as of January 1, 1959.

It is clear that the new federal benefits provided in the 1958 table took effect in January of 1959. Section 101(g) of P.L. 85-840.

There is no question that by December 31, 1959 the 1958 schedule of benefits was fully effective, both legally and factually, as to all employees with an average monthly