

ATTORNEY GENERAL

sentence imposed for the purposes of delineating an adjusted minimum and maximum sentence and establishing a parole eligibility date.

Very truly yours,

WILLIAM F. HYLAND

Attorney General

By: THEODORE A. WINARD

Assistant Attorney General

June 8, 1976

GEORGE E. DAVIS, *President*
Hudson County Board of Taxation
595 Newark Avenue
Jersey City, New Jersey 07306

FORMAL OPINION NO. 17-1976

Dear Mr. Davis:

The Hudson County Board of Taxation has requested an opinion concerning the effect of certain provisions of the Administrative Code recently adopted by the Hudson County Board of Chosen Freeholders. The Code has been adopted as a consequence of the change in form of government effected in Hudson County under the provisions of the Optional County Charter Law (N.J.S.A. 40:41A-1 *et seq.*). The particular provisions purport to transfer all but several enumerated responsibilities of the existing County Board of Taxation to a newly-created Division of Tax Assessments. For the reasons expressed below, we are of the opinion that this action is not within the authority conferred upon a county government by the Optional County Charter Law.

Article 5 of the Hudson County Administrative Code contains the provisions in question. The article establishes a Department of Finance and prescribes its organization and functions. Among the Divisions of the Department of Finance, the Code includes a Division of Tax Assessments. Section 5.2(d). The Code subsequently describes the relationship between this Division and the existing County Board of Taxation as follows:

“Section 5.7 *Division of Tax Assessments* The head of the Division of Tax Assessments shall be the Division Chief. Under the direction and supervision of the Director, the division shall:

(a) have, exercise and discharge all of the functions, powers and duties of a County Board of Taxation under State statutes, except the functions of hearing appeals from municipal assessments and relating to the County equalization tables;

(b) in cooperation with the Division of Data Processing, develop, install

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and supervise systems of electronic data processing for the preparation of municipal property tax rolls and duplicates; and

(c) develop and administer cooperative assessing programs under contract with one or more municipalities of the County organized into tax assessment districts.

Section 5.8 *County Board of Taxation* There shall be a County Board of Taxation as provided by Article 12 of this Code.* Pursuant to statute, the Board shall hear and determine appeals from assessments by municipal tax assessors and such other appeals as are provided by law. All staff services to the Board shall be provided by the Division of Tax Assessments."

The purpose of the quoted provisions is to remove from the Board and vest in the Division of Tax Assessments most of the powers and responsibilities heretofore directly and specifically conferred upon the Board by State statute. These responsibilities include: the supervision of the assessors of the taxing districts within the county (N.J.S.A. 54:3-16); the revision and correction of the tax lists submitted by the assessors (N.J.S.A. 54:4-46, 4-47); the ascertainment of the various property tax levies and the striking of tax rates (N.J.S.A. 54:4-48 through 4-52); and the entry of added and omitted assessments upon the tax rolls (N.J.S.A. 54:4-63.1 through 4-63.40). The essential question to be determined is whether these and the other functions of the Board are those of county government subject to transfer in a reorganization of county government under N.J.S.A. 40:41A-1 *et seq.* or whether they are assigned by statute exclusively to the County Board. Cf. *AFSCME v. Hudson County Welfare Bd.*, 141 N.J. Super. 25 (Ch. Div. 1976). An analysis of the Optional County Charter Law and of the statutes governing the county boards of taxation requires the conclusion that the boards are state agencies, exercising powers directly delegated by the Legislature within the geographical boundaries of the several counties, and that those powers are not subject to transfer in a reorganization of county government.

The power of a county government operating under the Optional County Charter Law to establish an office with substantive authority over tax assessments and assessing officials or to transfer functions of a county board of taxation to such an office can be predicated, if at all, only on the basis of the general power to organize county government conferred by section 27 of the Charter Law (N.J.S.A. 40:41A-27); for there is no provision of law which reposes in a county governing board any specific authority over the tax assessment function. Section 27 provides, in pertinent part:

"Any county that has adopted a charter pursuant to this act may, subject to the provisions of such charter, general law and the State Constitution:

a. Organize and regulate its internal affairs; create, alter and abolish offices, positions and employments and define the functions, powers and duties thereof; establish qualifications for persons holding offices, positions and employments; and provide for the manner of their appointment and removal and for their term, tenure and compensation." N.J.S.A. 40:41A-27.

It can be readily seen that this provision extends only to those functions of govern-

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ment which, independently of the provisions of the Charter Law, are already the affairs of the county level of government. This conclusion is reinforced by the immediately succeeding section of the Charter Law, which specifically states that "[n]othing in this act shall be construed to impair or diminish or infringe on the powers and duties of municipalities and other units of government under the general law of this state." N.J.S.A. 40:41A-28. Unless, therefore, a county board of taxation is an agency of county government independently of the Charter Law, the Charter Law does not subject the board's functions to the organizational definition and control of the board of chosen freeholders.

The pre-existing relationship between the board of taxation and the board of chosen freeholders is so clearly established by statute and case law as to admit of no doubt. The status of a county board of taxation is that of a state agency, and is, therefore, not directly affected by the Optional County Charter Law. The county boards of taxation "are creatures of the Legislature", created by N.J.S.A. 54:3-1. *Baldwin Construction Company v. Essex County Board of Taxation*, 28 N.J. Super. 110, 116 (App. Div. 1953); *Board of Taxation of Essex County v. Belleville*, 92 N.J. Super. 338, 342 (Law Div. 1966), aff'd 95 N.J. Super. 327 (App. Div. 1967). The members of a county board of taxation are appointed by the Governor with the advice and consent of the Senate. N.J.S.A. 54:3-2. Their salaries are paid by the State Treasurer upon warrants drawn by the Director of the Division of Budget and Accounting and are specifically fixed by statute. N.J.S.A. 54:3-6. In *Warren v. Hudson County*, 135 N.J.L. 178 (E. & A. 1947), the court stated:

"The county boards of taxation are an integral part of the State tax system and as such their status is necessarily that of State agencies having specified functions in the administration of a system for the assessment and collection of taxes."

In *DeFeo v. Smith*, 31 N.J. Super. 474 (Law Div. 1954), reversed on other grounds, 17 N.J. 183 (1955), the very point at issue here was the subject of the court's attention:

"The county board of taxation is not subordinate to the board of chosen freeholders. While the county board of taxation exercises a jurisdiction that is confined within definite territorial limits, its duties concern the state at large in a government field of major importance Its status is necessarily that of a state agency having specific functions in the administration of a system for the assessment and collection of taxes." 31 N.J. Super. at 479.

The recent decision of the Chancery Division in *AFSCME v. Hudson County Welfare Bd.*, *supra*, does not require a contrary conclusion. That case concerned the functions of the County Welfare Board, which was explicitly recognized to be an agency of county government. The question to be resolved by the court was whether legislation enacted previous to the Charter Law required the continued existence of the Welfare Board as an autonomous county agency. In the present case, the law is entirely clear that the county boards of taxation are not agencies of county government at all. They are, rather, agencies of the State government, whose functions are therefore not subject to reorganization under N.J.S.A. 40:40A-27.

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The powers of a county's chosen freeholders with respect to a county board of taxation remain strictly limited by statute. They are to approve the appointment of clerical assistants by the board (N.J.S.A. 54:3-7), to fix, within limits, the salary of the board's secretary and assistants (N.J.S.A. 54:3-8), to provide space for the transaction of the board's business and the safekeeping of its records and to furnish necessary supplies to the board (N.J.S.A. 54:3-29, 3-30), and to defray travel expenses of the board's members and its secretary (N.J.S.A. 54:3-31). Doubtless these powers continue to be exercised by the county governing body under the Optional County Charter Law. However, neither that statute nor any other law permits the dilution of a county tax board's own responsibilities, which are those of an agency of *State* government, either by the establishment of a separate office with jurisdiction over the same subject matter or by the formal transfer of the board's independent statutory functions.

For these reasons, it is our opinion that the provisions of the Hudson County Administrative Code which purport to establish an office with substantive authority over tax assessments and to transfer to that office functions conferred by statute upon the County Board of Taxation are beyond the statutory authority of a county governing body and are therefore legally without force and effect.

Very truly yours,

WILLIAM F. HYLAND

Attorney General of New Jersey

By: PETER D. PIZZUTO

Deputy Attorney General

* Section 12.1 states that the Board continues as an agency not allocated among or within the departments of county government.

June 21, 1976

ELAINE B. GOLDSMITH, DIRECTOR
Executive Commission on Ethical Standards
222 West State Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 18 - 1976

Dear Mrs. Goldsmith:

You have asked for our opinion as to whether the Conflicts of Interest Act prohibits a State officer or employee from holding or being employed in a separate State office or position at the same time. For the following reasons, you are advised that such dual State employment or officeholding is not proscribed by the Conflict of Interest Act. However, dual State officeholding may be regulated by the respective departments of State government when it is deemed that such officeholding might reasonably be expected to impair the objectivity and independence of the State employee in the exercise of his or her primary job responsibilities.