Property Appraiser, third party firms under contract

Number: INFORMAL

Date: March 31, 2008

Subject:
Property Appraiser, third party firms under contract

The Honorable David Johnson
Seminole County Property Appraiser
1101 East First Street
Sanford, Florida 32771

Dear Mr. Johnson:

This office has received your request for an opinion on whether section 193.074, Florida Statutes, extends the confidentiality of tax returns to information in the hands of private third party firms employed under contract with the property appraiser's office to perform duties assigned to the property appraiser.

Section 193.074, Florida Statutes, provides:

"All returns of property and returns required by s. 201.022 submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property appraiser, the clerk of the circuit court, the department, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, and their employees and persons acting under *their supervision and control*, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such returns are exempt from the provisions of s. 119.07(1)."[1] (e.s.)

This statute clearly recognizes that tax returns maintain their confidential status when in the control of employees of the designated officials and persons acting under their supervision and control.

Rule 12D-1.005, Florida Administrative Code, states:

"(1) The property appraiser of each county, duly authorized representatives of the Department, and duly authorized representatives of the Auditor General shall have the right to inspect and copy financial records relating to non-homestead property which are reasonably necessary to determine the property assessment of the property in question.
(a) Access to a taxpayer's records shall be provided only where it is determined that such records are necessary to determine the classification or value of the taxable non-homestead property.

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(d) The types of records which this rule covers shall include, but not be limited to, the following in the case of personal property:
1. Profit and loss statements,
2. Invoices from purchase of the property in question,
3. Inventories,
4. Federal Income Tax returns for the entity owning the property, including depreciation schedules,
5. General journal and ledgers showing date of acquisition and installed price for commercial personal property,
6. Financial statements for the business in connection with which the property is used, including balance sheets,
7. Insurance policies insuring the property in question against casualty loss,
8. Leases for leased property,
9. Records by which to determine the value of inventory, such as opening inventories, acquisitions, sales, cost of goods sold.
(2) The following procedures shall govern access to the records of a taxpayer:
(a) The property appraiser or his duly authorized representative, the duly authorized representative of the Department, or the duly authorized representative of the Auditor General shall make request, in writing, of the taxpayer and shall specify in general the records requested.
(b) The request shall state the purpose of the request, and the time and place at which the records shall be produced by the taxpayer. If the *records are located without the county, the taxpayer shall have 10 days following the request in which to make them available for inspection and copying*.
(c) All records produced under this section shall be returned to the taxpayer as expeditiously as possible under the circumstances, after examination by the requesting agency.

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(3) All records produced by the taxpayer under this rule shall be deemed to be confidential in the hands of the property appraiser, the Department, and the Auditor General and shall not be divulged to any person, firm or corporation." (e.s.)

The administrative rule, like the statute, recognizes that financial records may be provided to the property appraiser to determine the proper assessment of the property in question and these records may only be accessed when it is determined that the records are necessary to determine the classification or value of the property. The provisions of the rule appear to track the statutory language and require that records produced by the taxpayer under the rule be deemed confidential in the hands of the officials authorized to have access to such records. I would note that the statute requires that records be made available for inspection and copying in the county, rather than requiring the officials to travel outside the county to review these records.

Property appraisers are county constitutional officers[2] and possess the authority to "appoint deputies to act in their behalf in carrying out the duties prescribed by law."[3] However, any determination of whether a private person or business is "acting under the supervision and control" of a public officer pursuant to section 193.074, Florida Statutes, is a mixed question of law and fact which can only be conclusively determined by a court of law. Section 193.024, Florida Statutes, does not define what may constitute "supervision and control" for purposes of

that statute and my review of the statutes and administrative rules has not revealed any case law interpreting this language as used in this section.[4]

Words of common usage, when used in a statute, should be construed in their plain and ordinary sense.[5] The word "supervision" is commonly defined to mean: "the action, process, or occupation of supervising: *esp* : a critical watching and directing (as of activities or a course of action);"[6] and "1. to look over. . ., 2. to coordinate, direct, and inspect continuously and at first hand the accomplishment of : oversee with the powers of direction and decision the implementation of one's own or another's intentions : superintend."[7] The word "control" is defined to mean "[p]ower to regulate, direct, or dominate[;]"[8] and "[t]he act or fact of controlling: power or authority to guide or manage: directing of restraining domination[.]"[9] Thus, read together, these terms imply oversight and the ability to direct the actions of the persons under "supervision and control."

A determination of whether private parties are acting under the "supervision and control" of a public officer would require an examination of the terms of any employment contract or other engagement. In addition, I would caution that the profession of the person employed and the statutes and rules relating to performance of that profession may also be relevant to a determination of what constitutes "supervision and control" and to what extent the property appraiser may direct the conduct of these duties. For example, section 471.023(3), Florida Statutes, relating to engineers provides that "[a]ny officer, agent, or employer of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her *direct supervision and control*, while rendering professional services on behalf of the business organization."[10] (e.s.) Thus, provisions of the Florida Statutes and professional rules prescribing the conduct of particular professions may be relevant to the amount and type of supervision and control the Property Appraiser must extend to the actions of any private parties hired to perform duties of the office.

I trust that these informal comments will assist you. You may also wish to contact the Florida Association of Property Appraisers for any suggestions that organization may have regarding this issue. You may contact the Florida Association of Property Appraisers by mail at: 403 Park Avenue East, Tallahassee, Florida 32301; telephone (850) 681-2770; on the Internet at: www.fapa.net. Thank you for contacting the Florida Attorney General's Office for assistance.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

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[1] *And see* Rule 12D-1.005, F.A.C., providing access to financial records to the property appraiser of each county for non-homestead property.

[2] *See*, Art. VIII, s. 1(d), Fla. Const.

[3] Section 193.024, Fla. Stat.

[4] A number of statutes refer to "supervision and control" without describing in detail what acts may fall within the scope of the phrase: *see, e.g.*, s. 180.13, Fla. Stat. (municipal works board under "supervision and control" of city council); s. 250.41(1), Fla. Stat. (armory board charged with supervision and control of Florida National Guard); s. 274.03, Fla. Stat. (governmental unit primarily responsible for supervision and control of its property); s. 381.0062, Fla. Stat. (Department of Health has supervision and control over certain water systems).

[5] *See, e.g., Sieniarecki v. State*, 756 So. 2d 68 (Fla. 2000) (in absence of a statutory definition, words of common usage are construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary); Ops. Att'y Gen. Fla. 93-02 (1993) (since it is presumed that the Legislature knows the meaning of the words it uses and to convey its intent by the use of specific terms, courts must apply the plain meaning of those words if they are unambiguous) and 92-93 (1992).

[6] Webster's New Collegiate Dictionary p. 1170 (1975).

[7] Webster's Third New International Dictionary p. 2296 (unabridged ed. 1981).

[8] The American Heritage Dictionary p. 153 (2nd college ed. 1983).

[9] Webster's Third New International Dictionary p. 496 (unabridged ed. 1981).

[10] *And see* s. 621.07, Fla. Stat., relating to liability of officers, agents, employees, shareholders, members, and corporations or limited liability companies.