

TO: County Equalization Directors  
Assessing Officers  
FROM: State Tax Commission

No. 20 - July 15, 1982  
Opinions - Assessing Officers  
Liability

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

CIVIL RIGHTS: Liability of assessing officer  
for violation of taxpayer's  
civil rights

TAXATION: Assessing officer's duty to  
provide notice of increased  
assessment upon personal  
property

An assessor making an assessment upon personal property in an amount greater than the assessment for the previous year must notify the owner or person or persons listed on the assessment roll of such assessment increase.

An assessing officer who uses his or her best judgment and does not intentionally discriminate against a taxpayer or act with wilful disregard of the taxpayer's rights has a qualified immunity as a defense to an action for an alleged violation of civil rights under 42 US 1983.

Opinion No. 6079

JUN 21 1982

Honorable Paul B. Henry  
State Representative  
State Capitol  
Lansing, Michigan 48909

You have requested my opinion on two questions involving 1893 PA 206, § 22; MCLA 211.22; MSA 7.22. Your first question asks: "What notice is required when an assessor places an assessment upon personal property in accordance with 1893 PA 206, § 22, supra?"

1893 PA 206, § 22, supra, in pertinent part, states:

"[I]f the supervisor or assessing officer, a member of the state tax commission, or the director or deputy director of the county tax or equalization department as mandatorily established under section 34 of this act shall be satisfied that any statement so made is incorrect, or if, by reason of absence or other cause, said sworn statement cannot be obtained from the person, firm or corporation whose property is so assessed, said supervisor,

assessing officer, any member of the state tax commission, or the director or deputy director of the county tax or equalization department shall examine, on oath, to be administered by any of them, any other person or persons whom he may have good reason to believe, and does believe has knowledge of the amount or value of any property owned, held or controlled by such person so neglecting or refusing or omitting to be examined or to furnish such statement, and such supervisor or assessing officer is hereby authorized to set down and assess to such person, firm or corporation so entitled to be assessed, such amount of real and personal property as he may deem reasonable and just. ..."

1893 PA 206, § 18; MCLA 211.18; MSA 7.18, mandates the filing of the personal property statement by the taxpayer. 1893 PA 206, § 19; MCLA 211.19; MSA 7.19, requires that these statements be filed with the supervisor or assessor on or before February 20th of each year. In the normal course of events, where a personal property statement is received by the local assessor and where there is no reasonable question as to the authenticity or accuracy, the assessor relies upon it in establishing the assessed value of the personal property and enters it on the assessment roll which must be completed on or before the first Monday in March. 1893 PA 206, § 24; MCLA 211.24; MSA 7.24. If the then current assessment is greater than that of the previous year, the assessor is required to notify the owner or person or persons listed on the assessment roll of the property of the increased assessment by first class mail not less than ten days before the meeting of the board of review. However, as mandated by the Legislature, the failure to send or failure to receive such notice does not invalidate either the increased assessment or the assessment roll. 1893 PA 206, § 24c, as last amended by 1981 PA 210; MCLA 211.24c; MSA 7.24(3).

The notice procedure is required not only where the personal property statement is not submitted by the taxpayer but also where the statement submitted is insufficient or inaccurate. If a personal property statement is either not received by February 20th of any given year or if the assessing officer is satisfied that the personal property statement so filed is incorrect, then that assessing officer is charged with making an investigation to determine the value of the subject property. 1893 PA 206, § 22, supra. The assessor is then mandated to place upon the assessment roll, by the first Monday in March, the amount the assessing officer determines to be reasonable and just.

Again, if the assessment so made is greater than the previous year, the assessor must notify the owner or person or persons listed on the assessment roll of such assessment increase. 1893 PA 206, § 24c, supra. This is the only notice that is required. If the owner ignores the assessment notice and does not appeal the assessment to the local board of review, then for that year the assessment is final and the owner has no appeal remedy. See, OAG, 1981-1982, No 6007, p \_\_\_\_\_ (November 18, 1981).

It should be noted that while the failure to send the required notice does not invalidate the assessment, such failure may result in sanctions against an assessor. These include the criminal prosecution of the assessor under the provisions of 1893 PA 206, § 119; MCLA 211.119; MSA 7.173, and decertification of the assessor under rule 47 of the General Rules of the State Assessors Board, 1979 AACS, R 211.447, or, as discussed infra, a possible loss of the assessor's qualified immunity in federal civil rights actions pursuant to 42 USC 1983.

It is my opinion, therefore, that if an assessor makes an assessment upon personal property pursuant to 1893 PA 206, § 22, supra, which assessment is greater than the assessment for the previous year, the assessor must notify the owner or person or persons listed on the assessment roll of such assessment increase and no further notice is required.

Your second question deals with respect to the potential liability of an assessor, under 17 Stat 13 (1871); 42 USC 1983, who places an assessment on personal property pursuant to 1893 PA 206, § 22, supra. 42 USC 1983 provides, in pertinent part:

"[E]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. ..."

Assessing officers have been found liable under this section where a systematic discrimination in tax assessments was established. North American Cold Storage Co v Cook County, 468 F Supp 424 (ND Ill 1979).

Assessors and assessing officers are public officers whose activities are executive in nature. As such, assessors and assessing officers are entitled to a qualified immunity from suit under this section. This immunity is applicable if the public official demonstrates that he or she acted in good faith and without malice. Armstrong v Ross Township, 82 Mich App 77; 266 NW2d 674 (1978).

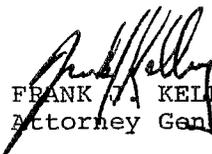
As stated in Fulton Market Cold Storage Co v Cullerton, 582 F2d 1071, 1080 (CA 7, 1978), cert den, 439 MS 1121; 99 S Ct 1033; 59 LEd2d 82 (1979):

"While we now hold that § 1341 does not bar a § 1983 action for damages, that is not to say that whenever a tax official raises a property assessment he exposes himself to a § 1983 suit. In order to insure that county or state tax officials will not exercise their legitimate discretion with undue timidity for fear of suit, they are entitled to a good faith defense as announced in Wood v. Strickland, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975). Therefore, we hold that a state or county tax official will be liable for damages under § 1983 only if he violated the plaintiff's clearly established constitutional rights intentionally or with reckless disregard of those rights. Inadvertence or negligence will not be enough. Thus, to paraphrase Wood v. Strickland, supra, a compensatory award will be appropriate only if the tax official has acted with an impermissible motivation or with such intentional or reckless disregard of the plaintiff's clearly established constitutional rights that his action cannot be reasonably characterized as being in good faith. Id. at 332, 95 S.Ct. 992. See also Procunier v. Navarette, 434 U.S. 555, 98 S.Ct. 855, 55 L.Ed.2d 24 (1978)."

In order to defeat the assessor's qualified immunity defense, a taxpayer must make a clear showing of either purposeful and methodical violation of the taxpayer's constitutional rights, or must demonstrate a reckless disregard of those rights by the assessor.

If an assessor does use his or her best judgment and refrains from an intentional and reckless disregard of the taxpayer's constitutional rights so that the assessor's actions may be reasonably characterized as being in good faith, a compensatory award under 42 USC 1983 would not be appropriate.

It is my opinion, therefore, that if an assessor uses his or her best judgment and refrains from intentionally discriminating against a taxpayer or acting with wilful disregard of the taxpayer's rights, a compensatory award under 42 USC 1983 would not lie.

  
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Attorney General