



HENRY McMASTER  
ATTORNEY GENERAL

July 7, 2010

John Brock, Chairman  
Oconee Board of Assessment Appeals  
415 South Pine Street  
Walhalla, South Carolina 29691

Dear Mr. Brock:

We received your letter requesting an opinion of this Office concerning circumvention of the board's decision and the legality thereof. You asked whether or not "it is correct and legal for other persons or entities to disregard a decision reached by the Appeals Board without pursuing proper channels before the Administrative Law Judge." You suggest that the "legal process was subverted when the Tax Committee intervened."

As background, you provided that the "Oconee Board of Assessment Appeals consists of nine members appointed by the Governor to consider various appeals filed by property owners in Oconee County. Members are concerned and upset over certain events that occurred after" the hearing on April 9, 2009 regarding an appeal filed by the property owner, Cross Creek Golf Course, where the board decided to raise the assessment on the subject property. The following day, the property owner, assessor and auditor were advised of the decision and given instructions for appeal with the Administrative Law Court. In a notice signed January 7, 2010, the Administrative Law Court stated that the petitioner failed to comply within the specified time period; therefore the case would not be assigned to an Administrative Law Judge. The property owner applied to have the property assessed as belonging to the Home Owners Association. "The Tax Committee, consisting of the [County] Treasurer, Auditor and Assessor, considered the request and changed the classification of the property allowing a reduction in taxes, and also granting a refund of taxes paid in previous years. This was done after a review and opinion rendered by the county attorney."

This opinion will address prior opinions, relevant statutes and caselaw to answer the question posed above.

### Law/Analysis

To best answer the requestor's question, one must first establish authority for both the County Board of Assessment Appeals and the County Tax Committee and then determine the appellate procedures in place for each.

In 2004, our South Carolina Supreme Court explained when the board (County Board of Assessment Appeals) should act and when the auditor, treasurer, and assessor (Tax Committee) should act. "As with PTA [Property Tax Assessment] protests, a taxpayer commences a refund action by filing a claim with the assessor. § 12-60-2560(A). In **refund actions**, however, the **assessor together with the auditor and treasurer make the initial determination**. If the refund request is denied, the **taxpayer may appeal to the county board of assessment appeals**. The refund statute contains a specific reference to the board's authority to rule on a timely PTA appeal, just as the PTA appellate statute specifically refers to the board's ability to rule on timely PTA appeals as well as 'other relevant claims of a legal or factual nature ...' Compare § 12-60-2560(B) with § 12-60-2530(B). The refund statute then defaults to the procedures followed by the board in a PTA appeal under § 12-60-2530. § 12-20-2560(B-D) (2000)." Brackenbrook North Charleston, LP v. County of Charleston, 360 S.C. 390, 398-399, 602 S.E.2d 39, 44 (2004).

In 2002, the South Carolina Court of Appeals explained that a "taxpayer who is aggrieved by the Assessor's valuation of his property may **appeal the assessment value to the County Board of Assessment Appeals and then to the [Administrative Law Court]**. S.C. Code Ann. §§ 12-60-2530 through 12-60-2540 (2000)." Smith v. Newberry County Assessor, 350 S.C. 572, 576, 567 S.E.2d 501, 503 (2002).

#### County Board of Assessment Appeals

S.C. Code § 12-60-30(7) defines the "County board of assessment appeals" or "county board" as "the board of assessment appeals which considers appeals of property tax assessments issued by the property tax assessor for the county and which also hears appeals of refund claims of property as determined by the majority of the county assessor, county auditor, and county treasurer."

In relevant part, S.C. Code § 12-60-2530 governs the county board of assessment appeals as follows:

- (A) Within thirty days after the date of the county assessor's response provided in Section 12-60-2520, a property taxpayer may appeal a real property tax assessment to the county board of assessment appeals. The board may rule on any timely appeal relating to the correctness of any of the elements of the property tax assessment, and also other relevant claims of a legal or factual nature, except claims relating to property tax exemptions. Conferences held by the board are subject to any rules prescribed for the county boards of assessment appeals by the Administrative Law Judge Division. The assessor may extend the time period for filing a taxpayer's

appeal if the request for an extension is received by the assessor within thirty days of the date of the county assessor's response provided in Section 12-60-2520 . . . .

- (F) At least fifteen days before the date of the conference, the assessor shall file with the board:
  - (1) a copy of the original property tax assessment for the subject property;
  - (2) the written protest of the property taxpayer;
  - (3) a written response to the taxpayer's protest; and
  - (4) copies of documents, including appraisals, property sales, and a brief description of other evidence to be presented by him. Copies of the documents filed with the board must be mailed or delivered to the property taxpayer at the same time.
  
- (G) At least fifteen days before the date of the conference, the property taxpayer shall file with the board copies of documents, including appraisals, property sales, and a brief description of other evidence to be presented. Copies of the documents and lists must be mailed or delivered to the assessor at the same time. The requirement that the property taxpayer file the material with the board and mail or deliver it to the assessor may be waived by the board . . . .
  
- (J) After the conference, the board shall issue a decision based upon the evidence before it as follows:
  - (1) The decision must be made by a majority vote of the board members present at the conference. In case of a tie, the assessor's determination is upheld.
  - (2) At the conclusion of the conference, the decision may be announced orally or it may be reserved for consideration. In either event, the board shall mail a written decision to the parties within fifteen days after the date of the conference, or as soon thereafter as practical.
  - (3) The written decision of the board shall:
    - (a) explain the basis for the decision;
    - (b) state that if the decision is not appealed, it must be certified to the county auditor for entry upon the property tax assessment rolls or tax duplicate; and
    - (c) inform the parties of their right to request a contested case hearing before the Administrative Law Judge Division.

S.C. Code § 12-60-2530. From conversations, it is the understanding of this Office that the Board of Assessment Appeals complied with the above code section.

S.C. Code § 12-60-2540 explains the appellate procedure a property taxpayer or county assessor must follow should he or she decide to appeal the board's decision. In relevant part, S.C. Code § 12-60-2540 states as follows:

- (A) Within thirty days after the date of the board's written decision, a **property taxpayer or county assessor may appeal a property tax assessment made by the board by requesting a contested case hearing before the Administrative Law Judge Division** in accordance with the rules of the Administrative Law Judge Division.
- (B) If a taxpayer requests a contested case hearing before the Administrative Law Judge Division without exhausting his prehearing remedy because he failed to file a protest or attend the conference with the county board of assessment appeals, the Administrative Law Judge shall dismiss the action without prejudice. If the taxpayer failed to provide the county board with the facts, law, and other authority supporting his position, he shall provide the representative of the county at the hearing with the facts, law, and other authority he failed to present to the county board earlier. The Administrative Law Judge shall then remand the case to the county board for reconsideration in light of the new facts or issues unless the representative of the county at the hearing elects to forego the remand . . . .

S.C. Code § 12-60-2540 (emphasis added). According to a Notice issued by the Administrative Law Court on January 7, 2010, the “[p]etitioner failed to comply within the specified time[; therefore, the case was not] assigned to an administrative law judge.”

In an opinion of this Office dated October 9, 2006, we stated as follows:

Subarticle 9 of chapter 60 of title 12 of the South Carolina Code governs the protest and appeal of property tax assessments. The provisions contained in this portion of the Code provide a means by which taxpayers may object to and contest a property tax assessment by a county assessor. S.C. Code Ann. §§ 12-60-2510 et seq. (2000 & Supp. 2005). A taxpayer's objection could arise as a result of his or her receipt of notice in an assessment year from the assessor informing the taxpayer of an increase in the assessed value of his or her property or by the taxpayer's own initiative in a nonassessment year. S.C. Code Ann. § 12-60-2510 (2000 & Supp. 2005). The taxpayer's objection is initially considered by the assessor. S.C. Code Ann. § 12-60-2520 (2000). **If the taxpayer and the assessor are not able to resolve the issue, the taxpayer may choose to appeal the issue to the county board of assessment appeals, then to the Administrative Law Judge Division, and onto the courts.** S.C. Code Ann. § 12-60-2530 (2000).

Op. S.C. Atty. Gen., October 9, 2006 (emphasis added). This opinion highlights the appellate procedure that one should take when objecting to a property tax assessment. After the county board of assessment appeals, one must go to the Administrative Law Court.

One should note that the Administrative Law Court is created under S.C. Code § 1-23-500 which explains that this court is “an agency and a court of record within the executive branch of the government of this State. The court shall consist of a total of six administrative law judges . . . .” “An administrative law judge shall preside over all hearings of contested cases as defined in Section 1-23-

505 . . . . All requests for a hearing before the Administrative Law Court must be filed in accordance with the court's rules of procedure." S.C. Code § 1-23-600(A)&(B).

Tax Committee

The Tax Committee mentioned in the request letter is created and governed under S.C. Code § 12-45-420 as follows:

**Notwithstanding another provision of law**, a committee composed of the county auditor, county treasurer, and county assessor may waive, dismiss, or reduce a penalty levied against real or personal property **in the case of an error** by the county.

S.C. Code § 12-45-420.<sup>1</sup> This county tax committee may only act if the county committed an error and such action will not conflict with another provision in the S.C. Code of Laws.

S.C. Code § 12-60-2560 governs refund claims, another time when the tax committee may act, as follows:

- (A) Subject to the limitations in Section 12-60-1750, and within the time limitation of Section 12-54-85(F), a **property taxpayer may seek a refund of real property taxes** assessed by the county assessor and paid, other than taxes paid on property the taxpayer claims is exempt, by filing a claim for refund with the county assessor who made the property tax assessment for the property for which the tax refund is sought.

The assessor, upon receipt of a claim for refund, shall immediately notify the county treasurer and the county auditor for the county<sup>2</sup> from which the refund is sought. The majority of these three officials shall determine the taxpayer's refund, if any, and shall notify the taxpayer in writing of their decision.

- (B) Within thirty days after the decision is mailed to the taxpayer on the claim for refund, a **property taxpayer may appeal the decision to the county board of assessment appeals**. The board may rule on any timely refund appeal relating to the correctness of the property tax assessment. Conferences conducted by the board are pursuant to the same rules and procedures provided in Section 12-60-2530 except that a taxpayer's denied claim for refund is considered the assessor's response to a protest of property tax assessment.

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<sup>1</sup> There is proposed legislation to add another section to § 12-45-420 which would specifically apply to property tax penalties. 2009 S.C. House Bill No. 3283, 118th Session.

<sup>2</sup> The Tax Committee is comprised of the county treasurer, auditor, and assessor.

- (C) Within thirty days after the board's decision is mailed to the taxpayer, a property taxpayer or county assessor **may appeal the decision issued by the board by requesting a contested case hearing before the Administrative Law Judge Division**<sup>3</sup>. Requests for a hearing before the Administrative Law Judge Division must be made in accordance with its rules.

S.C. Code § 12-60-2560 (emphasis added). The Tax Committee may hear claims for refunds, but if one is unsatisfied with the decision, he or she should appeal the decision to the board of assessment appeals and follow the appellate procedure of § 12-60-2530.

This Office is not a fact-finding entity; “investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court.” Op. S.C. Atty. Gen., September 14, 2006; April 6, 2006. Nevertheless, it is the understanding of this Office, based on previous conversations with individuals involved, that the property owner appealed the property tax assessment made by the assessor. The Oconee Board of Assessment Appeals properly held the hearing, but the property owner did not attend or submit evidence. The board reached a decision based on information submitted by the assessor, and the board informed parties of the decision and their right to request a contested case before the Administrative Law Court. The property owner failed to appeal within the specified time period, so the case was not assigned to an administrative law judge. The property owner later came to the Tax Committee and asked that the classification of his property be evaluated and classified as a Home Owner’s Association (HOA). The Tax Committee decided to allow the property to qualify as a HOA. It is unclear whether the county committed an error, which would allow the Tax Committee to “waive, dismiss, or reduce a penalty levied against real or personal property.” From conversations with individuals involved, the procedures set forth in S.C. Code § 12-60-2530 appear to have been followed by the Oconee Board of Assessment Appeals regarding the property tax assessment.

### Conclusion

It is the opinion of this Office that neither the Tax Committee nor any other person or entity, outside S.C. Code § 12-60-2540 (Administrative Law Court) and § 12-60-3380 (higher court), may disregard a decision reached by the County Board of Assessment Appeals. If one is unsatisfied with a decision made by the Board, he or she must go through appropriate appellate procedure and timely file an appeal with the Administrative Law Court. See S.C. Code §§ 12-60-2530 and -2540.

Since this Office is not a fact-finding entity, it is unclear whether the Tax Committee inappropriately interfered or whether the committee was acting under its authority and was simply hearing a different matter involving the same property. It is clear, however, that the county tax committee may only act

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<sup>3</sup> The “Administrative Law Judge Division” is now referred to as the “Administrative Law Court”

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if the county committed an error and such action will not conflict with another provision in the S.C. Code of Laws. S.C. Code § 12-45-420. And, it is clear that the Tax Committee may hear claims for refunds under S.C. Code § 12-60-2560.

The Tax Committee<sup>4</sup> and the County Board of Assessment Appeals<sup>5</sup> both have authority to make decisions. However, the decisions made by the Board of Assessment Appeals should not be disregarded by the Tax Committee. See, S.C. Code 12-60-2560; Brackenbrook, 360 S.C. 390, 398-399 (2004). Both entities are reminded and encouraged to abide by state law, county ordinances, and the appropriate appellate procedure set forth for decisions made by each governing body.

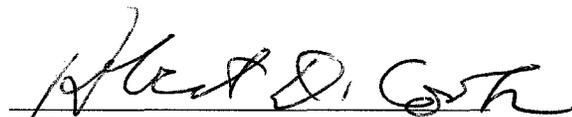
Sincerely,

Henry McMaster  
Attorney General



By: Leigha Blackwell  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General

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<sup>4</sup> under S.C. Code § 12-45-420 and § 12-60-2560

<sup>5</sup> under S.C. Code § 12-60-2530