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For more than a decade, Nevada tax panel breaks law

State continues in 'dereliction' of duties

John Dougherty

CARSON CITY, Nev. — The Nevada Tax Commission has violated state law for more than 10 years by failing to issue a statutorily required tax-policy manual to ensure that the state's 17 county assessors uniformly and equally appraise property parcels across the state.

The lack of the tax manual has resulted in significant disparities among county assessors in how they value property for tax purposes, state records, court rulings and interviews with assessors show.

The state constitution requires property to be equally and uniformly valued and the Nevada Supreme Court has ruled that county assessors must use state-approved methods when they assess any of the more than one million property parcels in the state.

The commission's failure to publish the tax policies and procedures manual for a decade is not its only major shortcoming. The commission has not yet promulgated a precise definition for "land," a fundamental element of property-tax assessment. The commission has also been reprimanded by the Nevada Supreme Court for "dereliction" of its duties to provide guidance to county assessors on how to conduct appraisals in complex situations.

The commission's violation of NRS 360.215(9), the provision requiring the policy manual, has played a central role in the ongoing property-tax revolt in Washoe County. North Lake Tahoe residents have won several Supreme Court cases over that county's illegal

use of property-tax-assessment methods never approved by the state.

The Nevada Assessors Association has repeatedly requested the tax commission to issue the manual, but so far, nothing has happened. The result: Assessors must make seat-of-the-pants judgments on often-complicated property-tax issues, sometimes consulting with each other for guidance.

"The assessors are in limbo," said Dino DiCianno, executive director of the state Department of Taxation, the agency that implements regulations passed by the Tax Commission. "What we need to do is update the manual and incorporate it into our regulations."

So far, however, the department has given no indication it plans to begin the rule-making process to issue a new tax-policy manual.

DiCianno said the old policy manual was withdrawn from assessors in 1999 after the Nevada Legislature amended a law on administrative procedures. The revision required policies and procedures within the manual to go through the state's lengthy and cumbersome regulatory rule-making process. Ten years later, DiCianno said, that still has not happened.

Additionally, some counties are quietly pressing for no tax-policy manual to be issued, because they want to retain ultimate authority on how to implement state property-tax laws and regulations, a former state tax department official and a former tax commissioner said.

Joel Flamenbaum, a former tax department supervisor, said that after he was hired in 2001 to oversee the appraisal division he was ordered by superiors in the Guinn administration not to work on the tax manual. Flamenbaum said he later learned that the department decided not to reissue the tax policy manual in order to provide cover for elected county assessors and allow them to implement their own property assessment procedures without being held accountable for straying from state standards.

"If nothing is written down, then no one could be admonished," said Flamenbaum, who was fired from the department in 2006 after he leaked internal information to a taxpayers group.

Former state tax commission chairman Thomas Sheets said there is disagreement between taxpayers and some assessors over the need for the policy manual. Some taxpayer groups, he said, want a tax manual with "rigid instructions" to provide assessors with as much guidance from the state as possible.

But, Sheets said, some elected assessors don't want to be subjected to the state-mandated directives that would come with a policy manual. Instead, they want general guidelines within which they can flexibly deal with varied situations.

"You don't have unanimity of opinion among the county (assessors)," Sheets said during an August interview in his Las Vegas law office. "All of these things factor into why there is no manual at this point."

Sheets, who served as tax commission chairman for four years, was unaware at the time of the interview that the commission was required by state statute to issue the policy-and-procedures manual.

"Frankly, if the statutes say you should have a [manual], then shame on me for not making sure we have done that during my watch," he said.

Sheets resigned from the commission in September to accept a position as chief counsel for the Federal Energy Regulatory Commission. Gov. Jim Gibbons named tax commission member Robert Barengo as the panel's new chairman. Barengo did not return a phone call seeking comment on the lack of a tax manual.

A half-dozen assessors interviewed for this story from large and small counties from across the state said they would welcome a new tax-policy manual.

Josh Wilson, the Washoe County assessor and current president of the Nevada Assessors Association, said, "assessors across the state would like to see an updated manual." Wilson said the tax department had scheduled hearings in the summer of 2007 on preparing

a new manual, but nothing ever came from the meetings.

Wilson said the old manual provided information on how to implement regulations passed by the tax commission. "We want guidance in carrying out the statutes and regulations consistently and appropriately," he said.

Douglas County assessor Doug Sonnemann said his staff still has a copy of the 1990s manual and he would welcome an updated version to assist in explaining to taxpayers how the assessor determined the value of their property. Douglas County includes high-end properties on the southeastern shore of Lake Tahoe.

"Nothing is better to me than to pull out the book and say, 'Here is the law and the regulation,'" he said.

Lyon County Assessor Mike Glass said the lack of the manual has made his job increasingly more difficult because of the complicated tax regulations that have resulted in the last few years after the Nevada Legislature imposed the property-tax caps in 2005. The rapidly growing county is east of Carson City.

"It's been a bit rougher because the rules seem obscure and hard to follow," Glass said. "There's lot of things where we don't know what to do."

Glass said that he and many of his fellow assessors in the 14 rural counties would welcome a policy manual because it would help ensure uniformity in property-tax assessments across the state.

"It would be nice if all the assessors could get on the same page," he said. "It would be nice for the department to say this is what this means. We all want to do it the same way and that's been our goal forever."

Mark Schofield, the assessor of Clark County, which includes Las Vegas, said, "a manual certainly would have added some clarity, but it hasn't really impeded or hampered our ability to do our jobs. We do rely heavily on the [state] statutes and the Nevada Administrative Code."

At the same time, Schofield said he does not understand why the tax department has not requested that the tax commission begin hearings on a new manual. "Why haven't you taken the tax manual back to the commission for adoption?" Schofield asks. "Why?"

Barbara Smith Campbell was chairwoman of the tax commission in 1999 when the legislative changes were made and the commission withdrew the manual, which up to then had not been made generally available to the public.

She said the tax department even then couldn't keep up with a statutorily required, 10-year review of about 100 regulations each year, let alone put a 350-page policy-and-procedures manual through the regulatory process.

In addition, she said, opening the policy manual to public comment during required regulatory workshops would quickly get bogged down in a debate over how much discretion should be given to assessors.

Taxpayer groups, such as the Village League to Save Incline Assets, Inc., which is leading a seven-year tax revolt at Lake Tahoe, would push for policies and procedures that strictly limit the amount of discretion given to assessors to determine property values, she said.

And assessors would counter, she said, arguing that some degree of subjectivity is necessary in order to fairly and equally assess property.

"The two sides shall never come together," Campbell said. "Not in our state."

The fact that it would be a contentious and difficult series of hearings to approve a new tax manual is not a legitimate excuse for the tax commission to have ignored the law for more than a decade, said Norm Azevedo, a former attorney for the tax commission.

"They have a statutory duty to do it and they should do it," said Azevedo, who after leaving the commission represented Lake Tahoe taxpayers in litigation that led to several significant Nevada Supreme Court decisions. The rulings force Washoe County to issue property tax refunds because the assessor used valuation methods unapproved by the state.

In December 2006, the high court ruled in *Bakst vs. the State Board of Equalization* that county assessors must use appraisal methods approved by the state tax commission. In the same ruling, the court also said the tax commission had been derelict in its duty to provide detailed guidelines to assessors.

Now, three years later, the tax commission continues to ignore state law and the Supreme Court by failing to provide taxpayers and assessors a required policy-and-procedures manual that would help ensure that property across the state is being fairly and equitably assessed.

"From my perspective, that is the heart of the issue," Azevedo said. "You have to have a uniform system of valuation."

John Dougherty is the principal of InvestigativeMedia.com and has long been one of America's leading investigative reporters. He has been retained by the Nevada Policy Research Institute to report on critical issues of Nevada governance.

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