ALAN WILSON
ATTORNEY GENERAL

June 22, 2012

The Honorable Michael E. Reed
Edgefield County Assessor's Office
129 Courthouse Square, Suite 109
Edgefield, South Carolina 29824

Dear Mr. Reed:

You have raised to this Office two questions concerning county *ad valorem* tax assessments. First, you have asked about the propriety of using certain kinds of appraisal reports. Second, you have inquired about options for disciplining an appraiser who creates a misleading, fraudulent, or deceptive report. We will consider each issue in turn.

Analysis

Use of report by assessor

Your first question concerns the use of certain appraisal reports. Specifically, you ask:

> If the appraisal report [submitted by a property owner disputing the valuation of his or her property] indicates the intended user is someone or some firm other than the assessor's office and the report indicates the intended use is for something other than . . . a dispute over the value of property for ad valorem tax purposes[,] should a licensed appraiser working in an assessor's office use it?

Pursuant to section 12-37-930 of the South Carolina Code (2000 & Supp. 2011):

> All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

As we have explained previously, "[i]n this context, 'true value in money' means fair market value. However, section 12-37-930 permits an exercise of discretion as to the proper method for ascertaining fair market value." Letter to The Honorable Tom Young, Jr., Op. S.C. Att'y Gen. (Oct. 20, 2011) (internal citations omitted). Further:

> The precise method for determining the "full and true value" of property is within the assessor's discretion. The tax assessor must consider all factors which affect property value, and judgment is the touchstone. The assessor must consider and give due weight to every element and factor affecting the market value of real property for the purpose of real property taxes.

Letter to The Honorable Donald C. Smith, Op. S.C. Att'y Gen. (Jan. 29, 2007) (quoting 72 Am. Jur. 2d *State and Local Taxation* § 668).[1] Thus, the assessor's focus in considering a dispute should be on evaluating all available evidence as to the "true value in money" of the disputed property.

Further support for this view is found in the procedures for appealing an assessor's valuation; these statutory procedures do not appear to limit the types of evidence upon which a taxpayer may base his or her dispute. Specifically, section 12-60-2520 of the South Carolina Code (2000) provides that "[a] property taxpayer may object to a property tax assessment . . . by requesting in writing to meet with the assessor" and "[i]f, upon examination of the property taxpayer's written objection, the county assessor agrees with the taxpayer, the county assessor must correct the error." If the assessor does not agree, a conference must be held, following which the taxpayer will have the right to file a written protest of the assessment. *Id.* Such protest must include "the value and classification which the property taxpayer considers the fair market value, special use value, if applicable, and the proper classification," but the statute does not specify any particular type of evidence that must support the taxpayer's assertions. *Id.* Nonetheless, in response to a written protest, "[t]he assessor may amend, modify, or rescind any property tax assessment, except claims relating to property tax exemptions." *Id.* In sum, section 12-60-2520 places no limitation upon the types of evidence a taxpayer may submit in support of an objection or protest, and it gives clear authority to the assessor to alter an assessment based upon the evidence presented.

In addition, courts and administrative law courts have relied on evidence from a variety of sources in ruling on tax appeals and contested cases.[2] *E.g.*, *Cloyd v. Mabry*, 295 S.C. 86, 367 S.E.2d 171 (Ct. App. 1988) (relying on owner testimony to determine that a reduction in value was supported by the evidence in the record); *The E.A. House Family Trust v. Charleston County Assessor*, Docket No. 07-ALJ-17-0265-CC (S.C. Admin. Law Ct. Jan. 31, 2008), *available at* 2008 WL 8582436 (relying on the testimony of a real estate agent to determine market value). At least one administrative law court has relied upon an appraisal compiled for a purpose other than real property taxation as some evidence of the value of a property for tax purposes. *Barclay v. Aiken County Assessor*, Docket No. 09-ALJ-17-0340-CC (S.C. Admin. Law Ct. Aug. 25, 2010), *available at* 2010 WL 6782554 (finding "the appraisal performed by an

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[1] Section 12-37-90(h) of the South Carolina Code (2000) makes the county assessor "the sole person responsible for the valuation of real property, except that [property] required by law to be appraised and assessed by the [South Carolina Department of Revenue]."

[2] While such proceedings are governed by their own procedural rules, the decisions of these tribunals reflect an understanding that evidence other than an appraisal prepared specifically for tax purposes can be probative of the value of a disputed property.

appraiser for [a federal bank] . . . is evidence of the fair market value of the property").

Viewing these authorities together, it appears that an assessor should consider all evidence presented by a taxpayer and exercise his or her discretion in evaluating the weight to be given that evidence. It does not appear that an appraisal submitted by a taxpayer must be discredited merely because it was compiled for a purpose other than *ad valorem* taxation. Rather, the usefulness of any information contained in the taxpayer's appraisal should be evaluated for the extent to which it is probative of the true value of the property at the relevant time.

We turn now to your inquiry concerning the discipline of appraisers.

Misleading, fraudulent, or deceptive report

You have inquired regarding options for disciplining an appraiser who creates a misleading, fraudulent, or deceptive appraisal report. Real estate appraisers are subject to the South Carolina Real Estate Appraiser License and Certification Act ("the License and Certification Act"), S.C. Code Ann. § 40-60-5 *et seq.* (2011), and to the provisions of article 1, chapter 1, title 40 of the South Carolina Code (2011), to the extent that article does not conflict with the License and Certification Act. S.C. Code Ann. § 40-60-5. Though we summarize some of the key provisions of these authorities below, we recommend you refer directly to the statutes for further detail concerning the procedures and sanctions available.

Pursuant to section 40-1-80, the Director of the Department of Labor, Licensing and Regulation (or his official designee) may investigate an appraiser in response to a written complaint charging a violation of article 1, chapter 1, title 40 or a regulation promulgated pursuant thereto. The Director (or his designee) also may investigate if he has "reason to believe" that an appraiser has violated the License and Certification Act or a regulation promulgated thereunder. *Id.*; *see also* S.C. Code Ann. § 40-60-80(A) (providing the Department of Labor, Licensing and Regulation "shall investigate complaints and violations" of the License and Certification Act).

The results of any such investigation "must be presented" to the relevant regulatory board, which may conduct a hearing and vote upon any disciplinary action. S.C. Code Ann. § 40-1-90. There are several grounds for discipline that might be relevant to a misleading, fraudulent, or deceptive appraisal report.[3]

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[3] Though several grounds appear on their face to be relevant, we would defer to any reasonable interpretation given these statutes by the authorities charged with enforcing them. *See, e.g.*, Letter to The Honorable Ramon Schwartz, Jr., Op. S.C. Att'y Gen. (Sept. 12, 1985) ("This Office must defer to any reasonable construction applied by the [administrative] agency." (emphasis in original)). Examples of potentially relevant grounds for discipline include, among others, the intentional use of "a fraudulent statement in a document connected with the practice of the individual's profession or occupation," the performance of "an act in the practice of real estate appraising that constitutes dishonest, fraudulent, or improper conduct," "violat[ing] any of the standards for the development or communication of real estate appraisals as promulgated by the [South Carolina Real Estate Appraisers Board] in regulation," and "demonstrat[ing] bad faith, dishonesty, untrustworthiness, or incompetency to act as an appraiser in a manner so as to endanger the interests of the public." *See* S.C. Code Ann. §§ 40-1-110(1)(d), 40-60-

However, pursuant to section 40-60-80, "[t]he board is prohibited from conducting an investigation based solely on a dispute over the value of property for ad valorem tax purposes" and it "may decline to conduct an investigation" in response to a complaint that "involves an appraisal report that varies from a sales, lease, or exchange price."

Upon finding conduct warranting discipline, the board may choose among several disciplinary options, including fines, public reprimand, and various actions limiting the ability of the appraiser to practice. Specifically, the board may "cancel . . . suspend, revoke, or restrict the authorization to practice" of the offending appraiser. *See* S.C. Code Ann. §§ 40-1-110, 40-1-120, 40-60-120.

In some instances, section 12-60-90 of the South Carolina Code (2000 & Supp. 2011) might provide an additional avenue for discipline. That section provides in relevant part that "a real estate appraiser who is registered, licensed, or certified pursuant to Chapter 60 of Title 40" may represent a taxpayer "during the administrative tax process in a matter limited to questions concerning the valuation of real property" and that the South Carolina Department of Revenue "may suspend or disbar from practice in the administrative tax process or censure any person authorized by these rules to represent taxpayers, if the person is shown to be . . . disreputable . . . ."[4] Disreputable conduct is defined by reference to section 10.51 of United States Treasury Department Circular 230 and includes, among other things, "[g]iving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading." S.C. Code Ann. § 12-60-90; Treas. Circular No. 230 § 10.51(a)(4) (June 3, 2011).[5] Section 12-60-90(F) of the South Carolina Code clarifies that terms in Circular 230 "must be given the meanings necessary to effectuate this section." For example, references to the Department of the Treasury "are deemed to include references to any state or local tax authority" and references to "federal are deemed to include references to this State [or] any of its political subdivisions." *Id.* Thus, false or misleading information given in the course of a representation before a state or local tax authority might constitute grounds for discipline by the Department of Revenue.

110(3), (8), (14). In addition, the License and Certification Act requires all appraisers to "conform their professional conduct to the National [Uniform Standards of Professional Appraisal Practice] and its amendments." S.C. Code Ann. § 40-60-38.

[4] For the purposes of section 12-60-90, the term "administrative tax process" is defined to include, among other things, "preparation and filing of necessary documents . . . and the representation of a client at conferences and meetings, including conferences with the county boards of assessment appeals." Whether a particular appraiser's relationship with a taxpayer would constitute representation in the administrative tax process within the meaning of section 12-60-90 is a question of fact beyond the scope of this opinion.

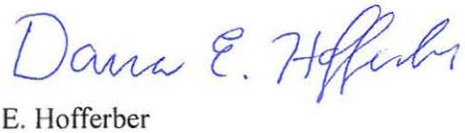
[5] For the purposes of this section, "[f]acts or other matters contained in testimony . . . financial statements . . . affidavits, declarations, and any other document or statement, written or oral, are included in the term 'information.'" Treas. Circular No. 230 § 10.51(a)(4).

Conclusion

In the opinion of this Office, an assessor should consider all evidence presented by a taxpayer and exercise his or her discretion in evaluating the weight to be given that evidence. The usefulness of any information contained in a taxpayer's appraisal should be evaluated based on the extent to which it is probative of the true value of the disputed property at the relevant time.

Several authorities for discipline are potentially relevant to an appraisal that is misleading, fraudulent, or deceptive. We have summarized key provisions of these authorities above.

Very truly yours,



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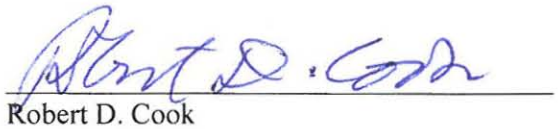

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