

Memorandum

To: Mr. Jerry Cornelius
Supervisor, Audit, Evaluation & Planning

Date: February 27, 1996

From: David H. Levine
Supervising Staff Counsel

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Subject: Notice to County Assessors

This is in response to memoranda from Audit Evaluation and Planning dated August 16 and November 15, 1995 regarding a notice issued to county assessors. That notice stated that sales tax does not apply when an assessor furnishes copies of public records as required by a county ordinance provided the ordinance fixes the fee. The notice states that tax does apply, however, if the ordinance does not establish a fixed fee (such as stating a "reasonable charge" instead of a fixed fee).

In a letter dated May 23, 1995, the REDACTED TEXT County Assessor's office questioned the notice. The county does not set a fixed fee by ordinance, but believes that it is providing the governmental service of furnishing public records pursuant to the California Public Records Act (CPRA). In a memorandum dated May 31, 1995, Mr. Charles G. Knudsen of the Assessment Standards Division notes that the notice conflicts with Annotations 515.0120 (10/2/64) and 515.0140 (8/4/64). These annotations state that the fee may be fixed by law or by public official. On the other hand, annotation 515.0180 (1/9/59) is consistent with the notice.

Annot. 515.0120 – deleted in 2000 (1Q00) SPJ 3/1/01 Annot. 515.0180 – deleted (3Q96) SPJ 3/1/01
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The REDACTED TEXT County Office of REDACTED TEXT has also questioned the notice. A member of the Audit Evaluation and Planning staff discussed the matter with REDACTED TEXT of the County REDACTED TEXT. I too have talked with Ms. REDACTED TEXT. She explained the manner in which the prices are set for the documents the county provides. My understanding is that the price is set at an amount sufficient to recover the county's cost of providing documents pursuant to the CPRA. If the county staff believes that a price increase is in order, a request for the increase is presented to the Board of Supervisors, and if the Board approves, it does so by resolution.

The basic rule is that when a governmental agency transfers copies of documents as required by the CPRA or other law for a price charged in accordance with and under authority of law, the agency has not made a "sale" of tangible personal property under Revenue and Taxation Code section 6006 but has instead provided a governmental service. Obviously, a price set by ordinance satisfies the pricing part of this rule. However, a price set by ordinance is *not* the only price that satisfies this test. For example, the REDACTED TEXT County Board of Supervisors

apparently has guidelines (perhaps adopted by ordinance, although I am not sure) for establishing the price of the documents the county provides under the CPRA. My understanding is that if the price is changed, the Board of Supervisors must approve the change, and it does so by resolution. This process is in accordance with law, is under authority of law, and meets the test set forth above. The county is providing a governmental service when it uses this method to price documents it is required to provide under the CPRA.

Annotations 515.0120 and 515.0140 state the correct rule. Annotation 515.0180 is incorrect, and by copy of this memorandum I am asking Mr. Nunes to have it deleted immediately. I note also that annotation 515.0195 should probably also be deleted because it makes no reference to price at all (i.e., if it is correct, none of the other annotations are necessary). The portion of the Notice to Assessors based on annotation 515.0180 is also incorrect. This portion appears under the heading "Photocopies of public records or maps." I suggest that a new notice be sent that corrects this mistake. (If the entire notice is reprinted, with corrections, the reference to exempt sales for resale and exempt services should be changed to nontaxable sales for resale and nontaxable services.)

Annot. 515.0195 – Deleted 3Q96 SPJ 3/1/01

Per the request in November 15, 1995 memorandum, I am also responding directly to REDACTED TEXT and a copy of that letter will be forwarded to you. If you have further questions, please let me know.

DHL/cmm

cc: Mr. Robert Nunes (MIC:40)