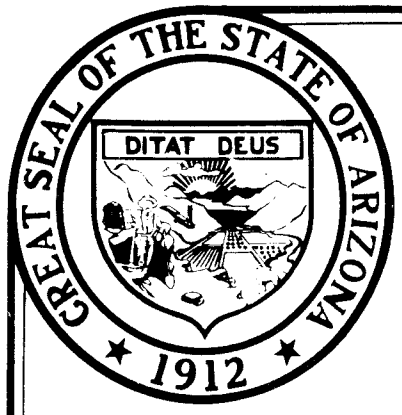


PERFORMANCE AUDIT

BOARD OF TAX APPEALS

Report to the Arizona Legislature
By the Auditor General
October 1989
89-7

DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

LINDA J. BLESSING, CPA
DEPUTY AUDITOR GENERAL

October 16, 1989

Members of the Arizona Legislature
The Honorable Rose Mofford, Governor
Ms. Barbara Fisher, Chairperson
Arizona Board of Tax Appeals

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona Board of Tax Appeals. This report is in response to a June 2, 1987, resolution of the Joint Legislative Oversight Committee.

The report addresses the difficulties the Board has faced meeting its seasonal workload which has tripled in the past five years. With limited resources, the Board has been unable to provide a high quality level of service to taxpayers. The best way to address these problems would be to spread the Board's workload over the entire year. Implementing filing fees to discourage frivolous appeals would also help to manage the problem.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Douglas R. Norton
Auditor General

DRN:lmn

STAFF: William Thomson
Peter N. Francis
Kimberly S. Hildebrand
Ned E. Parrish
Jennifer DuBois

2700 NORTH CENTRAL AVE. ● SUITE 700 ● PHOENIX, ARIZONA 85004 ● (602) 255-4385

SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Tax Appeals (BOTA) in response to a June 2, 1987, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Arizona Board of Tax Appeals is a quasi-judicial agency consisting of two divisions, known as Division One and Division Two, with separate jurisdictions and equal power. Each division has three appointed board members. Division One provides an independent appeals process relating to the ad valorem taxation of property while Division Two handles appeals regarding sales, income, and other types of taxes. This audit focuses on Division One which makes decisions affecting over $100 million in property taxes each year. These operations have been seriously impacted by a workload which has tripled in the past five years with no corresponding increase in resources. Due to time constraints and the severity of the workload problems in Division One, the audit did not address Division Two.

The Seasonal Nature of the Work Limits Division One's Ability to Handle Its Rapidly Growing Caseload (see pages 7 through 14)

Division One's efforts to manage its rapidly increasing caseload are hampered by the extreme seasonality of the work. A.R.S §42-245A.2 requires Division One to decide appeals concerning real and secured property by July 25 each year. Consequently, in 1988 Division One scheduled 2,339 hearings, reviewed 1,470 cases on-the-record, and made decisions in 3,756 appeals between April 1 and the end of July. In fact, 87 percent of all decisions rendered by the division in 1988 were made in two months, June and July.

The division has tried two very different approaches in an attempt to handle the workload. In 1988, the board decided many appeals based on written evidence alone. In 1989, the board resolved to hear all appeals by holding hearings for up to 10 and 1/2 hours per day, tripling the number of hearing officers, and tripling temporary clerical help expenditures. Regardless of how the board has approached its workload

problem, the large volume of appeals received by Division One limits the board's ability to provide a high quality of service to taxpayers. For example, the large caseload makes rescheduling impractical and limits the amount of time the board can devote to hearing and deciding appeals. The time and resource constraints faced by the board must be eliminated if the division is to effectively manage its rapidly growing caseload.

The Use of Filing Fees and Other Appropriate Measures Should Be Considered to Reduce the Number of Frivolous Appeals (see pages 15 through 19)

Mass solicitations by tax consultants and the no cost, no risk nature of the current property tax appeals process invites frivolous appeals which only serve to overload and abuse the appeals system. There is no cost involved in appealing, and the worst possible outcome is that the property valuation will not change.

Many appeals filed with the board are without merit and only serve to overload the appeals system. An analysis of the outcomes of tax appeals filed in 1988 showed that only 11 percent of the tax consultant appeals resulted in a reduction of full cash value. In contrast, 22 percent of all other appeals resulted in a reduction of full cash value. Requiring a nominal filing fee, as is common in judicial cases, may discourage taxpayers and consultants from filing indiscriminate appeals. Another option would be to give the board clear authority to raise assessed valuations if appropriate and warranted.

The Board Needs to Provide More Information in Its Written Decisions (see pages 21 through 24)

Due to its overwhelming workload and time constraints, Division One is also unable to generate written decisions which provide adequate detail. To accommodate its enormous workload, the board has developed an "assembly line," computer-aided method for generating its narrative Findings of Fact and Conclusions of Law. However, the "canned" narratives which state the board's decision are brief (most are only three to five lines), worded generally, and provide little insight into

the reasoning behind the board's decisions. One complex case involving $44 million received only a brief, three-line decision. Also, many appellants whose cases were heard by the board at the close of the 1988 tax season received no narrative explanations as statutorily required because the board did not have time to generate this information. In contrast, similar agencies in some other states include more detail and explanation in their written decisions.

Division One Is Not Complying with Notice Requirements (see pages 25 through 28)

Problems arising from the board's workload have also been at least partially responsible for failures to comply with State and federal due process requirements. Although the board can decide cases based solely on written arguments (without holding a hearing), in some instances parties were not provided adequate notice to object, and in others, the parties were given no opportunity to object. Even if the parties objected the board could not have accommodated them. This practice not only violates the board's own rules, but it also violates due process requirements of State and federal laws. Furthermore, Division One's current practice of scheduling hearings two weeks in advance may not allow sufficient time to notify the parties involved and fails to comply with statutory requirements.

Board Member Compensation Is Inadequate (see pages 29 through 32)

Board members responsible for decisions involving millions of dollars in tax revenues are paid $50 per day. This is an average of $6.25 an hour, which is less than custodians, laborers, and groundskeepers earn. Further, the enormous workload of the division requires a significant time commitment of board members. In fiscal year 1988, board members worked from 77 to 160 days to accommodate the workload; during the tax appeals season, board members work almost full-time. This is far more time than is required of individuals serving on other Arizona boards. Board of Tax Appeal members are also paid less than tax appeal board members of seven other states we surveyed, and when the caseloads of these agencies are considered, the discrepancy in pay is even more glaring.

TABLE OF CONTENTS

TABLE OF CONTENTS Con't

LIST OF TABLES

LIST OF FIGURES

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Tax Appeals in response to a June 2, 1987, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Arizona Board of Tax Appeals is a quasi-judicial agency and consists of two divisions, known as Division One and Division Two, with separate jurisdictions and equal power. Each division has three appointed board members. Division One provides an independent appeal process relating to the ad valorem taxation of property, while Division Two handles appeals regarding sales, income, and other types of taxes.[1] The board's expenditures for fiscal years 1986-87 through 1988-89 are shown in Table 1 (see page 2). This audit focuses on Division One which makes decisions affecting over $100 million in property taxes each year. These operations have been seriously impacted by an overwhelming workload.

Division One Caseload Overwhelming

Division One's workload has increased dramatically in the past five years. During this period, the number of appeals received annually tripled while resources have remained stable. In addition, the July 25 deadline limits the amount of time the division has to handle appeals.

Substantial increase in workload - Division One's caseload has grown substantially since the early 1980s. As Figure 1 (see page 3) clearly shows, the number of property tax appeals jumped dramatically in 1985,

---

(1) Division One of the Board of Tax Appeals hears property tax appeals filed by taxpayers, assessors, and the Department of Revenue concerning the valuation, classification, and taxation of property. The vast majority of appeals involve locally assessed property (property assessed by the county assessors). Division One serves as the third step in the appeals process. Property tax appeals for locally assessed property are first heard by the county assessors and then by the county boards of equalization, before being brought to the Board of Tax Appeals.

TABLE 1

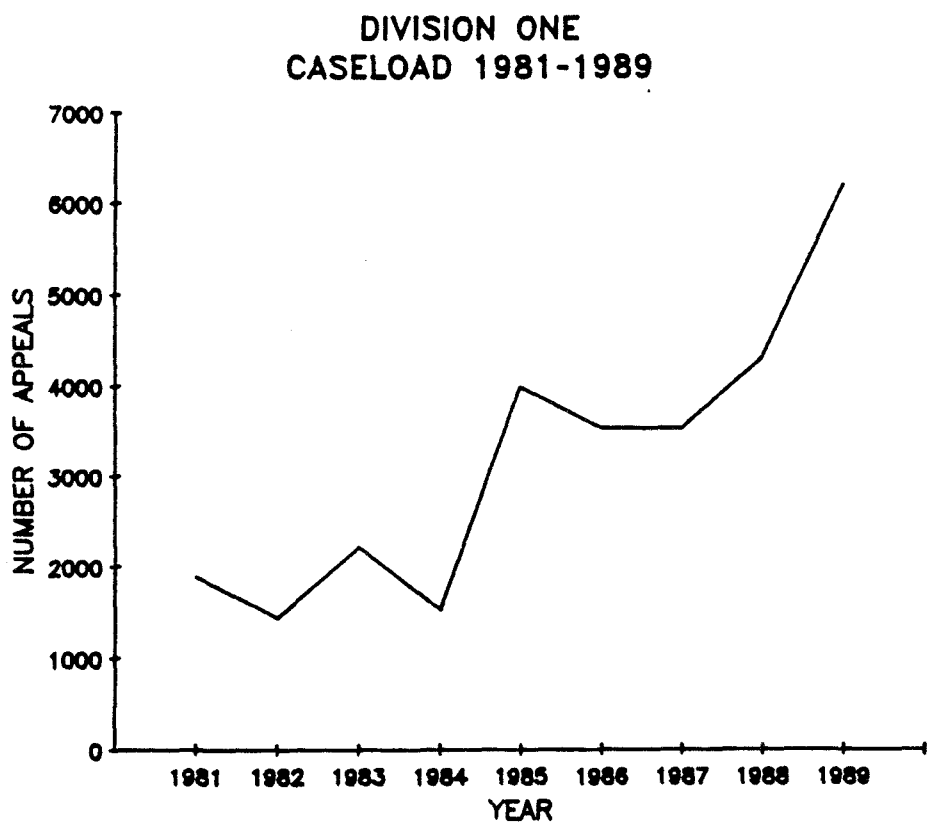
BOARD OF TAX APPEALS
STATEMENT OF FTEs AND ACTUAL EXPENDITURES
FISCAL YEARS 1986-87, 1987-88, AND 1988-89
(unaudited)

	1986-87	1987-88	1988-89
FTE Positions	7.5	7.5	7.5
Personal services	$218,766	$210,231	$240,915
Employee-related	37,331	32,868	40,782
Professional & outside services	9,542	14,177	26,049
Travel, in-state	17,080	22,098	16,287
out-of-state	1,900	4,859	2,059
Equipment	8,280	8,885	24,737
Other operating	75,433	75,755	38,629
Total	$368,332	$368,873	$389,458

Source: Arizona Financial Information Systems and the State of Arizona, Appropriations Report for the Fiscal Year Ended June 30, 1989

increasing almost 162 percent over the previous year. As a result, a system which was designed to handle about 2,000 appeals was faced with handling almost 4,000. The division continued to receive a large number of appeals in subsequent years and in 1988 received 4,299 appeals.[1] In 1989, the division received a record number of appeals, over 6,200. This tripling of the workload has placed a severe strain on the division since they have received essentially no additional resources to cope with the increase in workload.

FIGURE 1



Source: Division One, State Board of Tax Appeals caseload statistics

---

(1) Division One's caseload included residential, industrial, commercial, and other type property appeals with property values ranging from $407 to $208,000,000.

No increase in staff resources - Staffing resources have not kept pace with the growing number of appeals. As a result the division is faced with the dilemma of scheduling, hearing, and making decisions on three times the number of appeals with no corresponding increase in staff.

As Table 2 indicates, the size of Division One's board and full-time staff has not increased since 1981. Furthermore, until 1989, expenditures for temporary staff had declined substantially while the number of appeals received by the division continued to increase.

TABLE 2

COMPARISON OF DIVISION ONE'S
CASELOAD AND STAFFING RESOURCES

Year	Appeals Received	Board Members	FTEs(a)	Expenditures for Temporary Staff(b)
1981	1,877	3	4.0	$14,700
1982	1,437	3	3.5	25,100
1983	2,212	3	3.9	17,000
1984	1,522	3	4.0	4,300
1985	3,985	3	4.0	2,200
1986	3,524	3	4.0	3,400
1987	3,522	3	4.0	6,500
1988	4,299	3	4.0	5,800
1989	6,182	3	4.0	18,500(c)

(a) In addition to the FTEs listed since 1987, hearing officers have been contracted to assist in hearing appeals.

(b) During the appeals season (April through July), the division hires temporary clerical staff to generate hearing and decision notices.

(c) Only $11,100 was allocated for temporary staff in fiscal year 1989. The remaining funds came from vacancy savings.

Source: Auditor General analysis of Division One, State Board of Tax Appeals caseload and expenditure data

Limited amount of time to hear appeals - Not only must the division handle a workload which has tripled with no increase in resources, it must do so within a four-month period. The board is statutorily required to hear and decide most property tax appeals by July 25 each year. Since Division One does not receive many appeals before April, the board must

review the vast majority of appeals within a four-month period each year.[1] The seasonality of the appeals time frame severely impacts the division's ability to handle the increasing caseload.

Reasons For The Increase In Appeals

There appear to be several reasons for the growth in property tax appeals. The initial jump in appeals in 1985 can probably be attributed to the Department of Revenue's (DOR) implementation of a blanket increase in the values of commercial property and vacant land. The continued high number of appeals and additional growth in 1988 and 1989 coincides with the advent of tax consultants. The number of tax consultants began to grow in 1985 as the potential savings of tax appeals were recognized. In 1988, tax consultants were associated with at least 40 percent of the appeals filed with the division. A portion of the growth in appeals is also due to an increase in the amount of taxable property in Arizona. Between 1981 and 1988, there was a 22 percent increase in the number of parcels statewide.

The increase in property tax appeals may also be related to the taxpayers' lack of understanding of the Limited Property Value (LPV) formula.[2] This formula is used by county assessors to determine the value of property for assessment of primary property taxes. As the rate of growth in Arizona's property values began to slow in the mid-1980s, limited property values continued to increase. Some taxpayers may have filed additional appeals during this period because they did not understand why the LPV was rising when the property's market value for that year was not.

---

(1) Of the 4,299 total 1988 appeals, 1,700 were received in June. These 1,700 appeals had to be heard and decided in less than two months.

(2) The LPV formula is designed to limit the amount property values can increase in any given year. In periods of strong economic growth, when property values are increasing rapidly, the Limited Property Value of parcels lags behind true market value. However, in years when property values are not growing rapidly, the LPV continues to rise in an effort to approximate market value.

Finally, a former director of DOR believes that DOR and the county assessors have become more aggressive in the valuation of property in recent years. These efforts to bring LPV closer in line with market value may have also caused an increase in appeals.

Audit Scope

Our audit of the Arizona Board of Tax Appeals concentrated on the property tax operations in Division One. The report focuses on strategies to manage the appeals workload in Division One and changes needed to correct problems which have developed as a result of the workload. In addition, we addressed the 12 statutory Sunset Factors (see pages 37 through 40).

Due to time constraints and the severity of the workload problems in Division One, the audit did not address Division Two of the Board of Tax Appeals which handles appeals of sales, income, use, and other types of taxes. The section Area for Further Audit Work addresses this division (see page 35).

This audit was conducted in accordance with generally accepted governmental auditing standards.

The Auditor General and staff express appreciation to the Arizona Board of Tax Appeals, clerks, and staff for their cooperation and assistance during the course of our audit.

FINDING I

THE SEASONAL NATURE OF THE WORK LIMITS DIVISION ONE'S ABILITY TO HANDLE ITS RAPIDLY GROWING CASELOAD

Division One's efforts to manage its rapidly increasing caseload are hampered by the extreme seasonality of the work. Statutory requirements and fluctuation in the number of appeals received throughout the season limit the amount of time available to hear property tax appeals. Quality of service suffers regardless of how the division tries to cope with the workload. The best way to address the board's caseload may be to spread the workload over the entire year.

Division One's Workload Is Highly Seasonal

Division One's workload is extremely cyclical in nature. Most property tax appeals received by the division are heard within a four-month period each year. The seasonality of the work is due to statutory provisions which restrict the amount of time in which the board may hear appeals. The irregular flow of appeals during the tax appeal season compounds the division's workload problems.

Division One receives the vast majority of its property tax appeals between April and July each year. Approximately 96 percent of the 4,299 appeals in 1988 were filed during this period. Division One scheduled 2,339 hearings, reviewed 1,470 cases on-the-record, and made decisions in 3,756 appeals cases between April 1 and the end of July.[1]

The seasonality of the workload, described above, is due to provisions in Title 42 of the Arizona Revised Statutes that limit the time in which the board may hear property tax appeals (see Figure 2, page 8). A.R.S. §42-245A.2 requires Division One to decide appeals concerning real

---

(1) On-the-record decisions are based solely upon the written documentation provided by parties involved in the appeals. In these cases, no hearings are held, and oral testimonies are not received by the board.

FIGURE 2

ARIZONA PROPERTY TAX APPEAL SCHEDULE

January 1	County assessors notify property owners of the full cash value and limited value of their properties by January 1.
January 31	Property owners may appeal the assessors' values on or before January 31.
April 1	County assessors shall rule on every appeal by April 1.
April 15	Property owners can appeal the assessors' decisions to the county boards of equalization within 15 days of the date of mailing of the assessors' decisions.
May 30	May 30 is the last day for the counties to mail written decisions to property owners. (The county boards of equalization must complete all appeal hearings by May 10, make decisions on all appeals within 10 days of the hearing date, and must mail written decisions to property owners within 10 days of the date of decision.)
June 15	Property owners may appeal the county boards' decisions to the Board of Tax Appeals within 15 days of the date of mailing of the county boards' decisions.[a]
July 25	The Board of Tax Appeals must hear and decide most property tax appeals by July 25 and transmit to the Department of Revenue and county boards of equalization a statement of changes it has made in the valuation of property.

(a) In 1989 Division One received appeals of corrected and amended county board of equalization decisions as late as July 7.

Source: Analysis by Auditor General staff of the Annual Calendar of Legal Events, Ad Valorem Tax Schedule, 1989

property by July 25 each year. In addition, tax appeals concerning locally assessed property must first be reviewed by the appropriate county assessor and the county board of equalization before being considered by Division One. The boards of equalization may hear appeals through May 10, must render a decision within 10 days of the hearing date, and must mail a written decision to the parties within 10 days of the decision date. Property owners and county assessors have 15 days from the date of the mailing of the county board's decision to appeal to Division One. As a result, appeals may be filed with the board as late as mid June.

Even within the four-month period between April and July, the workload is uneven. In 1988, Division One received 41 percent of its appeals in June and July. As a result, much of the board's work had to be done in these two months. In fact, 87 percent of the decisions rendered by the division in 1988 were made during this period.

There appears to be two major reasons for the irregularity in the flow of appeals. First, growth in the number of property tax appeals has made it difficult for the county boards of equalization to meet their statutory deadline. Second, according to a former board member, tax agents have submitted large numbers of appeals just prior to the filing deadlines.

Division One Has Tried Two Different Approaches in an Attempt to Handle the Workload

Division One has tried two very different approaches in an attempt to handle the workload. In 1988, the division made decisions on over half its cases based only on written evidence submitted. In 1989, the board managed to hold hearings on every case by tripling temporary staff expenditures, tripling the number of hearing officers, and shortening the length of many hearings. However, both approaches compromise the quality of the board's service.

1988 efforts - The board was unable to hold hearings for all property tax appeals received in 1988. Division One board members and their staff worked a combined 600 hours of overtime in 1988 yet were still unable to

hold hearings for all cases. Hearings were scheduled on 33 of the 43 available weekdays in May and June and were typically scheduled at 15-minute intervals, allowing the board to hear 28 appeals each day.[1] Board members reviewed and deliberated cases on the few days when hearings were not scheduled, as well as during evenings and weekends.

Division One board members and staff would prefer to hold hearings for every appeal. However, the board simply received more appeals than could be scheduled for hearings in the time allotted and with the staff resources available. As a practical matter, the board decided many appeals "on-the-record." At least 1,472 appeals were decided in this manner in 1988.[2] Division One decided these appeals on-the-record because board members felt an obligation to consider all of the appeals received.

Taxpayers have expressed dissatisfaction with Division One's use of on-the-record decision making in 1988. Having an opportunity to appear before the board seems to be important to taxpayers. (Ninety percent of the 30 taxpayers surveyed immediately following their 1989 appeal hearing indicated that it was very important to them to have an opportunity to present their case in person.) Further, a survey of 30 taxpayers who received on-the-record decisions in 1988 revealed that nearly 70 percent were either dissatisfied or very dissatisfied with having their appeal decided in this fashion.[3] Although the State board has the authority

---

(1) In 1988, Division One conducted two sets of hearings simultaneously on five separate occasions and once held three sets of hearings throughout the day. Multiple hearings were again being held in 1989 because of the magnitude of the caseload. To do this the board must use hearing officers and divide into panels.

(2) The number of on-the-record decisions was probably much higher because this figure does not include on-the-record decisions made when the taxpayer failed to appear at the hearing.

(3) Auditor General staff randomly selected 90 individuals to survey who had appealed to Division One. Thirty individuals were interviewed in person immediately following their 1989 hearing; 30 individuals who appeared before the board and had already received their decision were contacted by phone; and 30 whose cases were handled on-the-record in 1988 were contacted by phone. Although the small sample is not statistically valid, the responses provide a qualitative assessment of Division One operations.

to decide appeals on-the-record, a recent Legislative Council Opinion indicates that Division One did not satisfy due process requirements in a number of the appeals decided on-the-record in 1988 (see Finding IV, page 25).

1989 efforts - During the 1989 season, the board resolved to hear all appeals. Even though the board received over 6,000 appeals in 1989, it did not resort to hearing cases on-the-record unless parties requested it or persons failed to appear for a scheduled hearing. To do this, the board lengthened the hours spent in hearings from a normal schedule of 6 to 7 hours a day to as many as 10 and 1/2 hours. Some days had over 100 cases scheduled in one hearing session. The board shortened many hearings involving tax agents from 15 to 10 minutes, tripled the number of hearing officers available to hear cases, and tripled temporary clerical help expenditures to assist in noticing parties of hearings and decisions. (The board was able to increase its number of hearing officers and temporary help through the one-time use of vacancy savings.)

Service to taxpayers - Regardless of how the board has approached its workload problem, the large volume of appeals received by Division One limits the board's ability to provide high quality service to taxpayers. First, the board can provide only a limited amount of time to hear and decide each appeal. Second, Division One cannot reschedule appeal hearings. Third, the division may devote insufficient time to the decision process. Finally, the board has been unable to provide timely notification of its decisions to some taxpayers.

The amount of time allotted to property tax appeal hearings may be insufficient. As mentioned earlier, the board typically scheduled hearings at 15-minute intervals. In 1989, hearings have been scheduled in 10-minute intervals in tax agent cases. This is done to maximize the number of appeals that can be heard by Division One and consolidate appeals involving similar issues. The board believes this is enough time in cases involving tax agents. However, a survey of states with similar administrative property tax appeal boards indicates that these states typically allocate more time to appeal hearings. Property tax appeal

hearings in Colorado usually range from one to two hours in length. Hearings in South Dakota and Idaho generally last between 30 minutes and one hour. Commercial property appeal hearings in Washington, Kansas, and Illinois range from two hours to several weeks in length.

The division's large caseload also makes rescheduling impractical. In 1988, the board received more appeals than could be scheduled for hearing. As a result, the board simply tried to schedule as many hearings as it could in the time available. If persons could not appear at the time scheduled, there was no opportunity to reschedule for a different time. In 1989, the board maintained the policy of not rescheduling hearings. The lack of scheduling flexibility may result in an increase in the number of no-shows and a reduction in the level of taxpayer satisfaction with the appeals process.

Furthermore, deliberations and decisions may be inadequate. Some tax consultants question whether the board devotes enough time to reviewing and considering the evidence presented in hearings. In addition, the board does not have time to produce written decisions which contain sufficient information (see Finding III, page 21).

Finally, Division One has been unable to provide some taxpayers with timely notice of the board's decision. In 1987, the division was unable to produce 450 decisions (over 14% of all decisions) within 30 days as statutorily required. The number of late decisions was substantially higher in 1988, with at least 765 decisions generated more than 30 days after the hearing. This represents over 19 percent of all decisions rendered in 1988.

Time and Resource Constraints Must Be Addressed If Division One Is to Be Effective

The time and resource constraints faced by the board must be eliminated if the division is to effectively manage its rapidly growing caseload. However, simply addressing Division One's resource problems, without also dealing with the significant time constraints, would be inefficient.

Increasing Division One's resources - Given current time constraints, substantial increases in staffing and material resources are necessary. As previously mentioned, Division One's resources have not kept pace with the growing number of property tax appeals. Although the annual number of appeals received by the board has increased more than 300 percent since 1984, expenditures have grown only 19 percent, and the number of FTEs has not increased at all. The board has received at least 40 percent more appeals in 1989 than were received in 1988, yet the division's budget was increased by only $600 for fiscal year 1990.

To meet the demands of its workload, the board would need additional funding for hearing officers, temporary clerical help, and space. In 1989, the board employed three hearing officers on a limited basis. Because vacancy savings were available at the time, it was able to spend more than it originally allocated for hearing officers. Similarly, the board spent an additional $6,000 on temporary clerical help. Again, due to the one-time availability of vacancy savings, the board was able to spend over $17,000 for all temporary help as compared to less than $6,000 spent in 1988. The board may also need additional funding for space to hold hearings.[1] In 1989, the board held three hearings simultaneously on many days. However, it has only one hearing room which is shares with Division Two. Some hearings had to be held in a board office which was not designed for hearings.

Removing time constraints - A better way to address Division One's workload problem would be to spread its work over the entire year and eliminate the seasonal cycle. Operating in such a high paced, stressful manner as was done in 1989 may eventually take its toll on staff and board members. Increased turnover may occur if staff are required to work long hours and on weekends for two or three months each year. The board's most experienced hearing officer indicated he does not want to

---

(1) The resources allotted to the Division One board would need to be increased further if changes recommended in this report are implemented. Preparing individualized decisions (see Finding III, page 21), scheduling deliberation and decision-making meetings (see Other Pertinent Information, page 33), and increasing the length of hearings all require additional time and resources.

work again at the same hectic pace that he worked in 1989. In addition to reducing the risk of staff turnover, spreading out the board's workload would also give the board time to generate more detailed written decisions (see Finding III, page 21). Six of the seven states we surveyed allow their property tax appeal boards to hear cases throughout the year.

However, the effects of modifying the appeals process timetable need to be considered. Increasing the amount of time in which the division may hear appeals would impact other entities. For example, counties establish their budgets in August based on property valuations finalized by July 25. Consequently, any extension of the July 25 deadline would seriously impact the counties' budgeting processes.[1]

RECOMMENDATIONS

1. The Legislature should consider extending the July 25 deadline, established in A.R.S. §42-175, to allow the board adequate time to hear the property tax appeals it receives. However, this change would need to be considered in light of its impact on other entities and local budgeting practices. In addition, Division One may still need additional resources to handle the caseload.

2. If this statutory deadline is not modified, the Legislature should consider a substantial increase in Division One's budget for temporary hearing officers, clerical support, and space requirements.

---

(1) The Property Tax Division of the Department of Revenue is currently collecting and studying information on other states' property tax systems. In addition, a committee comprised of representatives of DOR, the county assessors and boards of equalization, the Board of Tax Appeals' Division One clerk, and others has been organized to address Arizona's property tax system. According to a DOR assistant director, a report outlining the committee's recommendations should be ready in October 1989.

FINDING II

THE USE OF FILING FEES AND OTHER APPROPRIATE MEASURES SHOULD BE CONSIDERED TO REDUCE THE NUMBER OF FRIVOLOUS APPEALS

> In December 1987, the Maricopa County Board of Supervisors received a form letter from a tax consultant inviting the supervisors "to discuss your greater Phoenix property and outline a critical path for an upcoming appeal." A Maricopa County official believes this letter, mailed one month before valuation notices were issued, was probably mailed to all county property owners.[1]

Mass solicitations by tax consultants and the no cost, no risk nature of the current property tax appeals process invites appeals which lack merit and only serve to overload and abuse the appeals system. Instituting filing fees and other measures should be considered to discourage indiscriminate appeals of this type.

Current Process Invites Appeals

The current process of appealing to Division One invites appeals regardless of their merit. There is no cost involved in appealing, and the worst possible outcome is that the property valuation will not change. The tax consulting industry has taken advantage of these circumstances, resulting in enormous increases in the number of appeals filed in recent years. Many of these appeals are frivolous.

Tax consultants generate mass appeals - Much of the increase in the board's workload is attributable to tax consultants who have recognized and taken advantage of a potentially lucrative financial opportunity. The number of tax consultants involved in the property tax appeals process began to grow in 1985. Tax consultant appeals represent a large portion of the board's workload. At least 32 percent of the 3,522 appeals filed in 1987 and at least 40 percent of the 4,299 appeals filed in 1988 involved tax consultants.

---

(1) The board received this letter because it is listed as the owner for all county property.

Tax consultants have generated business through telephone contacts, mailings, and advertisements in various publications. These solicitations are attractive to the property owner because it may cost the owner nothing to respond. Some consultants are paid on a contingency basis, usually a percentage of any tax savings generated. Moreover, during the 1989 season, a taxpayer responding to a consultant did not risk a tax increase. No valuations were increased, even if an increase may have been warranted.[1] Therefore, the money-saving potential may have been sufficient to cause many property owners to respond favorably to tax consultant solicitations.

Some appeals have even been filed without the consent of the property owner. Maricopa County has documented several cases in which property owners were unaware that an agent had filed an appeal at the county level.

Many appeals are frivolous - Many appeals filed with Division One are without merit and only serve to overload the appeals system. The board chairperson believes many tax agent appeals are frivolous and filed just to see what the agent can get out of the system.

An analysis of the outcomes of tax appeals filed in 1988 shows that most tax consultant appeals did not result in a tax reduction. As shown in Table 3 (see page 17), only 11 percent of the tax consultant appeals resulted in a reduction in full cash value, and 27 percent actually resulted in an increase in full cash value. In contrast, 22 percent of the appeals which did not involve a consultant resulted in a reduction, and 10 percent resulted in an increase in full cash value. These differences suggest that tax consultants may file more frivolous appeals than taxpayers acting on their own behalf.

---

(1) In 1988, the board increased many values in taxpayer appealed cases. However it was advised by the Attorney General's office that it did not have clear statutory authority to do so. It did not increase taxpayer appealed values in 1989, even if warranted (unless DOR or the assessor cross appealed); and, therefore, taxpayers did not risk increasing their tax liability if they filed an appeal.

TABLE 3

RESULTS OF TAX CONSULTANT APPEALS
FILED IN 1988

	Reduction In Full Cash Value	No Change	Increase In Full Cash Value	Total
Tax Consultant Appeals	169 (11%)	960 (62%)	420 (27%)	1,549
All Other Appeals	537 (22%)	1,622 (68%)	228 (10%)	2,387

Source: Auditor General analysis of Division One board petition data

Filing Fees and Other Measures Should Be Considered

Filing fees and other appropriate measures should be considered to discourage frivolous and indiscriminate appeals. Nominal filing fees may help to deter the filing of appeals which lack a legitimate basis. Other measures, such as clarifying the board's authority to raise property values, may also discourage frivolous filings.

Filing fees - Requiring a nominal filing fee may discourage taxpayers and consultants from filing indiscriminate appeals. Filing fees are common in judicial cases. Appellants pay a $25 filing fee in Superior Court and at the Court of Appeals. Even small claims courts require a filing fee. In Maricopa County, a $3 fee is required if the claim amount is less than $1,000. A $20 fee is required if the claim amount is between $1,000 and $2,500.

A few states with administrative tax appeals bodies similar to Arizona's also require a filing fee. The State of Washington has set its filing

fee at $5. Illinois has proposed instituting a filing fee for its board of $20 per parcel.[1] New Hampshire charges a $25 fee plus $5 for each additional plaintiff. Thus, properties jointly owned by a husband and wife require a $30 filing fee.

To ensure that fees are not prohibitive, the Division One clerk has suggested that fees be set on a sliding scale based on the valuation or type of property involved. Properties of lower value could be charged a lower filing fee under the assumption that these owners would have less ability to pay. Michigan has instituted this type of sliding scale fee structure for all residential rental, agricultural, income producing, and business properties. Fees range from $50 to $250 depending on the value of the property.

In addition to discouraging frivolous appeals, a filing fee would generate additional revenue to support board operations. A filing fee of only $10 per appeal, for example, would have generated over $60,000 in new revenue in 1989 to support Division One operations. Imposing a fee of $20 per parcel as proposed in Illinois would generate enough revenue to cover the board's entire current budget.

Other measures - The board chairperson has suggested an alternative might be to give the board authority to raise assessed valuations if appropriate and warranted. According to a Legislative Council opinion dated July 6, 1989, the board currently does not have this authority in appeals brought by taxpayers. According to the board chairperson, however, giving the board the authority to raise values where appropriate would be one of the most effective ways to discourage frivolous appeals.[2] The board has general statutory authority to equalize values in its enabling statutes. In addition, under A.R.S. §42-174 the board may at any time request to review valuations and may "increase or

---

(1) An individual appeal may involve multiple parcels.

(2) An alternative measure suggested by the board chairperson is allowing the board to recover costs from the appellant if an appeal is determined, upon review, to be frivolous. She compares this approach to the awarding of fees by the courts as a sanction against frivolous lawsuits.

decrease" a property valuation to achieve equalization. However, this authority does not extend to taxpayer appealed valuations unless a cross appeal is filed by DOR or the assessor. In contrast, Illinois' Property Tax Appeal Board increases valuations in taxpayer appeals when warranted. According to its chief hearing officer, it is the board's intent to determine the correct assessment and in some cases that results in an increase in the valuation.

RECOMMENDATIONS

To discourage frivolous appeals, the Legislature should consider:

1. Amending board statutes to require appellants to pay a filing fee.

2. Providing the board with clear statutory authority to raise valuations to full cash value where appropriate.

FINDING III

THE BOARD NEEDS TO PROVIDE MORE INFORMATION IN ITS WRITTEN DECISIONS

Due to its overwhelming workload and time constraints, Division One is also unable to generate adequately detailed written decisions. Findings of Fact and Conclusions of Law do not provide taxpayers with sufficient information to understand the basis of the board's decisions. At the close of its 1988 appeals season, the board was so overburdened with cases that it was unable to provide some taxpayers with even this limited amount of information required by law.

Findings of Fact and Conclusions of Law Must Be Provided

The board's written decisions should include sufficient information to support the board's actions. A.R.S. §41-1063 requires that administrative agencies provide separately stated Findings of Fact and Conclusions of Law in contested cases in which the final decision or order is adverse to any party to the case. This statute and Board Rule R16-2-120 further mandate that Division One state the underlying facts supporting its findings.

Written Decisions Provide Insufficient Information

Division One's written decisions do not provide much detail and may not fully meet the spirit and intent of the statutory requirement and the board's rule. To meet the demands created by its increasing workload, the board has developed a computer-aided method for generating written decisions. However, the narratives describing the board's decisions are brief and provide little insight into the reasoning behind the decisions. By contrast, tax appeal agencies in other states include more detail and explanation in their written decisions.

Decisions are computer-generated - Division One's written decisions typically consist of two pages. The first page shows, in numerical

format, the board's valuation of the property in question. The second page contains the board's Findings of Fact and Conclusions of Law in narrative form. (See Appendix I, page A-1, for a document sample.)

To accommodate its enormous workload, the board has developed an "assembly line," computer-aided method for generating its narrative Findings of Fact and Conclusions of Law. Three paragraphs in the narrative may be changed. The remainder are standard paragraphs contained in each decision. The paragraphs which change are the petitioner's argument (what the appellant taxpayer claimed in his or her appeal), the respondent's argument (usually the county assessor or the Department of Revenue's defense of the assessed valuation), and the board's finding or decision. The board has developed numbered codes which, when entered into the computer, generate "canned" narratives which correspond (to the extent possible) to the selected petitioner and respondent arguments. In addition, the board's conclusion or decisions are also generated from a computer code which corresponds to a prewritten, canned narrative. (The board improved and expanded its selection of these narratives in 1988 and recently stated it has over 800 narratives.) However, since the selection of decision codes will not adequately fit every case, a few decisions are not computer-generated in full and must be custom drafted.

Written findings and conclusions do not explain basis of decisions - The standard narratives which state the board's decisions are brief (most are only three to five lines), worded generally, and don't explain the reasons for the board's decisions. For example, the following narrative is frequently used when the board makes no change in the assessed valuation:

> "The board finds that the property is correctly valued, and the value set by the county is upheld. The full cash value for future years is to be based upon standard appraisal methods and techniques."

In this case, both the appellant taxpayer and county assessor may have presented evidence at the hearing supporting their arguments. The appellant typically presents evidence that the valuation is excessive while the assessor presents evidence to show that the property is

correctly valued. The board's decision statement, however, does not comment on the evidence presented by the parties or explain why the county assessor's argument prevailed.

Even in more complex cases board decisions tend to be brief and lack detail. For example, in a case involving a telecommunications company which was centrally assessed by the Department of Revenue, the company and the department were over $1.2 billion apart in their assessment of the company's total system value. DOR estimated the company's value at approximately $3.28 billion whereas the company pegged its value at about $2.06 billion. Using the same allocation factor, DOR valued the company's Arizona property at $44.7 million while the company estimated its Arizona property at about $28 million. In a three-line statement, the board set the company's total system value at approximately $2.7 billion, and the value of its Arizona property at almost $37 million. Although the board's figures differ significantly from both the company's and DOR's, the board's decision does not explain the rationale for arriving at the valuation.

More than half the taxpayers we surveyed who appeared before the board felt they did not adequately understand the basis of the board's decision in their case. We contacted by telephone a small sample of taxpayers who had filed an appeal in 1989, had a hearing, and had received a decision from the board. Respondents were asked how well they understood the basis of the board's decision. Fifteen of the 28 respondents did not feel they understood the basis of the decision.

Appellants whose cases were heard on-the-record were even more likely to state that they did not understand the basis of the board's decision. Twenty of 28 respondents whose cases were heard on-the-record in 1988 did not feel they understood the basis of the board's decision. While neither sample size was large enough to project to the entire population of appellants, responses suggest that taxpayers would welcome more information explaining the board's decisions.

Taxpayers are not the only parties who would benefit from more informative explanations. The Department of Revenue has also complained about the lack of detail in board decisions. A DOR official stated that the board's Finding of Facts and Conclusions of Law "are so vague it is generally not possible to determine how the value was derived."

Other states - By contrast, similar agencies in some other states include more detail and explanation in their written decisions. The Washington State Board of Tax Appeals, for example, details the unique facts pertaining to each appeal and provides analyses and explanations of decisions in three to four pages of narrative. Decisions of the Colorado Board of Assessment Appeals are about three pages long and both comment on the facts and evidence presented by the parties, and provide insight into the rationale used in arriving at the decision. Two other states we contacted provide even lengthier and more detailed written decisions. However, not all are comparable due to lower caseloads and different time frames.

Some Appellants Received No Written Explanation

While most taxpayers received written decisions which lacked detail, some taxpayers received no narrative explanations at all in violation of A.R.S. §41-1063 and Board Rule R16-2-120. Findings of Fact and Conclusions of Law were not prepared and sent to 553 of the appellants whose cases were heard by the board at the close of the 1988 tax season. The division was so overloaded with cases it did not have time to generate this information.

RECOMMENDATIONS

In addressing the Board's time and resource constraints noted in Finding I, the Legislature should consider the Board's need to:

1. Include more information in its written decisions explaining the basis of its decisions.

2. Comply with A.R.S. §41-1063 and Board Rule R16-2-120 and include Findings of Fact and Conclusions of Law in all written decisions.

FINDING IV

DIVISION ONE IS NOT COMPLYING WITH NOTICE REQUIREMENTS

Problems coping with the board's workload have also been at least partially responsible for failures to comply with hearing notice requirements. Division One of the Board of Tax Appeals does not always provide adequate notice of hearings. The division has failed to provide appellants due process by deciding some cases based only on written arguments without providing parties the proper opportunity to either exercise or waive their right to personally appear at the hearing. In addition, the division usually does not provide at least 20-days notice of scheduled hearings as required by law.

Some Cases Handled On-The-Record May Have Violated Due Process Requirements and Could Potentially Result in Monetary Liability

In 1988 the board decided some of its cases based solely on written arguments without following its rules which allow parties to object to this procedure. In some instances parties were not provided the full 10-day period to object, and in others the parties were given no opportunity to object. These cases violated not only the board's own rules, but also due process requirements of State and federal laws.

In lieu of holding a hearing, the board may decide appeals on-the-record when 1) both parties request it or 2) when the board orders a hearing on-the-record and no objection is made within 10 days. On-the-record (OTR) means that all arguments will be in writing, no oral testimony will be taken, and neither party will appear before the board. Over 1,472 cases were heard on-the-record in 1988.

Although the board's rules allow for persons to object to an OTR within 10 days, many were not provided 10-days notice of the board's intentions

to handle the case on-the-record.[1] In 1988, only 42 percent of the OTRs scheduled provided at least 10 days between the date the notice was generated and the date the OTR was scheduled. However, some of these persons did not actually have 10 days to object when mailing time is taken into account. Even if the parties had objected the board could not have accommodated them.

The board decided many 1988 appeals on-the-record because the volume of appeals exceeded available time and resources. The board scheduled many cases to be handled on-the-record because the members did not have time to hold hearings given their resource constraints. In addition, the board's clerk stated that on some days, many more tax agent cases were scheduled for hearing than could possibly be heard. When the board ran out of time to hear scheduled cases, these cases would be handled on-the-record without giving parties 10-day advance written notice or the opportunity to object.

Serious legal ramifications could result from the board's failure to give adequate notice and opportunity to object to handling cases on-the-record. Legislative Council, in an opinion dated June 7, 1989, noted that the board is subject to Arizona's Administrative Procedures Act (A.R.S §41-1001 et seq.) which requires that parties be given the right to submit evidence in open hearing and to cross-examine - two procedural requirements not met by on-the-record reviews. Legislative Council noted that "an on-the-record decision does not constitute a hearing or meet the requisites of due process if there is no opportunity for parties to object." They concluded that if parties object to the board's procedures, the courts would probably require the board to rehear the cases. Further, the parties may be entitled to obtain their attorneys' fees. Because the issue involves due process and may affect

---

(1) Even if the division provides 10-days notice prior to reviewing the case on-the-record, parties may not realize they can object to this procedure. The letter accompanying the OTR notice makes no reference to a person's right to object to this type proceeding. A copy of the division's rules, which identifies parties' right to object to OTRs, is enclosed with the letter. However, the division's procedures would be improved if the letter made reference to the 10-day period.

persons' property interests, parties have a constitutional claim under federal law for due process safeguards. The federal law also allows aggrieved parties to obtain attorneys' fees.

Hearing Notices Are Not Timely

Further, Division One's current practice of scheduling hearings two weeks in advance does not allow sufficient time to notify parties involved. A.R.S. §41-1061 requires notice be given at least 20 days prior to the date set for the hearing (unless otherwise provided by law).[1] However, in 1988 only 11 percent of the hearings scheduled (270 of the 2,459 scheduled for hearing) provided at least 20 days notice to the parties involved.[2] On average, persons were notified about 13 days prior to the hearing.[3] This may not be adequate notice for some persons to attend the hearing.

The clerk believes providing 20-days notice is impractical given the limited time frame the board has to hear appeals, the volume of appeals that must be scheduled, and space availability. In addition, the date the case is filed impacts the board's ability to provide 20-days notice. For example, since the board must hear and decide most cases by July 25, a case received in late June may be impossible to schedule with 20-days notice. However, if a party later objected and could prove that the shortened notice affected his or her ability to prepare for the case or in some way hurt the case, the appeal could be remanded by a court back to the division for a rehearing.

---

(1) Appeals involving personal property, private car companies, and equalization orders all provide for shorter hearing notice. However, these type of appeals probably accounted for less than 100 of the 4,299 appeals in 1988.

(2) A statistically valid sample of 352 cases was randomly selected from the population of 4,299 appeals filed in 1988. Of the 352 cases selected, 223 were scheduled for a hearing and 114 were scheduled to be heard OTR. (Fifteen of the 352 cases were withdrawn prior to being scheduled or were not timely filed.) The sample has a reliability of ±5 percent at the 95 percent confidence level.

(3) This "average notice time" is the number of days between the date the notice was generated and the date of the hearing, and does not take into account time in the mail.

RECOMMENDATION

Division One of the Board of Tax Appeals should adopt procedures to allow for adequate notice to parties of cases scheduled for hearing and for cases to be heard on-the-record. In addition, the board should hold hearings in cases where parties object to an OTR proceeding.

FINDING V

BOARD MEMBER COMPENSATION IS INADEQUATE

In Maricopa County where custodial workers make nearly $7 per hour, and salaries for laborers and groundskeepers average over $8 an hour, board members responsible for decisions involving millions of dollars in tax revenues make an average of $6.25 an hour. Given the workload and time required of members of the State Board of Tax Appeals, such pay levels make board service a financial hardship. Compensation levels are well below those paid to individuals in many other occupations, to the board's hearing officers, and to members of similar boards in other states.

Board Service Requires a Major Time Commitment

Membership on Division One of the State Board of Tax Appeals requires a significant time commitment because of the enormous workload. Division One received 4,299 property tax appeals in 1988 and has received more than 6,000 appeals so far in 1989. In an effort to accommodate the rapidly growing caseload, board members worked from 77 to 160 days in fiscal year 1988. Furthermore, during the tax appeals season, board members work almost full-time. Hearings are scheduled throughout the day on nearly every available day during this four-month period. In 1988, hearings were scheduled on 33 days in May and June alone. On days when hearings are not scheduled and in between hearings, board members review evidence and make decisions regarding appeals. The division's board members frequently work more than eight hours a day and may work on weekends as well.

In contrast, the amount of time required of individuals serving on other Arizona boards tends to be much more limited. For instance, members of the Racing Commission meet once a month on average. These meetings last approximately four hours. The members of the Technical Registration Board meet quarterly, hold teleconferences once or twice per month, and

hold hearings on occasion. The Liquor Board typically meets two days per month and holds panel meetings periodically.

Members of the State Board of Tax Appeals are responsible for making important decisions concerning Arizona's tax revenues. In 1988, nearly $109 million in tax revenue was generated from properties whose valuations were appealed to Division One. Some of the cases received by the division are very technical and involved. For instance, the board must determine the value of property owned by large corporations. These companies may have landholdings scattered throughout the state. To make appeals decisions, board members must have a good understanding of taxation, property valuation, and appraisal.

Compensation Provided to Board Members Is Inadequate

Despite the number of hours worked by Division One's board members and the complexity of the subject area, they receive approximately $6.25 per hour on average.[1] This level of compensation is inadequate when compared to the salaries of other occupations, the board's hearing officers, and board members in other states. As a result of the low pay and substantial time requirement, it has been difficult for the Governor's Office to attract board members.

The Arizona Department of Economic Security's Maricopa County Employer Wage Survey for 1988 indicates that among the occupations surveyed, only food service workers, nursing assistants, and file clerks make less than members of the Board of Tax Appeals. Clerk typists, secretaries, and security officers all have a higher weighted hourly average wage than board members.[2]

---

(1) A.R.S. §42-171G provides that board members receive compensation of $50 per day plus travel and other expenses. Because board members generally work 8 hours or more per day during the appeals season, the pay translates to an hourly rate of $6.25 per hour or less when overtime is involved.

(2) The weighted hourly average wage paid is the weighted mean of all people employed in the particular occupation among the firms surveyed. Data were collected from firms with 300 or more employees.

Hearing officers employed by the board on a contract basis make substantially more than the board members they serve. Hearing officers are utilized during the property tax appeal season to conduct research, take testimony, and make recommendations to the board concerning the cases they hear. For their services, these hearing officers receive between $25 and $32 per hour. The board makes periodic use of an attorney who is paid at a rate of $60 per hour.[1]

A survey of similar tax appeal boards in other states suggests that board members in other states receive substantially more compensation. As Table 4 (see page 32) clearly shows, Arizona's board members receive less pay than is provided to officials in any of the seven states surveyed. If the caseloads of these agencies are considered, the discrepancy in pay is even more glaring. For example, although the Colorado Board of Assessment Appeals received only 1,855 property tax appeals in 1988 and is not subject to statutory time constraints, board members are paid nearly three times as much as Arizona's board members. Illinois' Property Tax Appeal Board members earn $28,000 annually, yet in 1988 received approximately the same number of appeals as Arizona's Board.[2] The pay discrepancy is even greater considering that Illinois board members actually hear very few cases. Hearing officers hear most of the cases and prepare written decisions for the board's approval.

---

(1) One of the current members of the State board is also an attorney, but as noted before only receives $50 per day.

(2) Illinois board members are also part-time.

TABLE 4

COMPARISON OF COMPENSATION LEVELS AND WORKLOAD
IN ARIZONA AND OTHER STATES

State	Full-time or Part-time	Number of Appeals [a]	Level of Compensation
Arizona	Part-time	4,299	$ 50/day
Nevada	Part-time	72	60/day
Idaho	Part-time	137	75/day
South Dakota	Part-time	146	75/day
Colorado	Part-time	1,855	140/day
Illinois	Part-time	4,357	28,000/year
Washington	Full-time	1,873	55,404/year
Kansas	Full-time	6,321	59,208/year

(a) Colorado, Illinois, and Washington appeals are for fiscal year 1988. Arizona, Idaho, Kansas, Nevada, and South Dakota appeals are for calendar year 1988.

Source: Auditor General's survey of tax appeal boards in other states

Existing compensation levels make it difficult to attract board members. An executive assistant to the Governor indicated that it was very difficult to find candidates willing to serve on the board because of the substantial time requirement and low pay. In 1988, for example, Division One carried one vacancy throughout most of the tax appeal season. There was also a vacancy in Division Two from January until July 1989. The executive assistant to the Governor responsible for overseeing the board believes that board member compensation should be raised to approximately $250 per day to make it easier to attract qualified candidates.

Legislation was introduced during the 1989 regular session to address, in part, the problem of inadequate pay, but the bill did not pass. Senate Bill 1256 would have increased board member pay, which has not changed since 1967, to $150 per day.

RECOMMENDATION

The Legislature should consider increasing the level of compensation received by members of the State Board of Tax Appeals. This would facilitate the Governor's efforts to attract qualified candidates to fill vacancies on the board.

OTHER PERTINENT INFORMATION

Division One's Decision and Deliberation Procedures Violated Open Meeting Law

During the course of our audit we determined that Division One's process for deliberating and deciding cases was not in compliance with open meeting law requirements. However, Division One recently instituted procedures which should bring it into compliance.

Prior to June 30, 1989, Division One deliberated and decided cases as time allowed. Typically, a case would be scheduled for hearing, and parties would present their evidence at that time. However, in most cases a decision was made at some later unscheduled date. At the time of the hearing, appellants were not informed when the board would meet to deliberate and decide their case. Instead, due to the large caseload, the board discussed and decided cases whenever they had a spare moment. Although the board posted a general notice stating that it would rule on each petition in an open meeting within 30 days of the hearing and advised persons interested in attending this meeting to contact the clerk to obtain a "reasonably accurate date and time," it really had no schedule or agenda for when the members would be discussing and deciding a certain case.

Division One's practice of holding unscheduled meetings to deliberate and decide cases violated open meeting law requirements. A.R.S. §38-431 et seq. requires quasi-judicial bodies to post notice of official meetings and establish agendas. The open meeting law applies to all public bodies and consequently applies to all meetings of Division One of the Board of Tax Appeals, including meetings held to discuss and decide appeals.[1] Consequently, Division One's failure to post appropriate

---

(1) In 1975 the Attorney General concluded that all discussions, deliberations, considerations, or consultations among a majority of members of a governing body which may foreseeably require a final action or a final decision must be conducted in open meeting unless an executive session is authorized.

notice and agendas for deliberating and deciding cases violated the open meeting law requirements. Specifically, Division One failed to give at least 24 hours notice in advance of deliberations and did not post decision agendas.

The insufficient notice and lack of agenda pose potential legal ramifications. Although the board maintains that these deliberation and decision meetings were open to the public, the board did not do enough to alert the general public of these meetings. For example, 48 of 60 petitioners we surveyed were not aware they could attend the board's deliberation and decision meeting; however, 77 percent expressed interest in attending these meetings.[1] Thus, the board's failure to provide sufficient notice of these meetings deprived the public of the right to be noticed and attend these meetings if desired. Furthermore, the board's failure to notice these meetings creates an opportunity for the board's decisions to be challenged, which may then nullify and void all decisions made prior to June 30, 1989.

After consulting with the Attorney General's office, the board has instituted procedures which should bring it into compliance with open meeting law requirements. The board plans to discuss and decide cases immediately following each board hearing. In cases where hearing officers preside, the parties will be verbally notified at the hearing of a date and time at which the board will meet to discuss and decide their case.

---

(1) Auditor General staff randomly selected and surveyed 60 persons who had appeared before the board in 1989 to appeal their property values.

AREA FOR FURTHER AUDIT WORK

Our audit work focused on Division One of the State Board of Tax Appeals because of the magnitude of the caseload and the extreme seasonality of the work. However, during the course of our audit we found that Division Two may also be inadequately funded and understaffed. The division consists of the clerk, a hearing officer, and a secretary. In fiscal year 1988 the division's 147 cases involved $13.6 million in potential revenues for the State. However, the division only decided and resolved 88 of the 147 cases. Board members and staff believe that the division is understaffed and not adequately funded to meet the workload.

Further audit work is needed to determine utilization and efficiency of current staff and the division's funding needs.

SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 12 factors in determining whether the Board of Tax Appeals should be continued or terminated.

1. **Objective and purpose in establishing the board**

The State Board of Property Tax Appeals was established in 1967 as an independent agency with full power to equalize the valuation of all property throughout the state and to hear and decide valuation appeals. In 1973, the name of the board was changed to the State Board of Tax Appeals to reflect additional duties involving sales, income, and other type tax appeals. The board is a quasi-judicial agency and consists of two divisions, known as Division One and Division Two, with separate jurisdictions and equal power. Each division has three appointed board members.

According to agency personnel, the purpose for establishing Division One was to provide an independent appeals process relating to the ad valorem taxation of property. Division One's major objective is to provide taxpayers, county assessors, and the Department of Revenue with an effective, objective, and cost-effective method of appealing real and personal property valuations and/or classifications.

Division Two was established to provide taxpayers with an independent appeal process for adverse decisions from the Department of Revenue which do not involve real estate transfer or the valuation, classification, and taxation of property. Consequently, Division Two provides an avenue for taxpayers to appeal sales, income, and other type taxes.

2. **The effectiveness with which the board has met its objective and purpose and the efficiency with which it has operated**

Division One's effectiveness in meeting its objective and purpose has been hampered because its appeals caseload has tripled while

its resources have essentially remained the same (see Introduction and Background, page 1). The division is also hampered by the severe time constraints placed on it. Almost all appeals are received and heard between April 1 and July 25 each year.

3. **The extent to which the board has operated in the public interest**

The State Board of Tax Appeals generally operates in the public interest by providing an impartial and inexpensive method to resolve tax disputes. However, Division One has not operated in the public interest in some instances to the extent it has failed to (1) provide adequate notice of hearings, (2) provide adequate explanations of its decisions, and (3) comply with open meeting law requirements regarding decision deliberations.

4. **The extent to which rules and regulations promulgated by the board are consistent with the legislative mandate**

The rules and regulations promulgated by the Board of Tax Appeals and Divisions One and Two are consistent with its legislative mandate. However, both divisions are in the process of revising their rules and regulations to clarify language and delete unnecessary provisions.

5. **The extent to which the board has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public**

The Board of Tax Appeals has three chapters of rules and regulations. One chapter pertains to the full 6-member board, another chapter addresses Division One operations, and the third specifically addresses Division Two operations. The board has not made any changes addressing the full board member rules and regulations since 1975. However, Division One rules and regulations were last revised in 1986, and Division Two made general revisions to its rules and regulations in 1980. Public hearings were held at those times to receive input.

6. The extent to which the board has been able to investigate and resolve complaints that are within its jurisdiction

The board is not a regulatory agency, and therefore, this factor does not apply.

7. The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under enabling legislation

The board is not a regulatory agency, and therefore, this factor does not apply.

8. The extent to which the board has addressed deficiencies in its enabling statutes which prevent it from fulfilling its statutory mandate

Legislation to increase the number of board members and board member pay was introduced in the 1989 session but did not pass.

9. The extent to which changes are necessary in the laws of the board to adequately comply with factors listed in the Sunset Law

Based on our audit work, we recommend that the Legislature consider the following changes to BOTA's statutes.

- Amend board statutes to require appellants to pay a filing fee. (See Finding II, pages 15 through 19.)

- Provide the board with clear statutory authority to raise valuations to full cash value where appropriate. (See Finding II, pages 15 through 19.)

- Amend board statutes to increase board member compensation. (See Finding V, pages 29 through 32.)

In addition, the Legislature should consider amending the current appeals filing and hearing time schedule set by law to allow hearings throughout the year. However, this change would need to be considered in light of its impact on other entities and local budgeting practices. (See Finding I, pages 7 through 14.)

10. **The extent to which the termination of the board would significantly harm the public health, safety, or welfare**

Although the Board of Tax Appeals is not essential to protect the public welfare, it does provide a valuable service. The board provides taxpayers, county assessors, and the Department of Revenue an impartial and inexpensive method to seek administrative resolution to property, sales, use, and other type tax appeals.

According to board members, if Division One were eliminated, inequitable treatment of taxpayers would result in taxpayers paying erroneous and/or excessive taxes. Division Two maintains that a tremendous financial burden would be placed on taxpayers because they would then have to pay the disputed amount of taxes (an average of $80,000-$90,000) in addition to filing fees before they could receive an impartial review. Both divisions maintain that parties involved would have to expend more in litigation costs and that the courts would be burdened with an increased caseload.

11. **The extent to which the level of regulation exercised by the board is appropriate and whether less or more stringent levels of regulation would be appropriate**

The Board of Tax Appeals has no regulatory authority, and therefore, this factor does not apply.

12. **The extent to which the board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished**

Division One currently contracts for hearing officers. The division began using the services of one outside contracted hearing officer during the 1987 appeals season. In 1989 the division awarded five contracts for hearing officers. However, budgetary constraints will only permit the division to actually employ three hearing officers on a limited basis. The seasonal nature of Division One's workload makes contracting out for this service very cost-effective and efficient.

DIVISION I - ROOM 332
Property
(602) 542-5462

DIVISION II - ROOM 319
Income, Sales, Use
(602) 542-3287

Arizona State Board of Tax Appeals

1645 W. JEFFERSON ST.
PHOENIX, ARIZONA 85007

October 11, 1989

Mr. Douglas R. Norton
Auditor General
Office of the Auditor General
2700 North Central Avenue, Suite 700
Phoenix, Arizona 85004

Dear Mr. Norton:

Attached is the response of the State Board of Tax Appeals, Division One, to the performance audit of our agency.

We want to thank you for pointing out to the Legislature the impact on our agency of the enormity of our caseload. As we stated in our response, we are supportive of your proposals to deal with this caseload.

Sincerely yours,

Barbara E. Fisher

Barbara E. Fisher, Chair
Division One

BEF/js

Attachment:

DIVISION I - ROOM 332
Property
(602) 542-5462

DIVISION II - ROOM 319
Income, Sales, Use
(602) 542-3287

Arizona State Board of Tax Appeals

1645 W. JEFFERSON ST.
PHOENIX, ARIZONA 85007

RESPONSE TO THE PERFORMANCE AUDIT

OVERVIEW

The Board of Tax Appeals, Division One, was constituted to hear approximately 1500 property tax appeals each year. The work load began in April and had to be concluded by July 25 when the Board ceases to have jurisdiction.

In 1988, this Board was confronted with over 4000 appeals and in 1989 the number was over 6200; however the deadline for hearing these appeals has remained unchanged.

The remarkable fact is that the Board accomplished its task each year. It did so with a volunteer citizen Board and hardworking State employees all of whom gave far more than it was fair to ask. It was a heroic effort.

The Auditor General's report chronicles our history and our problems. It clearly provides the most cogent discussion of the impact of tax agents on the State's tax appeals system that has been written.

This report also points out that the Board has not strictly complied with some rules such as the 20 day notification rule to taxpayers and it is critical of lack of detail contained in the decisions sent out to taxpayers.

When the Board had 1500 appeals each year, it could comply strictly with its rules. But there is a choice to be made. We cannot hear the volume of cases now presented to us and comply with all the statutory rules. Strict compliance requires that cases be left unheard and undecided.

It may also be true that if the number of appeals exceeds 6000 in 1990, cases will be left unheard and undecided. The Board believes that we have reached and exceeded our maximum capacity to hear and decide cases within our existing budget and resources.

Finding I

We agree that the seasonal nature of our work makes it difficult to hear and decide the rapidly growing caseload.

1. We disagree that some taxpayers were given 10 minute hearings in 1989. Cases were <u>scheduled</u> at 10 minute intervals <u>but given whatever time it took</u>. This was only done with agents - i.e. those who had numerous appeals with the same issue who could simply say "This is another case

where the issue is concurrent ownership." We could then review the evidence of concurrent ownership quickly and move on. It is not believed that anyone in 1989 felt they didn't have enough time to present their case. The Board has never told someone they could not present all their evidence, only requested they not repeat their arguments. Every taxpayer was asked if they had any additional evidence. Some locally assessed appeals (hearings) took more than an hour. Centrally valued cases often take a whole day.

2. We agree that we could not and did not reschedule any cases.

3. We disagree that decisions to taxpayers were untimely in 1989 and there has been no evidence of this.

4. We did not hear cases on-the-record in 1989 unless the taxpayer failed to appear or on-the-record treatment was requested by the taxpayer.

Finding II

We agree that filing fees and other appropriate measures should be used to reduce the number of frivolous appeals.

1. We would like to see the funds from filing fees used to carry out the appeal process.

2. We would like to have clear statutory authority to set full cash values, whether that means raising or lowering values. Our authority to raise values, unless appealed by the Assessor or Department of Revenue, is unclear.

3. We would like to have the statutory authority to assess costs against persons filing frivolous appeals.

Finding III

The existing decisions meet legal requirements for findings of fact and conclusions of law. They were approved, as such, by the Attorney General's office. We are working to expand our computer generated system to give more detail about the basis for our decision.

1. The sheer number of appeals requires use of a computer generated decision. However, we can and will expand that system to increase the information provided to the taxpayer.

2. The basis of the evidence presented appears in our decisions. It is provided under the categories petitioner's position and respondent's position.

Finding IV

On-the-Record Appeals:

In 1988 the Board notified tax agents that each agent would have a given number of hearing days to present their cases and that the ones not heard would be heard on-the-record. Each agent was notified of his/her dates and the dates for the decisions of the on-the-record cases.

This has not been done in 1989 and will not be done again as it was an unsatisfactory method of dealing with the excess caseload. In 1989, every case was heard unless the taxpayer requested an on-the-record hearing or did not appear for hearing at the time of notification.

As to the 20 day notice requirements, many of the taxpayers who do not receive 20 days written notice receive actual notice by telephone. The sheer volume of cases which must be scheduled makes it very difficult to give every taxpayer the full 20 days by mail.

Finding V

The Board agrees that $50 per day is inadequate compensation for its members. This Board actually hears and decides the cases and should receive $150 per day served as suggested by the Auditor General's report.

Other Pertinent Information

The Board has complied with the Open Meeting Law. The posting of the notice and the accessible decision making location were reviewed by the Attorney General on two occasions for compliance with the Open Meeting Law. The Auditor General staff is second guessing the Attorney General's approvals.

However, once this disagreement was brought to the attention of the Board, we decided to put an end to the conflicting opinions by making decisions from the bench. The Board now makes decisions immediately following the hearing unless there is material which must be studied. This eliminates the problem and will be our future method of deciding cases because we have found it to be very effective.

DOCKET 0495 -07-89

APPENDIX I PARCEL 211-02-003D

THE STATE BOARD OF TAX APPEALS, DIVISION ONE, CONVENED AT 02:00 PM ON 04/19/89, AND REACHED A DECISION ON THE PROPERTY IDENTIFIED ABOVE.

F I N D I N G S O F F A C T

1. THE PETITIONER APPEALED TO THE STATE BOARD OF TAX APPEALS, DIVISION ONE, THE DECISION OF THE BOARD OF SUPERVISORS IN THE COUNTY OF MARICOPA.

2. THE RESULTS OF THE BOARD'S DECISION IS SHOWN ON THE ATTACHED FORM TA400.

3. THE APPEAL WAS TIMELY FILED.

4. THE PETITIONER APPEALED THE FULL CASH VALUE AS EXCESSIVE ON THE BASIS OF THE MARKET APPROACH TO VALUE, AND SUBMITTED SALES DATA TO SUPPORT THE VALUE ESTIMATE. 159

5. THE RESPONDENTS BASIS FOR VALUE WAS THE MARKET APPROACH TO VALUE. SALES DATA WERE SUBMITTED TO SUPPORT THE VALUE ESTIMATE. 460

6. THE BOARD FINDS THAT THE PROPERTY IS CORRECTLY VALUED AND THE VALUE SET BY THE COUNTY IS UPHELD. THE FULL CASH VALUE FOR FUTURE YEARS IS TO BE BASED UPON STANDARD APPRAISAL METHODS AND TECHNIQUES. 600

C O N C L U S I O N O F L A W

1. THE BOARD HAS JURISDICTION TO HEAR THIS CASE.

2. FULL CASH VALUE IS THE TOTAL VALUE OF THE LAND AND ANY IMPROVEMENTS THERETO AND IS SYNONYMOUS WITH MARKET VALUE.

3. THE ASSESSOR SHALL PREPARE THE VALUATION OF ALL REAL PROPERTY IN ACCORDANCE WITH STANDARD APPRAISAL METHODS AND TECHNIQUES PURSUANT TO DEPARTMENT OF REVENUE MANUALS AND PROCEDURES(A.R.S. 42-221; 42-123.01)

4. ANY PROPERTY OWNER MAY INQUIRE OF HIS OR HER VALUE FOR AD VALOREM TAX PURPOSES AS OF JANUARY 2 OF THE CURRENT YEAR (A.R.S. 42-221).

5. LIMITED PROPERTY VALUE IS A MINISTERIAL CALCULATION AND IS DEFINED AS RULE A: THE GREATER OF (1) THE SUM OF LAST YEAR'S LIMITED VALUE PLUS 10%, OR (2) LAST YEAR'S LIMITED VALUE PLUS 25% OF THE DIFFERENCE BETWEEN LAST YEAR'S LIMITED VALUE AND THE CURRENT YEAR'S FULL CASH VALUE. RULE B: IF THE PROPERTY IS NEW, HAD A CHANGE IN USE OR SIGNIFICANTLY CHANGED PHYSICALLY, THE LIMITED PROPERTY VALUE WILL BE A PERCENTAGE OF FULL CASH VALUE COMPARABLE TO THAT OF OTHER PROPERTIES OF THE SAME OR SIMILAR USE OR CLASSIFICATION. LIMITED PROPERTY VALUE MAY NOT EXCEED THE CURRENT FULL CASH VALUE.

ARIZONA LEGISLATIVE COUNCIL

MEMO

June 7, 1989

TO: Douglas R. Norton, Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-89-3)

This memo is sent in response to a request made on your behalf by William Thomson in a memo dated May 24, 1989.

FACT SITUATION:

Arizona Revised Statutes section 42-245 authorizes any individual dissatisfied with his property valuation as set by the county board of equalization to appeal to the state board of tax appeals (board) within fifteen days of the decision or mailing of the decision, whichever is later.

Property tax appeals are handled by division one of the board. According to Rule R16-2-107, upon receipt of a petition or appeal, division one shall:

1. Assign a docket number to the case.

2. Record the filing of the petition or appeal in the docket book.

3. Assign a place and time for the hearing of the case and notify the petitioner or appellant of the hearing date.

4. Notify the Department of Revenue, the county assessor, the owner of the property . . . or others who might be a party in interest to the hearing.

In lieu of holding a hearing, the board may decide appeals on the record. Rule R16-2-119 states:

> Whenever the record in any case includes a stipulation by both parties . . . or when the Board orders a hearing on the record and no objection is made within 10 days, the case may be submitted to the Board for decision on the record.

As a practical matter, the board decided many appeals filed in 1988 "on the record" because the volume of appeals exceeded available time and resources. In some cases, appellants received a letter which provides notice that the appeal will be heard on the record. A copy of the board's rules, including rule R16-2-119, is enclosed with the letter. According to this letter, on the record review means that all arguments will be in writing, no oral testimony will be taken, and neither party will appear before the board.

Other cases scheduled by the board for a hearing have been heard on the record because of lack of time; however, written notice was not given. In these cases, tax consultants representing multiple appellants have been verbally informed on the day of the scheduled hearings that any cases which the board does not have time to hear will be decided on the record. The board does not invite objections because there is no time to hear these appeals given the board's current resource constraints.

QUESTIONS PRESENTED:

1. Does the board's practice of deciding cases on the record meet the statutory requirements of A.R.S. section 42-245 and comply with applicable board rules?

2. Does an "on the record" decision constitute a "hearing" and meet the requisites of due process in cases in which parties do not have an opportunity to object to this procedure?

3. Does the letter and its enclosures provide adequate notice to the right to object within ten days to the on the record review?

4. If a party objects to an on the record review, is the board required to hold a hearing?

5. If the board is not in compliance with applicable statutes or rules relative to its on the record procedures, are decisions rendered in such manner valid and binding on parties at interest?

6. Would the board or the state be liable in any way for failing to comply with statutes or rules applicable to on the record decisions of the board?

ANSWERS:

1. No, if individuals are not given the opportunity to object. See discussion.

2. No, see discussion.

3. Yes, R16-2-119 clearly states the right to object to an on the record review within ten days. The board's procedures would be improved, however, if the letter made reference to the ten day period.

4. Yes, because there is no other rule or statutory provision which provides for an exception to the hearing required under A.R.S. section 42-245.

5. The validity of board decisions which are made in violation of statute or rule must be determined on a case by case basis. See discussion.

6. Yes, see discussion.

DISCUSSION:

1. The board's practice of deciding some cases on the record without giving the parties an opportunity to object has no basis either on statute or in rule.

The board's practice of deciding some cases on the record after sending the parties the letter and a copy of R16-2-119 is valid because the practice satisfies the requirements of the board's rules and the parties have waived any statutory right to a hearing under A.R.S. section 42-245 by their failure to object to an on the record review. 73A C.J.S. Public Administrative Law and Procedure section 142.

2. An on the record decision does not constitute a hearing or meet the requisites of due process if there is no opportunity for parties to object. Due process requires notice and an opportunity to be heard. 2 Am.Jur.2d Administrative Law section 414. The board and its hearing procedures are subject to the administrative procedure act (A.R.S. section 41-1001 et seq.) because the board and its proceedings are not expressly exempted by law. A.R.S. section 41-1002. The notice and hearing procedures required by the administrative procedure act are set forth in A.R.S. sections 41-1061 and 41-1062. The hearing requirements under A.R.S. section 41-1062 include the parties' right to submit evidence in open hearing and the right of cross-examination. Obviously, the on the record review does not comply with these procedural requirements.

5. Any action the board takes in violation of its own rules may be invalidated by a court if an aggrieved party proves that it had been prejudiced by the noncompliance. See, Missouri Nat. Educ. v. Missouri State Bd., 695 S.W.2d 894, 897 (1985). If an aggrieved party objected to the board's procedures, a court that reviews a decision of the board which was based on the record without giving the parties the opportunity to object within ten days as provided by rule would probably remand the case to the board with directions that the board must comply with its procedural requirements. See, Caldwell v. Arizona State Board of Dental Examiners, 137 Ariz. 396, 670 P.2d 1220, 1225 (App. 1983).

6. It is clear that the board is acting under color of law in rendering its decisions. It is also clear that the board in rendering its decisions may deprive parties of property interests. Therefore, parties have a constitutional claim under 42 United States Code (U.S.C.) section 1983 for due process safeguards to apply to its actions. See, Tiffany v. Ariz. Interscholastic Ass'n, Inc., 151 Ariz. 134, 726 P.2d 231 (App. 1986). Parties, of course, may waive their right to due process protections (see discussion under question 1). However, if the case is decided on the record without giving the parties an opportunity to object, 42 U.S.C. section 1983 has been violated and the aggrieved parties may be awarded attorney fees pursuant to 42 U.S.C. section 1988. Id. 726 P.2d 231 at 236.

In sum, the board's practice of deciding some of its cases on the record without providing the parties the opportunity to object to this procedure in accordance with its rules is probably illegal under state and federal law. Furthermore, this practice may subject the board to monetary liability under 42 U.S.C. section 1988 for attorney fees paid by an aggrieved party.

ARIZONA LEGISLATIVE COUNCIL

MEMO

July 6, 1989

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-89-5)

This is in response to a request submitted on your behalf by Bill Thomson in a memorandum dated June 28, 1989.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 42-245, subsection A, paragraph 2 provides that any person dissatisfied with a classification or valuation of his property may appeal to the state board of tax appeals (state board). A.R.S. sections 42-171 et seq. establish the state board and prescribe its duties and authority. A.R.S. section 42-174 relating to the state board's authority to increase or decrease individual valuations states:

> 42-174. Increase or decrease in individual valuation; hearing; notice
>
> The state board of tax appeals may at any time require any county board of supervisors or the clerk thereof and the department to furnish statements showing the valuation of the property of any person within any county or within the state. The board shall consider and equalize such valuations and after hearing may increase or decrease the valuation of the property of any person, provided that no increase in any valuation shall be made without first giving at least five days' notice, by certified or registered letter to the owner of the property to be affected at his address shown on the then existing tax roll, of its intention to do so and of the time and place of the hearing of the board at which such increase is proposed to be acted upon. The owner of the property so affected may appear at the hearing and be heard in protest of any such proposed increase.

In 1988, the state board raised valuations in over 600 cases which were heard following an appeal brought in accordance with the provisions of A.R.S. section 42-245, subsection A, paragraph 2. However, the board

has since discontinued raising values in such cases on advice of counsel and in consideration of a 1978 Arizona supreme court decision which was brought to its attention by counsel. (Pima County v. Cyprus-Pima Mining Co., 119 Ariz. 111.)

QUESTIONS PRESENTED:

1. Does the state board have authority to raise property valuations in cases involving appeals brought in accordance with A.R.S. section 42-245, subsection A, paragraph 2?

2. If the state board does not have authority to raise valuations in such cases, are the increased valuations fixed by the board in 1988 valid and effective?

3. Is the state board's authority to increase property valuations limited to cases in which the department of revenue (DOR) or a county assessor has appealed for an increase in valuation?

4. In cases in which a person appealed his property valuation claiming it was excessive, does the board have authority to increase the property valuation above the value set by DOR or a county assessor?

DISCUSSION:

1. As an initial comment, the function of this office in connection with performance audits by the auditor general is to provide legal research and statutory interpretation. The attorney general has the same responsibility in providing legal advice to state agencies. In this case where the state board has received a legal interpretation from its counsel, the state board members are obligated to follow that counsel or risk personal liability for the consequences. It would be inappropriate for this office to gainsay or second guess the attorney general's advice or otherwise interfere with the attorney-client relationship between the attorney general and the state board.

That being said, however, it is appropriate to point out the following:

- A.R.S. section 42-245, subsection A, paragraph 2 authorizes taxpayers (not DOR or the county assessor) to appeal from the county board of equalization to the state board of tax appeals. In such cases the appeal would almost certainly be to reduce the assessment fixed by the county board.

- County assessors and DOR may appeal reductions in assessments to the state board under A.R.S. section 42-245, subsection C. Such an appeal would obviously be an attempt to increase the assessment fixed by the county board at least back to the amount fixed by the county assessor or DOR, if not higher.

- Pima County v. Cyprus-Pima Mining Co., supra, held that the assessing entity cannot "appeal" for a higher assessment merely by way of its answer to an appeal initiated by the taxpayer. Instead, the county assessor or DOR must file a direct appeal or cross-appeal.

- Applying that principle to administrative appeals to the state board by taxpayers under A.R.S. section 42-245, subsection A, paragraph 2, if there is no appeal or cross-appeal by the assessor or DOR under A.R.S. section 42-245, subsection C, the state board may set the valuation at no greater than that set by the county board of equalization.

It is evident that the statutes contemplate the state board having the authority to raise property valuations, and the court decisions do not prevent this, if the issue is brought to the state board in the proper manner. It is simply a procedural matter. In the case of an appeal from the county board of equalization, the state board may respond to the appeal as presented to it. The state board may not respond to a request to increase the assessment unless the request is presented by the taxpayer (an unlikely occurrence) in his appeal under A.R.S. section 42-245, subsection A, paragraph 2 or by the assessor or DOR in an appeal under subsection C. The state board may not increase an assessment in response to a taxpayer's appeal to lower the assessment, and the assessor or DOR may not request an increase in its answer to a taxpayer appeal.

2. The 1988 assessment increases were presumably adopted according to standing administrative procedures at the time. Having been fixed by the state board under color of law, they will remain in effect unless invalidated by a court. Not knowing the specific circumstances and facts of each case, it would be speculative to categorize the 1988 increases as void.

3. No. In addition to the authority to increase valuations pursuant to an appeal by the assessor or DOR, the state board, as noted in the given facts

> . . . may at any time require any county board of supervisors . . . and the department to furnish statements showing the valuation of the property of any person within any county or within the state. The board shall consider and equalize such valuations and after hearing may increase or decrease the valuation of the property of any person, provided that no increase in any valuation shall be made without first giving at least five days' notice . . . to the owner . . . .

(A.R.S. section 42-174, emphasis added.)

This provision is generally utilized in the course of equalization proceedings instituted by DOR involving several parcels of property in a tax classification or in a county. It should be noted, however, that the

language of the statute is not limited to general equalization proceedings. The state board could use this provision to sua sponte review the valuation of any property of any person at any time and increase the assessment to bring it into line with similarly situated property. The language of the statute appears to be deliberately crafted to allow consideration of individual cases. It should be noted, however, that A.R.S. section 42-174 is not intended as authority to raise valuations for the purpose of increasing revenues. This power to review and increase (and reduce) assessments is only for the purpose of tax equity among property owners.

4. No. As explained in the response to question no. 1 above, if the taxpayer appeals (assuming he is appealing for a reduction in the assessment), the state board can only reduce or sustain the county board's valuation and assessment. The state board can increase the assessment pursuant to an appeal only by the assessor or DOR, not by a taxpayer appeal.