

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 61

COUNTIES - Deliberations of county tax appeal board, notice of meetings;
OPEN MEETINGS - Deliberations of county tax appeal board, notice of meetings;
PROPERTY, REAL - Deliberations of county tax appeal board, notice of meetings;
PUBLIC OFFICERS - Deliberations of county tax appeal board, notice of meetings;
RIGHT TO KNOW - Deliberations of county tax appeal board, notice of meetings;
TAXATION AND REVENUE - Deliberations of county tax appeal board, notice of meetings;
MONTANA CODE ANNOTATED - Sections 2-3-202, 2-3-203, 15-15-101 to 15-15-103;
MONTANA CONSTITUTION - Article II, section 9;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 42 (1987), 38 Op. Att'y Gen. No. 33 (1979).

- HELD: 1. The deliberations of a county tax appeal board regarding an application for reduction in property valuation must be open to the public unless the presiding officer determines that the discussion relates to a matter of individual privacy and that the demands of individual privacy clearly exceed the merits of public disclosure.
2. Adequate notice must be given of any meeting of a county tax appeal board, including the board's deliberations which involve the convening of a quorum to hear, discuss, or act upon an appeal.

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3 February 1988

Mike Salvagni
Gallatin County Attorney
Law and Justice Center
615 South 16th Street
Bozeman MT 59715

Dear Mr. Salvagni:

You requested my opinion on two issues:

1. May a county tax appeal board close to the public its deliberations regarding an application for reduction in valuation of property?
2. If such deliberations are to be open to the public, what notice procedures should be followed if the deliberations are held at a time different from the examination required by section 15-15-103, MCA?

The county tax appeal boards described in section 15-15-101, MCA, are comprised of three county residents appointed by the county commissioners. These residents are paid for their work on the board with state funds. A county tax appeal board is charged with the duty of hearing all taxpayers' appeals from property tax assessments. § 15-15-101, MCA. It is given the power to change an assessment or to fix an assessment at some other level. § 15-15-101(3), MCA.

Section 15-15-102, MCA, provides that, before a county tax appeal board can make a reduction in property valuation, a written application must be filed by the party affected by the valuation. That section states:

No reduction may be made in the valuation of property unless the party affected or his agent makes and files with the county tax appeal board on or before the first Monday in June or 15 days after receiving a notice of classification and appraisal from the department of revenue, whichever is later, a written application therefor. The application shall state the post-office address of the applicant, shall specifically describe the property involved, and shall state the facts upon which it is claimed such reduction should be made.

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Section 15-15-103, MCA, requires that the board must examine on oath, at a recorded hearing, any person making such an application. You have asked whether the deliberations conducted by a county tax appeal board, following such examination of applicants, may be closed to the parties involved and the public.

Article II, section 9 of the Montana Constitution provides that a person has the right to observe the deliberations of "all public bodies or agencies of state government and its subdivisions." Likewise, section 2-3-203, MCA, found in Montana's open meeting law, requires that the meetings of all "public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public." As stated above, county tax appeal boards are state-funded boards assigned the governmental task of receiving input from the public and, thereafter, fixing property tax assessments. Thus they are public or governmental boards as referred to in section 2-3-203, MCA. See 42 Op. Att'y Gen. No. 42 (1987).

The fact that a county tax appeal board has finished hearing testimony pursuant to section 15-15-103, MCA, does not mean that its meeting has necessarily ended. The crucial question is whether there is still a "meeting," as defined in section 2-3-202, MCA.

As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

Thus, where a board's deliberations involve the convening of a quorum to hear, discuss, or act upon an appeal, there is a "meeting" within the above definition, and the public must be allowed. The exception, of course, is where the presiding officer of a meeting makes a determination, according to section 2-3-203(3), MCA, that the demands of individual privacy require that the meeting be closed. See Mont. Const. art. II, § 9.

I previously held in 38 Op. Att'y Gen. No. 33 at 115 (1979) that the deliberations of the Montana Human Rights Commission, a quasi-judicial body, are subject to

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Montana's open meeting law. In addressing the concern that a determination regarding individual rights be conducted in a "judicial atmosphere," I stated:

Our Open Meeting Act specifically addresses this problem by allowing the closure of any proceeding in which the individual's right to privacy outweighs the public's right to know. In such cases, which may be common before the Human Rights Commission, the attributes of a "judicial atmosphere" can be preserved. In the case of other quasi-judicial bodies which consider questions of broader public impact, the expansive intent in our Constitution and statutes favoring public disclosure can be preserved. If this inhibits frank discussion of views and issues by board members, that is a price demanded by our Constitution and our Legislature so that the people of Montana do not "abdicate their sovereignty to the agencies which serve them."

38 Op. Att'y Gen. No. 33 at 118.

Such reasoning is applicable to the deliberations of a county tax appeal board. Even if characterized as a quasi-judicial board, its meetings must still be open generally, and may be closed after a determination regarding individual privacy, pursuant to section 2-3-203, MCA. And even if a meeting is closed to the general public, the taxpayer who is appealing has the right to attend. See Jarussi v. Board of Trustees, 40 St. Rptr. 720, 725, 664 P.2d 316, 320 (1983).

Your second question relates to notice to the public of deliberations, where such deliberations take place at a date and/or time different from when testimony was heard pursuant to section 15-15-103, MCA. Section 15-15-101, MCA, specifically sets out the notice requirements for a county tax appeal board hearing:

(3) In connection with any such appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. The notice shall be published in a newspaper if any is printed in the county or, if none, then in such manner as the board may direct. The notice shall be published at least 7 days

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prior to the first meeting of the county tax appeal board.

Therefore, a county tax appeal board must follow the requirements of section 15-15-101(3), MCA, in giving notice of a meeting to hear protests. Such notice requirements may also apply when the board meets to discuss and deliberate about such protests and any applications made pursuant to section 15-15-102, MCA.

Montana's open meeting law also requires that adequate notice be given to the public. Board of Trustees v. County Commissioners, 186 Mont. 148, 606 P.2d 1069 (1980). If notice has been given under section 15-15-101(3), MCA, but the board meets at another time and/or place after initially hearing a protest, adequate notice must again be given.

THEREFORE, IT IS MY OPINION:

1. The deliberations of a county tax appeal board regarding an application for reduction in property valuation must be open to the public unless the presiding officer determines that the discussion relates to a matter of individual privacy and that the demands of individual privacy clearly exceed the merits of public disclosure.
2. Adequate notice must be given of any meeting of a county tax appeal board, including the board's deliberations which involve the convening of a quorum to hear, discuss, or act upon an appeal.

Very truly yours,

MIKE GREELY
Attorney General