

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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April 3, 2006

Opinion No. 06-059

County Assessor's and Board of Equalization's Powers to Compel Witnesses

QUESTIONS

1. a. Is a county assessor's power to compel witnesses, as set forth in Tenn. Code Ann. § 67-5-303, the functional equivalent of a subpoena?
b. Does this authority include the power to require a person to produce documents in the person's possession?
2. Is a county board of equalization's power to compel witnesses and documents, as set forth in Tenn. Code Ann. § 67-5-1404, the functional equivalent of a subpoena?
3. What penalties may be imposed against a taxpayer who fails to appear before the assessor or county board of equalization or to provide documents related to the assessment of property?
4. What other authority does an assessor have in obtaining information relating to the assessment of property?

OPINION

1. A county assessor's power to compel witnesses to appear and to answer oral or written questions pursuant to Tenn. Code Ann. § 67-5-303 constitutes the functional equivalent of a subpoena power. The statute empowers the assessor to compel the attendance and testimony of witnesses, and establishes a penalty for a witness's refusal to appear and testify by making such refusal a Class C Misdemeanor. The penalty for violation of a Class C misdemeanor is a term of imprisonment not to exceed thirty days, a fine not to exceed \$50, or both. The statute does not specifically authorize the assessor to require the witness to produce documents; however, the statute would require the witness to answer the assessor's questions concerning any such documents and to provide any requested information contained therein.

2. A county board of equalization's power and authority to send for persons and papers, to examine and enforce the attendance of witnesses, and to obtain other evidence or information,

pursuant to Tenn. Code Ann. § 67-5-1404, constitutes the functional equivalent of a subpoena power. Inasmuch as the statute does not establish a specific penalty for a witness's refusal to attend, testify, or provide documents, the county board may enforce its power by applying to a trial court for an order directing the recalcitrant witness to comply. The witness then would be subject to the court's contempt powers.

3. A witness's refusal to comply with a county assessor's order to appear and answer oral or written questions constitutes a Class C misdemeanor, punishable by up to thirty days imprisonment, \$50 in fines, or both. A witness's refusal to comply with a county board of equalization's order to attend and give evidence is redressed by applying to the appropriate trial court for an order of enforcement, the violation of which would be punishable as any other contempt of court.

4. This Office is aware of no other general statutory authority for a county assessor to obtain information relative to the assessment of property, although more specific statutes grant such powers in cases involving stock assessments, *see* Tenn. Code Ann. § 67-5-1107 (2003), and cases where taxpayers are represented by fiduciaries, *see* Tenn. Code Ann. § 67-5-511(b) (2003).

ANALYSIS

Tenn. Code Ann. § 67-5-303 authorizes a county assessor to "examine any person believed to have any knowledge or information relating to the assessment of property of any taxpayer." Tenn. Code Ann. § 67-5-303(a)(1) (2003). To that end, an assessor "has the power to administer oaths and compel any witness to appear and to answer oral or written questions." Tenn. Code Ann. § 67-5-303(a)(2) (2003). A witness who refuses to appear or testify under oath, when ordered to do so by the assessor, commits a Class C misdemeanor. By statute, Class C misdemeanors are punishable by a term of imprisonment of up to thirty days, a fine of \$50, or both. *See* Tenn. Code Ann. § 40-35-111(e)(3) (2003).

In addition to this power, Tenn. Code Ann. § 67-5-303 grants the assessor "the authority to go upon land in order to obtain information for the assessment of property." Tenn. Code Ann. § 67-5-303(e) (2003). If the landowner refuses to grant entry, "the assessor may petition the circuit or chancery court for an order allowing entry at a specific time for purposes of appraising the land and improvements." *Id.* Although Tenn. Code Ann. § 67-5-303 does not specifically authorize the assessor to petition the circuit or chancery court for an order compelling compliance with subsection (a) of the statute, such a remedy may be fairly implied from the remainder of the statute.

This Office previously has observed that

The term "subpoena" has been defined as the order of an arm of the state compelling the presence of a person under threat of contempt, *Timson v. Weiner*, 395 F. Supp. 1344, 1348 (S.D. Ohio 1975); as the medium for compelling the attendance of a witness, carrying with it a command dignified by the sanction of law, the disobedience of

which may be punishable as and for contempt, *Application of Remy Sportswear, Inc.*, 16 Misc.2d 407, 183 N.Y.S.2d 125, 129 (1959); and as a process to cause a witness to appear and give testimony, commanding him to lay aside all pretenses and excuses, and to appear before a court or magistrate therein named at a time therein mentioned under a penalty therein mentioned. *Black's Law Dictionary* (4th ed. 1957) 1595.

Op. Tenn. Att'y Gen. No. 83-462 (Oct. 26, 1983).

Tenn. Code Ann. § 67-5-303 gives a county assessor the power to “compel any witness to appear and to answer oral or written questions,” and it provides that a witness’s failure to appear before the assessor, testify under oath, or answer questions constitutes a Class C misdemeanor. Inasmuch as the statute authorizes a county assessor to compel the attendance of witnesses, and sets forth specific penalties for a witness’s refusal to comply, the powers set forth in Tenn. Code Ann. § 67-5-303 appear to constitute the functional equivalent of a subpoena power. As noted by your request, Tenn. Code Ann. § 67-5-303 does not specifically authorize the assessor to require a witness to produce documents in the person’s possession; however, the statute would require the witness to answer the assessor’s questions concerning any such documents and to provide any requested information contained therein.

Tenn. Code Ann. § 67-5-1404 authorizes a county board of equalization to “send for persons and papers, to examine and enforce the attendance of witnesses, and [to] obtain any evidence or information that may be deemed material in the performance of [the board’s] duties.” Tenn. Code Ann. § 67-5-1404(b) (2003). Because the statute specifically authorizes the board to “enforce the attendance of witnesses,” and to obtain other evidence, *id.*, this statute appears designed to grant the board a subpoena power similar to that granted the assessor in Tenn. Code Ann. § 67-5-303. Unlike Tenn. Code Ann. § 67-5-303, however, Tenn. Code Ann. § 67-5-1404 does not provide a specific penalty for a witness’s refusal to comply with the board’s directive to attend and testify, nor does it specifically authorize the board to petition the circuit or chancery court for an order compelling the witness to attend, testify, or provide documents.

In a prior opinion, this Office opined that, where a statute conferring the subpoena power does not explicitly set forth how the power is to be effectuated or make failure to comply a criminal offense, the agency or board must resort to the courts for enforcement. We explained that

[t]he procedure generally followed in the absence of a specific criminal or other enforcement statute is for an agency to apply to a trial court for an order directing the recalcitrant witness to comply. If the witness refuses, he can be punished for contempt of court in the

usual fashion. *See* W. GELLHORN & C. BYSE, *Administrative Law* (6th ed. 1974) at 558-61.

Such a procedure is consistent with Tennessee practice.

Op. Tenn. Att’y Gen. No. 82-225 (Apr. 22, 1982).

In accordance with our prior opinion, inasmuch as Tenn. Code Ann. § 67-5-1404 fails to contain a specific penalty or enforcement mechanism, a county board of equalization wishing to enforce its subpoena power should apply to a trial court for an order directing the recalcitrant witness to comply. If the witness still refuses to comply, the court may find the witness to be in contempt of court and impose any punishment applicable to contempt proceedings.

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