



STATE OF INDIANA

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December 16, 2009

Mr. Eric F. Reedy
Reedy Financial Group P.C.
415 S. Walnut Street
Suite 215, P.O. Box 943
Seymour, IN 47274

Re: Informal Inquiry 09-INF-40; Jackson County Assessor

Dear Mr. Reedy:

This is in response to your formal complaint dated November 16, 2009 regarding the Jackson County Assessor ("Assessor"). Pursuant to Indiana Code § 5-14-4-10(5), I issue the following advisory opinion.¹ My opinion is based on applicable provisions of the Indiana Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

You have requested an advisory opinion regarding access to the Schedules of Deduction from Assessed Valuation of Personal Property in Economic Revitalization Area, Form 103-ERA (the "Forms") from the Assessor's office. You state that you require the information so that you and your firm, Reedy Financial Group P.C. ("Reedy Financial") can perform essential services for the City of Seymour (the "City"). The Form includes a privacy notice that reads, "Privacy Notice: The records in this series are confidential according to IC 6-1.1-35-9."

This situation stems from the City's establishment of a tax increment financing district ("TIF") in 2008. The TIF includes the incremental assessed valuation of both real and personal property, including abatements. Your firm is engaged to provide the City and its redevelopment commission with financial projections regarding the TIF. You initially received access to the Forms in the TIF area from the Jackson County Auditor's ("Auditor") office in January and February of 2008. In those documents, you found errors in the calculations of the abatements resulting in incorrect deductions granted. After you notified the Assessor of the errors, on March 10, 2009, the Assessor corrected the errors and later provided you with revised valuations. However, she provided only the total valuation for the parcel without the supporting detailed calculations such as

¹ Your complaint alleges that the Assessor denied your request for access on June 25, 2009. Indiana Code § 5-14-5-7(a)(1) requires that formal complaints be filed within 30 days of an agency's denial of access. Because the agency's denial of your request for access occurred more than thirty days prior to the filing of your complaint, I have converted your complaint into an informal inquiry.

depreciation pools, year of abatement, and the deduction claimed. When you requested access to the Forms and the detailed information contained therein, the Assessor denied access to the records, including the corrected forms, citing confidentially under Ind. Code § 6-1.1-35-9.

The Assessor believed that the Auditor's staff erred in allowing your firm access to the Forms. As a result, the Jackson County attorney, Susan Bevers, drafted an opinion in which she opined that access is allowable under I.C. § 6-1.1-35-9. That statute authorizes the disclosure of confidential information to particular people, including an official or employee of an agency or subdivision of this state, another state, or the United States if the information is required in the performance of the official duties of the official or employee. Ms. Bevers' reasoned,

Reedy was requesting the information as the financial consultant for the City of Seymour. It's as if the clerk treasurer for the City requested the information. Seymour is obviously a subdivision of the state, and therefore, falls under (b)(1)(c). If the information was necessary for an official with the City to perform their duties, the disclosure was authorized. Further, Reedy has its own confidentiality requirements. IC 25-2.1-14-1 requires accountants to preserve the confidentiality of their client records. In addition, according to IC 6-1.1-35-9(e) the confidential information that is disclosed to an authorized recipient retains its confidential status.

You allege that the records are necessary for the City to properly ensure the tax increment finance revenues are accurate, and for your office to be able to make reasonable projections for the redevelopment commission, the City, and to provide information for potential buyers of the redevelopment commission's future bonds.

The question of law is whether you are entitled to access the Forms under Ind. Code § 6-1.1-35-9(b). The full text of that subsection is as follows:

- (b) Confidential information may be disclosed to:
 - (1) an official or employee of:
 - (A) this state or another state;
 - (B) the United States; or
 - (C) an agency or subdivision of this state, another state, or the United States;
 - if the information is required in the performance of the official duties of the official or employee;
 - (2) an officer or employee of an entity that contracts with a board of county commissioners or a county assessor under IC 6-1.1-36-12 if the information is required in the

performance of the official duties of the officer or employee; or

(3) a state educational institution in order to develop data required under IC 6-1.1-4-42.

Id. Thus, under the plain language of the statute, if you are “an official or employee of . . . an agency or subdivision of this state,” and the Forms are required for the performance of your official duties, the Assessor may release the Forms to you. Title 6 does not define either the word “official” or the word “employee.” As a general rule of statutory construction, if a statute is unambiguous (i.e., susceptible to but one meaning), courts give the statute its clear and plain meaning. *See Elmer Buchta Trucking, Inc. v. Stanley*, 744 N.E.2d 939, 942 (Ind. 2001). Webster’s Dictionary defines an “employee” as “[o]ne who works for another in return for a salary, wages, or other consideration.” Webster’s Third New International Dictionary 318 (1992). Under this definition, because you are performing your duties on behalf of the City in return for compensation, you are an “employee” within the meaning of Ind. Code § 6-1.1-35-9(b)(1). You also state that you cannot perform your duties on behalf of the City without all of the information in the Forms. In my opinion, you meet the criteria contained within section 9(b)(1).

Based on the foregoing, it is my opinion that pursuant to Ind. Code § 6-1.1-35-9(b), the Assessor may release the Forms to Reedy Financial in response to a request from Reedy Financial to inspect and copy the same.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,



Andrew J. Kossack
Public Access Counselor