



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2011

Mr. Douglas Oldmixon
Commissioner
Texas Appraiser Licensing and Certification Board
Post Office Box 12188
Austin, Texas 78711-2188

Via E-Mail

Re: Jurisdiction of the Appraiser Licensing and Certification Board over a property tax appraiser's "uniform and equal" analysis (RQ-0992-GA)

Dear Commissioner Oldmixon:

We have received your letter dated August 19, 2011 and have designated it as Request No. 0992-GA. Section 402.042 of the Government Code provides that the Attorney General shall issue an opinion not later than the 180th day after the date that an opinion request is received unless we notify the requestor in writing before that day that the opinion will be delayed or not rendered. We received your request on August 26, 2011, setting a due date for your opinion of February 21, 2012. We will respond by that date.

By copy of this letter we are notifying those listed below of your request and asking them to submit written briefs if they care to do so. If you are aware of other interested parties, please let us know as soon as possible. We ask that the briefs be submitted by September 29, 2011. Please note that briefs and other correspondence are subject to the Public Information Act.

Very truly yours,

J. Rick Gilpin
Deputy Chair, Opinion Committee

JRG/WAH/rem
Attachment: Request No. 0992-GA

cc: Ms. Barbara Hutzler, General Counsel, Property Tax Division, Office of the Comptroller of Public Accounts
Mr. Shane Docherty, Presiding Officer, Texas Tax Professional Advisory Committee, Texas Department of Licensing and Regulation
Mr. Michael Braught, President, Association of Texas Appraisers
Ms. Doris Koch, Executive Director, Texas Association of Appraisal Districts
Mr. Curby Brantley, President, Texas Association of Assessing Officers
Ms. Kara Bryant, Executive Director, Texas Association of Assessing Officers
Ms. Lanette Andrews, Executive Director, Texas Association of Property Tax Professionals
Mr. Travis Kessler, President and Chief Executive Officer, Texas Association of Realtors
Ms. Teresa Spears, Governor's Appointment Director, Office of the Governor

TEXAS



APPRAISER LICENSING & CERTIFICATION BOARD

RECEIVED

DOUGLAS E. OLDMIXON, COMMISSIONER

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Commissioner
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AUG 26 2011

OPINION COMMITTEE

FILE # MI-46812-11
I.D. # 46812

August 19, 2011

RQ-0992-BA

The Honorable Greg Abbott
Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711-12548

Attention: Opinion Committee

Dear General Abbott:

At its meeting on May 20, 2011, the Texas Appraiser Licensing and Certification Board (TALCB, or Board) authorized me to request an opinion regarding TALCB's jurisdiction over "uniform and equal" (U&E) studies performed for property owners wishing to protest their property tax appraisals.

Section 1, Article VIII of the Texas Constitution provides that (a) taxation shall be uniform and equal, and (b) property shall (with certain exceptions not relevant here) be taxed in proportion to its value, which shall be ascertained as may be provided by law. Chapter 41 of the Property Tax Code provides for relief for property owners whose property is "appraised" unequally relative to other comparable properties, appropriately adjusted. Consequently, even if a property owner knows that the local appraisal district has appraised his property at less than market value, if he can establish that comparable properties are *more* undervalued (after proper adjustments due to size, quality, and other relevant features), he is entitled to a reduction in his appraised value. Because of this statutory remedy, a property owner may hire an appraiser to perform a "uniform and equal" study. Certain other professionals, such as property tax consultants, accountants, real estate brokers, and attorneys, are also authorized by law to provide the same analysis for property owners in these appeals (cf. Occupations Code 1152.002). The object of such a study is to determine whether the appraisal district's "appraisal" figure is in line with similar properties, and to calculate a more appropriate figure if the study reveals that it is not.

The following provisions of Chapter 1103, Texas Occupations Code (the Texas Appraiser Licensing and Certification Act, or the Act) are relevant to this request (portions of Chapter 1103 were amended by House Bill 2375, which was immediately effective upon the Governor's signature of May 27, 2011; all statutory references are to the new provisions):

Section 1103.201(a) – A person may not perform an appraisal of real estate unless the person is licensed or certified as an appraiser under this chapter, registered as a

temporary out-of-state appraiser under this chapter, or acting as an appraiser trainee under the sponsorship of a certified appraiser.

Section 1103.405 – A person who holds a license, certificate, or approval issued under this chapter shall comply with:

- (1) the most current edition of the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation; or
- (2) other standards provided by board rule that are at least as stringent as the Uniform Standards of Professional Appraisal Practice.

Section 1103.003(1) – “Appraisal” means, regardless of whether performed for a federally related transaction:

- (A) an opinion of value; or
- (B) the act or process of developing an opinion of value.

The above definition of “appraisal” is based on the definition of the same term in the Uniform Standards of Professional Appraisal Practice (USPAP), which also defines related terms as follows (and includes the noted comments):

Appraisal Consulting – the act or process of developing an analysis, recommendation, or opinion to solve a problem, where an opinion of value is a component of the analysis leading to the assignment results. Comment: An appraisal consulting assignment involves an opinion of value but does not have an appraisal or an appraisal review as its primary purpose.

Appraisal Review – the act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal, appraisal review, or appraisal consulting assignment. Comment: The subject of an appraisal review assignment may be all or part of a report, workfile, or a combination of these.

Recently, the Board has begun to receive complaints alleging USPAP violations by licensed or certified appraisers performing U&E studies. While these appraisers may have violated USPAP in performing these studies, it is unclear whether the Board has jurisdiction over this activity because it is uncertain whether a U&E study fits within the statutory definition of “appraisal” or is otherwise included in the scope of the types of appraisal activity the Board is charged with regulating. The Act does not define “appraisal consulting,” but the USPAP definition suggests that a U&E study may be an *appraisal consulting* assignment rather than an actual *appraisal*. If a U&E study is not, in fact, an appraisal but is instead appraisal consulting or some other type of appraisal activity, it may still be within the Board’s jurisdiction if that jurisdiction is broader than simply regulating the performance of *appraisals*.

In exploring this issue, the Board has received testimony from persons involved in cases making use of U&E studies (primarily attorneys) that such studies are not about establishing *value* or providing opinions about *value* (a key component of the definition of “appraisal”). Citing cases such as *Harris County Appraisal District v. United Investors Realty Trust*, 47 S.W.3d 648 (2001), they suggested that an appeal based on the U&E provision is distinct from one based on a contention that an appraisal district appraised a property above market value (which would involve an effort to establish its actual *value*). Therefore, it has been argued, a U&E study is not about value at all but rather is about relationships among dollar amounts that may not – and often do not – represent actual *value*.

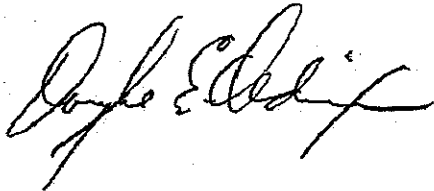
It has also been suggested that 1103.405 of the Act binds all licensed and certified appraisers to comply with USPAP in all appraisal-related activities in which they may engage, regardless of whether the appraiser is performing actual appraisals or is engaging in other related activities (such as teaching an appraisal course or testifying about value in court) and even when those activities do not specifically require a person to be licensed or certified by the Board in order to perform them. Under this view, a licensed person is always an appraiser and is bound to always comply with USPAP.

Our questions are as follows:

1. Is performance of a "uniform and equal" (U&E) analysis by an appraiser within the Board's jurisdiction as articulated in Chapter 1103, Texas Occupations Code?
2. Would the answer be different if (a) the appraiser included his or her appraiser number on a report or testified that he or she was an appraiser, or (b) the property owner hired the appraiser specifically *because*, and in reliance on the fact that, the person was an appraiser?
3. Does the Board have authority to define its jurisdiction by rule in a way that would specifically include or exclude U&E work?

Thank you for your attention to this matter. Please let me know if I may be of further assistance.

Sincerely,



Douglas E. Oldmixon
Commissioner
Texas Appraiser Licensing & Certification Board