

Commercial Information, Conflict of Interest, and *Ex-parte* Communication as a Member of the Board of Equalization

1. When the Council sits as the Board of Equalization, it serves in a “quasi-judicial” role.
 - A judicial process weighs the evidence in an impartial and fair proceeding from outside influences.
 - The Board is constitutionally created. Utah Const. art. XIII, § 7.
 - Besides adjudication, the Board becomes a party when its decisions are appealed.
2. Who is impacted by the Board’s decision?
 - Property owner of the subject appeal.
 - All property owners in the County.
 - Assessor.
 - All taxing entities that impose a levy.
3. Three concerns.
 - Protect Commercial Information.
 - Avoid conflicts of interest.
 - Avoid *ex parte* communication.
4. Commercial Information. Utah Code § 59-1-404
 - Unless there is an exception, you cannot disclose commercial information.
 - Commercial information is “information of a commercial nature obtained from a property taxpayer regarding the property taxpayer’s property.”
 - Criminal penalties, loss of license, dismissal of elected office, and bar to future public service.
 - Visit with Brad Neff to make sure you and your staff comply with the employee certification.
5. Conflicts of Interest.
 - Dual role as Council and Board members.
6. *Ex parte* Communication.
 - County Ordinance § 2.70.050 - Ex-parte communication.
 - “No quasi-judicial official shall initiate contact or initiate discussion with any party or the representative or agent of any party or a person who may claim to be “adversely affected” by the resolution of the matter with respect to an issue of law or fact in issue on a matter which is either currently before the quasi-judicial official for adjudication or which is reasonably likely to come before the quasi-judicial official unless the official provides notice to all parties and an opportunity to participate.”
7. Best Practice.
 - Use the board of equalization process and procedures that you have established.
 - If a constituent raises a property tax issue, do not engage in the details unless you have cleared it through Brad Neff.
 - Brad can tell you the status and offer solutions to ensure that commercial information is protected, and *ex parte* communication does not occur.
 - Avoid conflicts of interest by keeping your Council and Board roles separate and independent.