

Ethical Practices Board
41 State Office Building
St. Paul, MN 55155

Approved by the Ethical Practices Board on April 13, 1978

Advisory Opinion #46

Issued to: Earl B. Gustafson
Court Administrator, Judge
Tax Court of Minnesota
St. Paul, Minnesota 55155

Re: Economic Interest - Tax Court Members

Summary

Judges of the Tax Court are not public officials as defined by Minnesota Session Laws 1978, Chapter 463, Section 15, and therefore not subject to economic interest disclosure.

Text

Judge Gustafson requested an opinion of the Board based on the following:

"Effective July 1, 1977 the Minnesota Tax Court became a full time quasi-judicial position.

Under the Terms of the new Act, Minn. Stat. 490.121, subd. 2 (1977), "The judges of the tax court shall be subject to the provisions of the Minnesota Constitution, Article VI, Section 6, the jurisdiction of the commission on judicial standards, as provided in Minnesota Statutes, Section 490.15 and 490.16, and the provisions of the code of judicial conduct."

It therefore appears that we are no longer subject to the State Ethical Practices Board.

I solicit your reaction and comments."

Question

Is a judge of the Tax Court a public official as defined by Minn. Session Laws 1978, Chapter 463, Section 15, therefore subject to economic interest disclosure?

Opinion

Minnesota Session Laws 1978, Chapter 463, Section 15, provides in relevant part that a "public official" means any "member, chief administrative officer or deputy chief

administrative officer of a state board or commission which has at least one of the following powers: (I) the power to adopt, amend or repeal rules, or (ii) the power to adjudicate contested cases or appeals..." The 1977 legislature, however, made it clear that the tax court is a "court" rather than being a board or commission. Minn. Stat. 490.121, subd 2 (1977) provides as follows:

"Court" means any court of this state established by the Minnesota Constitution, the tax court, and any municipal, county or probate court of record.

The law prior to 1977 had not included the term "the tax court" in the definition of court.

Although the terms "board" and "commission" are not defined in Minn. Stat. Chapter 15, those two terms are subsumed within the definition of "agency." Minn. Stat. 15.0411, subd. 2. The definition of agency explicitly excises the term "court" from its meaning. Therefore, it is clear that a "court" is not a board or commission for purposes of the new Ethics in Government Act. It also seems clear that judges of the Minnesota Tax Court are not considered "public officials" within the meaning of section 14 of the new Ethics in Government Act and, therefore, are not required to file statements of economic interest.