Assessors (powers and duties) - Real Property Tax Law, § 102, subds. 2 and 3:

A local legislative body has no power with respect to the classification of property as real or personal for taxation purposes, and a resolution adopted by a town board instructing the assessor to eliminate all swimming pools from the assessments of parcels on which they are located, is invalid.

Our opinion has been requested as to the validity of a resolution adopted by a town board instructing the town assessor to eliminate all swimming pools (both above and below ground) from the assessments of parcels on which they were located.

Taxation has always been considered exclusively a matter of State concern and not within the local home rule powers. *County Securities, Inc. v. Seacord*, 278 N.Y. 34, 15 N.E.2d 179. Thus, the powers of local legislative bodies in matters of the assessment and taxation of property are therefore controlled by State law. Subdivision 1 (d-l) of section 10 of the Municipal Home Rule Law provides that a town may enact a local law relating to the preparation, making, confirmation and correction of assessments of real property consistent with laws enacted by the Legislature.

Therefore, the question is whether the subject resolution is consistent with State laws on the subject.

Subdivision 3 of section 102 of the Real Property Tax Law defines an assessor as “an elected or appointed officer or body of officers charged by law with the duty of assessing real property for the purposes of taxation or special ad valorem levies . . .”

Subdivision 2 of section 102 defines “assessment” as “a determination made by assessors of (1) the valuation of real property, including the valuation of exempt real property and (2) whether or not real property is subject to taxation or special ad valorem levies.”

Title 1 of Article 5 of the Real Property Tax Law sets forth in detail the procedure which town assessors must follow in assessing property including a verification of the assessment roll that they, the assessors, have set forth all real property on the roll (section 514).

It is clear that under these provisions the assessing function, including the function of determining what is taxable real property, has been given exclusively to local assessors and, ergo, the local legislative body has no power to enact a local law instructing the assessors as to the classification of property as real or personal for taxation purposes. See *Drelich v. Kahn*, 60 Misc.2d 227, 302 N.Y.S.2d 634, 638-639.

Therefore, it is our opinion that the resolution is invalid as being inconsistent with State law.
on a subject exclusively of State concern.

March 6, 1972

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