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DEPARTMENT OF JUSTICE
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OPINION 13-0113

Ms. Sandy Edmonds
Executive Director
State Board of Examiners of
Interior Designers
11736 Newcastle Avenue
Building 2, Suite C
Baton Rouge, LA 70816

63 – B – LICENSING – For professions or occupations
90 – B – 4 – PUBLIC MEETINGS – State & Local Governing Bodies

La. R.S. 37:3173	La. R.S. 42:23
La. R.S. 37:3174	La. R.S. 44:36
La. R.S. 37:3182	La. Const. art. VII, §1

The State Board of Examiners of Interior Designers is a nonelected board without the authority to levy a tax. Thus, Act 363 of the 2013 Louisiana Legislative Session, which requires that a nonelected board or commission with the authority to levy a tax video or audio record, film or broadcast live the proceedings of a public meeting, does not apply to the Board. However, while the Board is not mandated to do so, La. R.S. 42:23(A) still permits the Board, if it so chooses, to video or tape record, film or broadcast live the proceedings of its meetings.

Dear Ms. Edmonds:

Our office received an opinion request from you submitted on behalf of the State Board of Examiners of Interior Designers ("Board") concerning whether Act 363 of the 2013 Louisiana Legislative Session ("Act 363") applies to the Board.

Act 363 amended and reenacted La. R.S. 42:23(A) to provide:

All of the proceedings in a public meeting may be video or tape recorded, filmed, or broadcast live. However, any nonelected board or commission that has the authority to levy a tax shall video or audio record, film, or broadcast live all proceedings in a public meeting.

Act 363 also enacted La. R.S. 44:36(F) to provide:

All existing records or records hereafter accumulated pursuant to R.S. 42:23 shall be preserved and maintained for a period of at least two years from the date on which the public record was made.

You have asked whether this applies to the Board. Such a conclusion depends upon whether the Board is a nonelected board or commission with the authority to levy a tax. As specified by La. R.S. 37:3173(A), the seven members of the Board are appointed by the governor. Thus, the Board is nonelected. With respect to the authority to levy a tax, La. Const. art. VII, §1(A) provides, "Except as otherwise provided by this constitution, the power of taxation shall be vested in the legislature, shall never be surrendered,

suspended, or contracted away, and shall be exercised for public purposes only.”¹ Thus, it is relevant to examine the specific authority granted to the Board by the legislature.

The authority of the Board is defined by La. R.S. 37:3174, which provides:

The board shall have the following powers and authority:

- (1) To enforce the provisions of this Chapter and incur such expenses as are necessary within the operating budget of the board.
- (2) To adopt and promulgate rules of organization, practice, and procedure; establish criteria for eligibility for licensing; and to provide for the taking of examinations.
- (3) To adopt, promulgate, and enforce rules and regulations governing the standards of education, service, conduct, and practice of persons licensed under this Chapter.
- (4) To maintain an official roster showing the name, license number, and address of each interior designer licensed under this Chapter and in good standing.
- (5) To employ an executive director, legal counsel, and such other assistants and clerical staff and other employees as it deems necessary.

Additionally, the legislature has granted the Board limited authority to collect fees, as described by La. R.S. 37:3182:

The applicant shall pay the actual cost of any examination. In addition, the board may establish fees that shall not exceed the following amounts:

- (1) For licensing, one hundred fifty dollars.
- (2) For each annual renewal, one hundred fifty dollars.
- (3) For restoration of an expired certificate of registration or for reactivation of an inactive certificate of registration, one hundred fifty dollars.
- (4) For restoration of a revoked or suspended certificate of registration, one hundred fifty dollars. The board may assess a penalty not to exceed one hundred fifty dollars that shall be paid prior to the restoration of a revoked or suspended certificate of registration.
- (5) For issuance of original or duplicate certificate of registration, twenty-five dollars.
- (6) For failure to renew a certificate of registration within the time period to be set by the board, fifty dollars.
- (7) For approval of a continuing education provider, two hundred dollars.

Nowhere in the statutes establishing the Board does the legislature grant the Board the authority to levy a tax. Although the Board has the authority to impose fees, such fees

¹ La.Const. art. VI, §29 is an example of a provision “otherwise provided by this constitution,” which specifically grants authority to the governing authority of a local governmental subdivision or school board to levy sales and use taxes, as qualified therein.

are not a tax. As stated by the *Louisiana Supreme Court in Audubon Ins. Co. v. Bernard*, 434 So.2d 1072, 1074 (La.1983):

It is well settled generally and in Louisiana that not every imposition of a charge or fee by the government constitutes a demand for money under its power to tax. If the imposition has not for its principal object the raising of revenue, but is merely incidental to the making of rules and regulations to promote public order, individual liberty and general welfare, it is an exercise of the police power. (Citations omitted). In similar fashion, the police power may be exercised to charge fees to persons receiving grants or benefits not shared by other members of society. (Citations omitted). But if revenue is the primary purpose for an assessment and regulation is merely incidental, or if the imposition clearly and materially exceeds the cost of regulation or conferring special benefits upon those assessed, the imposition is a tax. (Citations omitted).²

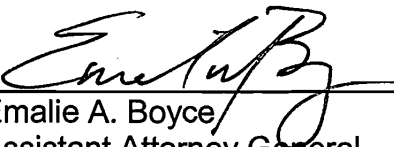
It does not appear that the fees authorized by La. R.S. 37:3182 have the object of raising revenue, but rather are fees incidental to the regulation of the interior design profession. Thus, the Board does not meet the second qualifying characteristic for the application of Act 363.

In conclusion, the Board is a nonelected board without the authority to levy a tax. Thus, Act 363, which requires that a nonelected board or commission with the authority to levy a tax video or audio record, film or broadcast live the proceedings of a public meeting, does not apply to the Board. However, while the Board is not mandated to do so, La. R.S. 42:23(A) still permits the Board, if it so chooses, to video or tape record, film or broadcast live the proceedings of its meetings.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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BY: 
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² See also *Ewell v. Board of Supervisors*, 100 So.2d 221 (La.1958) and La. Atty. Gen. Op. No. 90-677.