WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD
62706

December 10, 1975

FILE NO. S-1011

TAXATION:
Real Estate Assessments
Payment Under Protest

Honorable John J. Bowman
State's Attorney of DuPage County
207 S. Reber St.
Wheaton, Illinois 60187

Dear Mr. Bowman:

I have your letter requesting my opinion as to the proper interpretation of section 194a of the Revenue Act of 1939. (Ill. Rev. Stat. 1973, ch. 120, par. 675a.) You ask specifically:

1. Whether that portion of the statute which states that "the court must", under certain circumstances, hold a conference is mandatory or directory;

2. What the legal effect is of a failure by the court to hold a conference within the 90 day time limit provided in the statute; and

3. Whether the conference must be held in the presence of the court?

Section 194a provides:

"§ 194a. Upon the filing of an objection under Section 194 or a petition for refund under Section 195, the court must, unless the matter has been sooner disposed of, within 90 days after such filing hold a conference between the objector or petitioner and the State's Attorney. If no agreement is reached at the conference, the court must, upon the demand of either the taxpayer or the State's Attorney, set the matter for hearing within 90 days of the demand. Compromise agreements on tax objections reached by conference between the objector or petitioner and the State's Attorney shall be filed with the court and the State's Attorney shall prepare an order covering the settlement and file same with the clerk of the court within 15 days following said conference."

In response to your first question, it must be noted that no rule exists by which mandatory provisions may, in all cases, be distinguished from those that are merely directory. (People v. Frank G. Heilman Co., 263 Ill. App. 514.) As in all cases involving the construction of a statute, the primary object is to give effect to the intention of the legislature. Zbinden v. Bond County Community Unit School Dist. No. 2, 2 Ill. 2d 232.

Courts of Illinois have not been asked directly to determine whether the word "must" as used in section 194a, indicates an intent on the part of the legislature to create a mandatory or directory statute. In the case of People v. Highway Commissioners, 279 Ill. 542, however, the Supreme Court of the State did deal with the question indirectly. The statute involved there contained the word "may" and the court held at page 547: "That the word 'may' in said section 74, as therein used, means 'must', and that the act was intended to be mandatory." The court thus indicated that it generally associated the word "must" with mandatory statutes. Similarly, Black's Law Dictionary, Revised 4th Ed., says of the word "must" that it "like the word 'shall', is primarily of mandatory effect and in that sense is used in antithesis to 'may'."

Although "must" normally conveys a mandatory meaning, it does not necessarily do so, however. As the court pointed out in People v. Elgin Home Protective Ass'n., 359 Ill. 379, words of a permissive character may be given a mandatory significance and language, however mandatory in form, may be deemed directory when the purpose of the legislature would best

be carried out by such a construction.

In order to ascertain this legislative purpose, "consideration must be given to the entire statute, its nature, objects and the consequences which would result from construing it one way or another". (Carrigan v. Liquor Control Comm., 19 Ill. 2d 230, 233.) Thus, statutory requirements designed to secure order, system and dispatch in proceedings are not to be construed as mandatory unless accompanied by negative words indicating that action shall not be taken in any other manner. (People v. Jennings, 3 Ill. 2d 125; Carrigan v. Liquor Control Comm., supra.) Likewise, statutes directing "mode of proceeding" of public officials are merely advisory and strict compliance with their provisions is not essential to the validity of acts done under them. Siedschlag v. May, 363 Ill. 538.

The opposite is true, however, when statutory requirements are intended to protect the rights and property of an individual. Such provisions should be construed as mandatory unless the General Assembly clearly manifests a contrary intent. (People v. Jennings, supra; Carrigan v. Liquor Control Comm., supra.) Similarly, when the terms of the statute are peremptory

or exclusive or where penalties are provided for its violation, the statute should be regarded as mandatory. Clark v. Quick, 377 Ill. 424.

Section 194a contains no language of a peremptory or exclusive nature that would clearly indicate a legislative intent that it be treated as mandatory. Neither does it provide for penalties should the court fail to act in accordance with its terms. Rather, it is in my opinion a statute designed to secure order and dispatch in the proceedings by which a taxpayer can challenge his real or personal property taxes. It provides for a conference at which the taxpayer and the state's attorney are brought together in an effort to secure a "compromise agreement" acceptable to both sides. The failure to hold such a conference within the 90 day limit set forth in section 194a would not seem to impair seriously the taxpayer's statutory right to challenge his taxes. If no compromise is reached or even if no conference is held, the taxpayer may still obtain redress under the provisions of sections 194 and 195 of the Revenue Act of 1939. Ill. Rev. Stat. 1973, ch. 120, pars. 675 and 676.

It is therefore my opinion that no right or property is lost to the taxpayer if the court fails to hold a conference as provided in section 194a and as a result this section is directory only.

This does not mean, of course, that the legislature intended that the requirements of section 194a should be disregarded. (Siedschlag v. May, 363 Ill. 538, 543.) Rather, the only difference between a directory and a mandatory statute is the consequence of failure to abide by its provisions. The general rule in this regard was set forth in the Siedschlag case at page 543, where the court stated:

> "A mandatory provision in a statute is one the omission to follow which renders the proceeding to which it relates illegal and void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding."

The answer to your second question is, of course, dictated by the rules set forth in the Siedschlag opinion. Since section 194a is directory only, the court's failure to abide by its provisions is without legal effect. A binding conference may therefore be held beyond the 90th day. Indeed,

even if no conference is ever held, the validity of the taxpayer's challenge remains unaffected. In such a case, the decision of the court reached at a hearing held pursuant to either section 194 or 195 of the Revenue Act of 1939 would be valid and binding.

The answer to your final question is controlled by the general maxim of statutory construction that words should be given their ordinary and popularly understood meaning absent a specific statutory definition. People v. Blair, 52 Ill. 2d 371.

Webster's Third International Dictionary lists as one meaning of "hold": "To engage in with someone else or with others; do any concerted action". Similarly, Black's Law Dictionary, Revised 4th Ed., defines the word "hold": "To administer; to conduct or preside at; to convoke, open and direct the operations of; as to hold a court, hold pleas, etc.".

Applying these two definitions to section 194a, it seems evident that the General Assembly meant the conference to be a proceeding involving not only the petitioner and state's attorney, but also the circuit court judge.

It is, therefore, my opinion that the conference held pursuant to section 194a must be held in the presence of the court.

Very truly yours,

ATTORNEY GENERAL