

BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION

FILLMORE COUNTY HOSPITAL,)
)
Appellant,)
)
vs.)
)
FILLMORE COUNTY BOARD OF)
EQUALIZATION,)
)
Appellee.)

CASE NO. 01E-261

FINDINGS AND ORDERS

Filed July 26, 2001

Appearances:

For the Appellant: Mr. L. L. Eichelberger, CEO
Fillmore Family Health Services
Hospital Division
P. O. Box 193
Geneva, NE 68361-0193

For the Appellee:

Jill R. Cunningham, Esq. Fillmore County Attorney P. O. Box 15 Geneva, NE 68361-0015	Howard F. Ach, Esq. Deputy Fillmore Cty. Att. P. O. Box 15 Geneva, NE 68361-0015
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Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman, for the Commission

SUMMARY OF DECISION

The Commission concludes that only the governmental subdivision owner of real property, or its lessee, has standing to appeal a decision under Neb. Rev. Stat. §77-202.12. This appeal must therefore be dismissed for lack of standing.

NATURE OF THE CASE

Fillmore County ("the County") owns certain agricultural real property located in Fillmore County, Nebraska. The property is leased to a farmer. The proceeds of the lease, under the terms of a trust agreement between the settlor and the County, are used to support the Fillmore County Hospital ("the Hospital"). The Fillmore County Assessor ("the Assessor") determined that the agricultural real property should be placed on the tax rolls. For reasons which do not appear in the record, the Assessor issued the notice to the Hospital rather than the County. The Hospital protested the Assessor's decision to add the property to the tax rolls to the Fillmore County Board of Equalization ("the Board"). The Board denied the protest, from which decision the Hospital appeals.

I.

EVIDENCE BEFORE THE COMMISSION

The Commission took notice of the following documents as authorized by Neb. Rev. Stat. §77-5016(5) (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 419, § 1, as amended by 2001 Neb. Laws, L.B. 170, § 22, and as amended by 2001 Neb. Laws, L.B. 465, § 7) without objection: the Commission's case file for Case No.

01E-261; the Nebraska Constitution; the Nebraska State Statutes and the amendments to those statutes; and *Title 442, Nebraska Administrative Code* (the Tax Equalization and Review Commission's Rules and Regulations).

The Commission also received certain testimony without objection, and afforded the Parties the opportunity to provide evidence and argument as to the issue of subject matter jurisdiction and standing as required by Neb. Rev. Stat. §77-5015 (2000 Cum. Supp.).

**II.
FINDINGS OF FACT**

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016(3) (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 419, § 1, as amended by 2001 Neb. Laws, L.B. 170, § 22, and as amended by 2001 Neb. Laws, L.B. 465, § 7). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016(5).

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

A.
PROCEDURAL FINDINGS

1. That the County is the owner of record of certain agricultural real property legally described as the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 17, Township 7, Range 4, consisting of approximately 80-acres of agricultural land in Fillmore County, Nebraska ("the subject property"). (Undated Excerpt of Minutes of Fillmore County Board of Equalization certified by Fillmore County Clerk June 21, 2001.) (Warranty Deed from Carl H. Nolde to County of Fillmore, recorded June 9, 1961, Fillmore County Register of Deeds Office. Deed Book 48, Page 246).
2. That the Assessor proposed placing the property on the tax rolls of the County for tax year 2001. ("Notice of Taxable Status" dated April 26, 2001).
3. That the Assessor issued the notice to the Hospital. That Neb. Rev. Stat. §77-202.12(1) (2000 Cum. Supp.), however, requires the notice to be issued to the owner.
4. That the Hospital protested that decision of the Assessor. (Letter of May 15, 2001).

5. That the Board denied the protest. (Form 422, with certification date of June 12, 2001).
6. That the Hospital appealed that decision to the Commission. (Appeal Form dated June 21, 2001).

B.
SUBSTANTIVE FINDINGS

1. That the County is the owner of the property.
2. That the Hospital is not the owner of the property.
3. That the Hospital is not the lessee of the property.

III.
ANALYSIS

The issue presented in this appeal is a case of first impression for the Commission. The statutory provisions which generally govern disposition of this appeal are set forth in Neb. Rev. Stat. §77-202(1) (2000 Cum. Supp.), and provide:

"The following property shall be exempt from property taxes: (a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. For purposes of this subdivision, public purpose means use of the property (i) to provide

public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by public housing authority, parks, culture, recreation, community development, and cemetery purposes, or (ii) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose. Leases of property by a public housing authority to low-income individuals as a place of residence are for the authority's public purpose . . ."

The appeal provisions governing the process state:

"(1) On or before March 1, the county assessor shall send notice to the state or to any governmental subdivision if it has property not being used for a public purpose upon which a payment in lieu of taxes is not made. Such notice shall inform the state or governmental subdivision that the property will be subject to taxation for property tax purposes. The

written notice shall contain the legal description of the property and be given by first-class mail addressed to the state's or governmental subdivision's last-known address. If the property is leased by the state or the governmental subdivision to another entity and the lessor does not intend to pay the taxes for the lessee as allowed under subsection (4) of section 77-202.11, the lessor shall immediately forward the notice to the lessee. (2) The state, governmental subdivision, or lessee may protest the determination of the county assessor that the property is not used for a public purpose to the county board of equalization on or before April 1. The county board of equalization shall issue its decision on the protest on or before May 1. (3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission on or before June 1." Neb. Rev. Stat. §77-202.12 (2000 Cum. Sup.).

The record before the Commission establishes that the "subject property" is legally described as the E½SE¼ of Section 17, Township 7, Range 4, consisting of approximately 80-acres of agricultural land in Fillmore County, Nebraska ("the subject

property"). (Undated Excerpt of Minutes of Fillmore County Board of Equalization certified by Fillmore County Clerk June 21, 2001.) The record also establishes that the owner of the property is Fillmore County, Nebraska. (Warranty Deed from Carl H. Nolde to County of Fillmore, recorded June 9, 1961, Fillmore County Register of Deeds Office. Deed Book 48, Page 246).

(Although owned by the County, the Chief Executive Officer of the Hospital testified that the property is leased to an individual who farms the property.)

The record before the Commission raises a number of questions. Those questions include the following:

1. Why was the notice issued to the Hospital rather than the County?
2. Why was the notice issued to the Hospital on April 26, 2001, when the statutes provide that the notice must be issued by March 1?
3. Why did the County act on or about June 12, 2001, when the statutory deadline was April 1?
4. Does the Commission have subject matter jurisdiction if the appeal was filed June 21, when the statutory deadline was June 1?

5. Does the Hospital have standing to prosecute the appeal?

The Commission raised the last of these questions on its own motion. This is in keeping with the decision of the Nebraska Court of Appeals, which held that:

"The fact is that lack of jurisdiction may exist even where the parties submit an issue to an administrative agency in the mistaken belief that the agency has statutory authority to resolve it. The parties' understanding or intentions are irrelevant to the issue of whether the Commission [has] jurisdiction, since the parties cannot confer subject matter jurisdiction upon a tribunal by either consent or acquiescence."

Arcadian Fertilizer, L.P. v. Sarpy County Bd. Of Equal., 7 Neb. App. 499, 504 - 505, 583 N.W.2d 353, 356 - 357 (1998). The Court of Appeals has also determined that standing is a jurisdictional component of a party's case, because only a party who has standing may invoke the jurisdiction of a court. *In re: Guardianship and Conservatorship of Borowiak*, 10 Neb.App. 22, 31, 624 N.W.2d 72, 80 (2001). The Supreme Court has established that the requirement of standing is fundamental to the exercise of jurisdiction that either a party or the court or tribunal may

raise the question of standing at any time during the proceeding. *McLeod Telemanagement, Inc. v. U.S. West Communication, Inc.*, 255 Neb. 202, 208, 583 N.W.2d 39, 44 (1998).

The question of standing is the threshold issue in this matter. The statute provides that the governmental subdivision or the lessee may protest the decision of the Assessor. Nothing in the language of the statute allows any other entity to protest the decision. The right to appeal is purely statutory. *Boone County bd. Of Equalization v. Nebraska Tax Equalization and Review Com'n*, 9 Neb. App. 298, 302, 611 N.W.2d 119, 123 (2000).

The Commission, in determining whether an entity has standing to prosecute an appeal under Neb. Rev. Stat. §77-202.12, must consider the judicially mandated rules of statutory construction.

"In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous In construing a statute, a court must attempt to give effect to all of its parts, and if it can be avoided, no word, clause, or sentence will be rejected as superfluous or

meaningless; it is not within the province of a court to read anything plain, direct, and unambiguous out of a statute.

Id. at 302 - 303, 123. (Citations omitted).

The statutes set forth above contemplate that only the owner or the lessee of the property which is owned by the State or a governmental subdivision thereof has standing to file a protest. It follows then that those same entities or individuals are the only entities or individuals who have standing to appeal an adverse decision of a county board of equalization. The Hospital, based on this construction of the statutory provisions, lacks standing to prosecute the appeal.

**IV.
CONCLUSIONS OF LAW**

That the Nebraska Supreme Court has held that "Jurisdiction is the inherent power or authority to decide a case. . . ." *Wickersham v. State*, 218 Neb. 175, 183, 354 N.W.2d 134, 140 (1984). The Commission only has that "authority" specifically conferred upon it by the Constitution of the State of Nebraska, Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act. *Arcadian*

Fertilizer, L. P. v. Sarpy Cty. Bd. Of Equal., 7 Neb. App. 499, 504 - 505, 583 N. W. 2d 353, 356 - 357 (1998). The statutory jurisdiction of the Nebraska Tax Equalization and Review Commission is generally set forth in Neb. Rev. Stat. §77-5007 (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 170, § 20). The Commission's specific statutory authority in this appeal is set forth in Neb. Rev. Stat. §77-202.12 (2000 Cum. Supp.).

In construing the language of this statute, the Commission must, and hereby does, find as a matter of law that:

1. The statutory provision limits the statutory right to appeal an adverse decision of a county board of equalization to the governmental subdivision which is the owner of the property, and to the lessee of the property.
2. That since the Hospital is neither the owner nor the lessee, it lacks standing to prosecute this appeal.
3. That since the Hospital lacks standing to prosecute this appeal, the appeal must be dismissed.
4. That since the filing deadline of June 1, 2001, under Neb. Rev. Stat. §77-202.12 (2000 Cum. Supp.) has expired, the dismissal must be with prejudice.

IV.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That this appeal be, and hereby is, dismissed with prejudice.
2. That this decision, if no appeal is filed, shall be certified within thirty days to the Fillmore County Treasurer, and to the Fillmore County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2000 Cum. Supp., as amended by 2001 Neb. Laws, L.B. 465, § 8).
3. That each party is to bear its own costs in this matter.

IT IS SO ORDERED.

Dated this 26th day of July, 2001.



SEAL

Janet L. Edwards

 Janet L. Edwards, Commissioner

Robert L. Hans

 Robert L. Hans, Commissioner

Mark P. Reynolds

 Mark P. Reynolds, Chairman