



**I.  
NATURE OF THE CASE**

The County's request, that the Commission allow the County to "create" subclasses of property, raises a jurisdictional issue that has not previously been decided by the Commission. At the hearing on the County's Petition, the Commission, on its own motion, raised the issue of subject matter jurisdiction, and afforded the Petitioner the opportunity to address this issue. After considering the evidence and argument offered by the Petitioner, the Commission determines that the Commission is without jurisdiction over the request presented by the Petitioner. The Commission therefore orders the petition dismissed.

**II.  
EVIDENCE BEFORE THE COMMISSION**

Judicial notice was taken, without objection, of the pleadings in Case File 98CP-2; Case File the *Nebraska Agricultural Land Valuation Manual* (1998); the *Nebraska Assessor's Reference Manual* - Volumes 1 and 2 (Reissue 1997); the Nebraska Constitution; the Nebraska State Statutes; 1998 Neb. Laws, L. B. 306; *Title 442, Nebraska Administrative Code* (Tax Equalization and Review Commission's Rules and Regulations); three standard reference works published by the International Association of Assessing Officers: *Property Assessment Valuation, Second Edition*, (1996); *Property Appraisal and Assessment Administration*, (1990); and the *Glossary for Property Appraisal and Assessment*, (1997); the 1998 Preliminary Statistical Profiles of the Property Tax Division of the Nebraska Department of Revenue; the Property Tax Division of the Nebraska Department of Revenue's Published 1998 Ratios and Measures of Central Tendency; the *1998 Reports and Opinion*

of the Property Tax Administrator; the 1998 Statewide Equalization Proceedings; the Soil Survey for Cedar County; the 1997 Property Tax Division Interviews with Assessors; the 1998 County Abstract of Assessment submitted by the Property Tax Division as of June 12, 1998; certain Statistical Analysis Definitions; the County Geocode Map; the Commission's General Order Number 6; and the 1998 Assessment Calendar.

### III. ISSUE BEFORE THE COMMISSION

The threshold question presented is whether the Nebraska Constitution or the Nebraska State Statutes authorize the Commission to "allow Cedar County to create two subclasses of property", as requested in its Petition.

### IV. ANALYSIS

"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" which is specifically conferred upon it by the Constitution of the State of Nebraska, the Nebraska State Statutes, or by the construction necessary to achieve the purpose of the relevant provisions or act. See, e.g., *Grand Island Latin Club v. Nebraska Liquor Control Commission*, 251 Neb. 61; 554 N.W. 2d 778 (1996).

The Nebraska Constitution, in Article IV, Section 28; states that "The Commission shall have power to review and equalize assessments of property for taxation within the state and shall have such other powers and perform such other duties as the Legislature may provide." The terms "review" and "equalize assessments" are not defined in the Constitution.

The Nebraska Supreme Court has held that "In ascertaining the intent of a constitutional provision from its language, the words must be 'interpreted and understood in their most natural and obvious meaning . . .'" *Pig Pro Nonstock Co-op v. Moore*, 253 Neb. 72, 83, 568 N. W. 2d 217, 224 (1997) (citations omitted). Furthermore, "The language of a constitutional provision is to be interpreted with reference to established laws, usage and custom of the country at the time of its adoption . . ." *Pig Pro Nonstock Co-op v. Moore*, 253 Neb. 72, 86, 568 N. W. 2d 217, 225 (1997) (citations omitted).

The term "review" is defined as "to view again, to look at, look over, or study again." *Webster's New Universal Unabridged Dictionary*, 2<sup>nd</sup> Edition. The Commission must conclude therefore that the Commission has no authority under the "review" provision to allow or forbid a county to create a class or subclass of property after the completion of the real property protest process set forth in Neb. Rev. Stat. §77-1502, *et seq.* (1997 Supp.).

The Commission must reach the same conclusion regarding the "equalization" clause of the Article IV, Section 28. The term "equalize" may be explained by reference to "established laws." The Legislature has authorized the Commission to "equalize" assessments between April 5 and May 15 of each year. Neb. Rev. Stat. §77-5022, *et seq.* (1997 Supp.). During this process the Commission may adjust values by a percentage adjustment to a class or subclass. Neb. Rev. Stat. §77-5023 (1997 Supp.). The Commission, after referring to laws established after the adoption of the Constitutional provision at issue, must conclude that the "equalization" authority conferred by the Nebraska Constitution is limited to adjusting values by a class or subclass by a percentage. The petition before the Commission does not consist of a request to adjust values by a class or subclass, but rather to "allow the County to create two subclasses of property." The Commission has no jurisdiction to grant or even to consider such a request under the applicable provisions of the Nebraska Constitution, Article IV, Section 28.

The only other basis upon which the Commission may have jurisdiction to consider the request must be through a statutory grant of authority. The Commission has reviewed the applicable

statutes. Neb. Rev. Stat. §77-5007 (1997 Supp.) authorizes the Commission to hear and decide appeals of decisions from county boards of Equalization; the Property Tax Administrator; and pursuant to 1998 Neb. Laws, L. B. 306 (1998 session), from the Department of Motor Vehicles. The second area concerns the equalization of assessments, and is generally set forth in Neb. Rev. Stat. §77-5022, *et seq.* (1997 Supp.). That jurisdiction is primarily limited to a process which begins April 5 of each year and must end by May 15. The only exception involves the "county petition" process described in Neb. Rev. Stat. §77-1504.01, as amended by 1998 Neb. Laws, L. B. 306, Section 22.

This law authorizes the Commission to "consider an adjustment to a class or subclass of real property," within a county, after the county board of equalization has conducted protest hearings and has met and taken action as required by Neb. Rev. Stat. section 77-1502 (1997 Supp.), and Neb. Rev. Stat. section 77-1504 (1997 Supp.) The term "adjustment" is not defined in the statute. The definition of this term is essential in order to determine the Commission's jurisdiction.

The Supreme Court has established clear and unequivocal rules for statutory construction. First, the language of a statute should be given its plain and ordinary meaning. When the words of a statute are plain, direct, and unambiguous, no interpretation is necessary or will be indulged to ascertain their meaning. *Hamilton v. Hamilton*, 242 Neb. 687, 693; 496 N.W. 2d 507, 512 (1993). When a statute that is in a series or collection all relating to a certain subject, the various parts are read *in pari materia*, and may be considered conjunctively in determining the Legislature's intent. *State v. Garza*, 242 Neb. 573, 584; 496 N.W. 2d 448, 456 (1993). The goal is to interpret the different provisions in a consistent, harmonious, and sensible manner. *State v. Garza, supra*, at p. 584. Finally, effect should be given to every word, clause, and sentence of a statute, since the Legislature is presumed to have intended every provision of a statute to have meaning. *Sorenson v. Meyer*, 220 Neb. 457, 370 N.W. 2d 173, 177 (1985).

The equalization process is clearly defined in the statutes. The county assessor must complete the assessment process and certify the abstracts of assessment no later than April 1. Neb. Rev. Stat. §77-1301(2) (1997 Supp.) The Property Tax Administrator must report the level and quality of assessment to the Commission no later than April 5. Neb. Rev. Stat. §5027 (1997 Supp.) The Commission must equalize assessments no later than May 15. Neb. Rev. Stat. §77-5028 (1997 Supp.) The county assessor, after any adjustments by the Commission, must notify property owners of any change in the assessed value of property no later than June 1. Neb. Rev. Stat. §77-1315(2) (1997 Supp.) The property owners must file any protest regarding assessed values no later than July 1. Neb. Rev. Stat. §77-1502 (1997 Supp.) The county board of equalization must equalize individual property assessments no later than July 25. Neb. Rev. Stat. §77-1504 (1997 Supp.) After the completion of that process, the county board of equalization may petition the Commission to “. . . consider an adjustment to a class or subclass of property . . . The commission shall hear and take action on a petition filed by a county board of equalization on or before August 10. . . ” Neb. Rev. Stat. §77-1504.01 (1997 Supp.), as amended by 1998 Neb. Laws, L. B. 306, Section 22.

Any adjustment made during this “petition” process carries significant consequences. First, the county assessor must recertify the abstract of assessment no later than August 20. Neb. Rev. Stat. §77-1504.01 (1997 Supp.), as amended by 1998 Neb. Laws, L. B. 306, Section 22. This recertification may be a herculean task, depending on the number of parcels affected by the order. This adjustment may also impact the equalization of centrally assessed property, which the Commission must undertake pursuant to Neb. Rev. Stat. §77-5022 (1997 Supp.). Finally, it would appear that there is no right on the part of individual taxpayers to appeal an adjustment made during this “petition process.” (Neb. Rev. Stat. §77-510 (1994 Supp.) provided the exclusive method of appeal from decisions of the State Board of Equalization and Assessment in making adjustments after the county protest process. The only appeal provision regarding Commission action is now found in Neb. Rev. Stat. §77-5019 (1997 Supp.) That section limits the matters which may be

appealed to “Any person aggrieved by a final decision in a case appealed to the commission. . . .” A petition is not a case “appealed to the Commission. It would therefore appear that there is no right to appeal from an adjustment ordered by the Commission pursuant to Neb. Rev. Stat. §77-1504.01.)

Given these facts, the Commission must be governed by the Nebraska Supreme Court mandate that tax laws are to be strictly construed, and construed in a light most favorable to the taxpayer. *See, e.g., Nebraska Annual Conference of the United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W. 2d. 543, 547 (1993), and *Sioux City and Pacific R.R. v. Washington County*, 3 Neb. 30, 32 (1873).

Under these circumstances, the Commission must conclude that the term “adjustment” as it appears in Neb. Rev. Stat. §77-1504.01 (1997 Supp.), when read in conjunction with the overall assessment process statutes, means a change in the assessed values of a class or subclass by a percentage. Under this definition, the Commission does not have the statutory authority to either allow or to forbid a county board of equalization to “create” subclasses of property, as requested by the Petitioner.

## V. 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) (Reissue 1996). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (Reissue 1996).

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

1. That the Petitioner presented to the Commission a letter, dated July 24, 1998, which served as a formal petition, and which requested that the Commission “create two sub-classes of

property . . . class 1 being residential rural homes attached or located on more then (sic) 40 acres of real estate; and class 2 being rural residential homes attached or located on 40 acre (sic) or less of real estate.”

2. That on July 24, 1998, the Commission issued an Order for Hearing and Notice of Hearing to the Petitioner, setting this Petition on the Commission’s docket for July 31, 1998.
3. That thereafter, on July 30, 1998, the Commission issued an Amended Order for Hearing and Notice of Hearing to the Petitioner.
4. That the Petitioner appeared at the July 31, 1998 hearing, and presented its request that the Commission create two subclasses of property, as set forth in its Petition.
5. That at this hearing, the Commission, on its own motion, raised the issue of the Commission’s subject matter jurisdiction to hear the request stated in the Petition.
6. That at the hearing, the Commission afforded the Petitioner the opportunity to present evidence and argument as to this jurisdictional issue.
7. That the Petitioner failed to meet its burden of proof, set forth in Neb. Rev. Stat. §77-1504.01 (1997 Supp.), as amended by 1998 Neb. Laws, L. B. 306, Section 22, regarding the jurisdiction of the Commission over the Petitioner’s request.

**VI.  
CONCLUSIONS OF LAW**

1. That the subject Petition requests that the Commission create subclasses of property.
2. That pursuant to the analysis set forth above, the Commission has neither the constitutional authority nor the statutory authority to grant or to forbid the creation of a class or subclass of property.
3. That the authority to create market areas, classes or subclasses of property within a county must be made in accordance with “professionally accepted mass appraisal methods.” Neb. Rev. Stat. §77-112 (1997 Supp.).



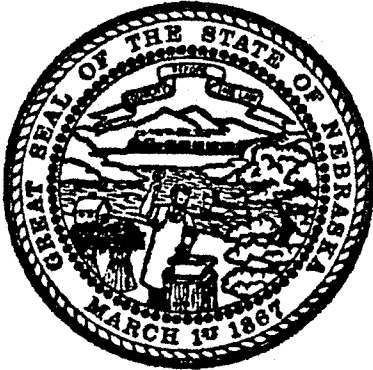
4. That the use of market areas, classes or subclasses of property, within a county must also be made in accordance with the “. . . rules and regulations, appraisal manuals, special manuals and studies, cost and price schedules, news and reference bulletins, property tax laws, and memoranda . . . ” of the Property Tax Division of the Nebraska Department of Revenue. Neb. Rev. Stat. §77-1330 (1996 Supp.).
5. That the county assessors of the various counties are charged by law with the duty of “. . . general supervision over and direction of the assessment of all property in his or her county.” Neb. Rev. Stat. §77-1311 (1996 Supp.).
6. That therefore use of market areas, classes or subclasses of property, within a county is a matter which must be left to the discretion of the duly elected, qualified, and acting county assessor of the county.
7. That the Cedar County Board of Equalization therefore has no standing to make the request contained in the Petition.
8. That since the Commission has no jurisdiction over the Petitioner's request, the Commission must, and hereby does conclude as a matter of law, that the Petition must be dismissed.

**ORDER**

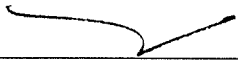
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the subject Petition be, and it hereby is, dismissed.

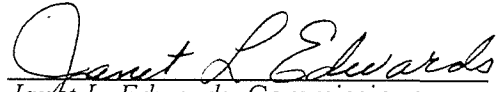
**IT IS SO ORDERED.**

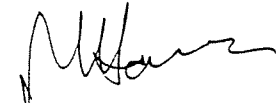
Dated this 3<sup>rd</sup> day of August, 1998.



SEAL

  
\_\_\_\_\_  
Mark P. Reynolds, Chairman

  
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Janet L. Edwards, Commissioner

  
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Robert L. Hans, Commissioner