

BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION

OMAHA, LINCOLN, AND ) Case No. 96R-0018  
BEATRICE RAILWAY COMPANY, )  
)  
Appellant, )  
)  
vs. ) FINDINGS AND ORDERS  
)  
)  
LANCASTER COUNTY BOARD OF )  
EQUALIZATION, )  
)  
Appellee. )

Filed February 21, 1997

Appearances:

For the Appellant: James W. Hewitt, Esq.  
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For the Appellee: Michael E. Thew, Esq.  
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Lancaster County Attorneys Office  
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Before: Commissioners Edwards and Reynolds

Reynolds, Chairman:

SUMMARY OF DECISION

Taxpayer appealed a decision of the Lancaster County Board of Equalization which affirmed a decision of the Lancaster County Assessor to add certain railroad property to the tax rolls of Lancaster County. The Commission affirms the decision of the County.

## NATURE OF THE CASE

Omaha, Lincoln and Beatrice Railway Company ("Railroad") alleged that it filed a "terminal tax return" with the Property Tax Administrator, and that the return included certain railroad real property. Railroad alleged that the property was listed on the "terminal tax return" pursuant to an agreement with the State Board of Equalization and Assessment (SBEA) dating back to 1978. Railroad alleged that as a direct result of this agreement or order, the subject property was not to be locally assessed. Railroad further alleged that the Lancaster County Assessor added that property to the Lancaster County rolls in 1996, in violation of the agreement with the SBEA, and that the action of the County Assessor resulted in double taxation, since the railroad operating property is assessed by the State. Railroad therefore filed a protest with the Lancaster County Board of Equalization ("County"), challenging that decision. County denied the protest, from which decision Railroad appeals.

## DUTIES OF THE PARTIES

On or before June 1, the county assessor shall, before filing the certificate for real property, notify the record owner of every item of real property which has been assessed at a value higher than in the previous year. Neb. Rev. Stat. §77-1311.02 (Reissue 1996). The County Board of Equalization is required to hold a session of at least three days, for the purpose of reviewing and deciding property "filed pursuant to sections 77-1502 to 77-1507." Neb. Rev. Stat. §77-1502 (Reissue 1996). Protests by taxpayers regarding such increases in valuation must be filed with the County Board of Equalization between June 1 and July 1 of each year. Neb. Rev. Stat. §77-1502 (Reissue 1996). The county board of equalization must, between June 1 and July 25 of each year, fairly and impartially equalize the values of all items of real property in the county "except agricultural and horticultural land" so that all real property is assessed uniformly and proportionately. Neb. Rev. Stat. §77-1504 (Reissue 1996). "Appeals may be taken from any action of the county board of equalization to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act. The appeal shall be filed within thirty days after adjournment of the board which, for actions taken pursuant to sections 77-1502 and 77-1504, shall be deemed to be July 25 of the year in which the action is taken." Neb. Rev. Stat. §77-1510 (Reissue 1996).

## ANALYSIS

The Commission, in determining the case, 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 to it utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (5) (Reissue 1996).

Applying these guidelines to the evidence here establishes that the Commission must resolve two issues: (1) whether the subject property was included in the "terminal tax return" filed with the Property Tax Administrator for 1996; and (2) whether there was an agreement and/or order from or involving the SBEA in 1978 which applies to the subject property in this case.

An essential element of Railroad's case is the allegation that the certain railroad property was included in a "terminal tax return" for tax year 1996. The property in question is certain vacant land legally described as follows:

All of Blocks 8, 14, 17, 20, and 21, Abbot Irvines Addition to the City of Lincoln, Lancaster County, Nebraska, and,

Parts of Blocks 7, 13, 15, 16, 19 and 23, Abbott and Irvines Addition to the City of Lincoln, Lancaster County, Nebraska.

Neb. Rev. Stat. §77-603 (Reissue 1996) requires that any person, company or corporation which owns, operates or controls any railroad or railroad service to return "a sworn statement or schedule of the property" of such company to the Property Tax Administrator on or before April 1 of each year. The Property Tax Administrator is required in May of each year to "ascertain all operating property of any railroad company owning, operating, or controlling any railroad or railroad service . . . which for the purpose of assessment and taxation shall be held to include . . . all other real property of such railroad company which is adjacent and contiguous to the railroad right-of-way and is used or held for the sole purpose of operating the railroad." Nebr. Rev. Stat. §77-602 (Reissue 1996). The Property Tax Administrator (as opposed to the county assessor) is obliged to assess all "operating property of the railroads." Neb. Rev. Stat. §77-601 (Reissue 1996). The Property Tax Administrator is also required to "find the taxable value of all such property" based on the returns, which are not conclusive as to the taxable value. Neb. Rev. Stat. §77-604. (Reissue 1996). The Property Tax Administrator also has the power to "to require any officer, agent, or servant of any railroad or railway company having any portion of its property in

this state to attend a hearing and to answer under oath questions regarding this property." Neb. Rev. Stat. §77-607. These provisions became effective January 1, 1996.

These statutes, when read *in pari materia*, outline a process wherein a railroad submits a list of property which it contends is "operating property" to the Property Tax Administrator. (The effect of such a decision is apparently advantageous to the railroad, otherwise the appeal would not be before the Commission. This is of some concern to the Commission since the only "legal" consequence should be that the property is assessed by the Property Tax Administrator as opposed to the county assessor. There shouldn't be any difference in tax "rates," only in the distribution of the taxes, since the statutes require that the property be assessed "on the same basis as other property is required to be assessed." Neb. Rev. Stat. §77-604 (Reissue 1996).) The statutes clearly contemplate that the Property Tax Administrator hold a hearing on the issue where the county assessor, among others, presents relevant evidence. The Property Tax Administrator then makes a fully informed decision as to whether the property is, in fact, "operating property," and therefore not subject to local assessment. If the Property Tax Administrator determines that the property is in fact "operating property," then a determination as to taxable value of the property must also be made. This determination, too, would require the presence of the county assessor, or at least the records of that office. The presence of the county assessor or his or her deputy would also place the county on notice that the property could not be locally assessed. Finally, if either the railroad or the county was unsatisfied with the Property Tax Administrator's decision, that decision could be appealed.

Testimony was adduced by County that such a determination was made. However, neither party presented the "terminal tax return," and no Order of the Property Tax Administrator was adduced to establish what, if any property of Railroad was deemed to be operating property. Under these circumstances, the Commission cannot conclude as a matter of fact that the subject property was deemed by the Property Tax Administrator to be "operating property" and therefore should be exempt from local assessment.

The Commission is likewise barred from concluding that an order of the SBEA from 1978 prohibited the county assessor from assessing the subject property in 1996. A number of exhibits were adduced to show that by SBEA action in 1978, certain property of Railroad was ordered to be locally assessed. However, Exhibit 6 states that "The Secretary then moved that properties listed by the Omaha, Lincoln, and Beatrice Railway Company on the 1978 terminal reports, which properties are separated from the railroad trackage by private ownership, be removed from the terminal reports and be treated as locally assessed property and further that any property in residential zoning classifications be similarly treated . . ." The 1978

terminal report was not entered into evidence before the Commission. The Commission cannot therefore determine whether the subject property was on that list of property to be locally assessed. Furthermore, the Commission could not, even if the terminal report was made a part of the record, conclude that the order established that all other property of Railroad was never to locally assessed.

### FINDINGS OF FACT

From the pleadings and the evidence the Commission finds and determines as follows:

- I. That Railroad owns certain real property located in the City of Lincoln, Lancaster County, Nebraska, legally described as:

All of Blocks 8, 14, 17, 20, and 21, Abbot Irvines Addition to the City of Lincoln, Lancaster County, Nebraska, and,

Parts of Blocks 7, 13, 15, 16, 19 and 23, Abbott and Irvines Addition to the City of Lincoln, Lancaster County, Nebraska.

- II. That the County Assessor deemed this property to be non-operating property of Railroad and therefore determined that this property should be locally assessed for tax year 1996.
- III. That nothing in the record shows whether this decision was supported based on findings of the Property Tax Administrator.
- III. That Railroad timely protested this determination to County.
- IV. That County timely denied the protest.
- V. That Railroad timely appealed this action of County.
- VI. That the evidence before the Commission does not establish that the order of the SBEA in 1978 requires the subject property to be exempt from local assessment.

## JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Reissue 1996).

### STANDARD OF REVIEW ANALYSIS

#### I.

#### The "Unreasonable or Arbitrary" Standard in the Courts

Neb. Rev. Stat. §77-1511 (Reissue 1996) states "The commission shall affirm the action taken by the board unless evidence is adduced establishing that the action of the board was unreasonable or arbitrary or unless evidence is adduced establishing that the property of the appellant is assessed too low."

The Nebraska Supreme Court, in determining its role within the assessment process, held "In reviewing the actions of tribunals created by law for ascertaining the valuation and equalization of property for taxation purposes, courts will not usurp the functions of such tribunals. It is only where such assessed valuations are not in accordance with law, or it is made to appear that they were made arbitrarily or capriciously, that courts will interfere." *Hastings Bldg. Co. V. Board of Equalization of Adams County*, 190 Neb. 63, 72, 206 N.W.2d 338, 344 (1973), citing *Newman v. County of Dawson*, 167 Neb. 666, 94 N.W.2d. 47, (1959). This position was in keeping with an earlier case where the Court held:

"The court is not a board of review to correct errors. It is solely where there is evidence a systematic purpose on the part of a taxing board to cast a disproportionate share of the public burden on one taxpayer, or classes of taxpayers that the court will intervene." *LeDioyt v. Keith County*, 161 Neb. 623, 74 N.W.2d 455, 462 (1956).

The Court then enunciated the standard which the courts in this state would apply when taxpayers challenge the assessed valuations of real property.

"In an appeal to the county board of equalization or to the district court, and from the district court to this court, the burden of persuasion imposed on the complaining taxpayer is not met by showing a mere

difference of opinion unless it is established by clear and convincing evidence that the valuation placed upon his property when compared to valuations placed on other similar property is grossly excessive and is the result of a systematic exercise of intentional will or failure of plain duty, and not mere errors of judgment." *Hastings Bldg. Co. V. Board of Equalization of Adams County*, 190 Neb. 63, 72, 206 N.W.2d 338, 344 (1973), citing *Lexington Bldg. Co. V. Board of Equalization*, 186 Neb. 821, 187 N.W.2d 94 (1971).

The effect of this holding is to interpret, and therefore to define, "unreasonable or arbitrary" as "grossly excessive and the result of an illegal act." Under such circumstances, the history of such an interpretation requires examination. The holding in *Hastings Bldg. Co.* cited *Newman, supra*, which in turn cited *LeDioyt v. County of Keith*, 161 Neb. 615, 74 N.W.2d 455 (1956). The *LeDioyt* case also dealt with a challenge to the assessed valuation of real property. In that case, the Court held "In *Daniels v. Board of Review*, 243 Iowa 405, 52 N.W.2d 1, 9 it is said:

'A final word should be said as to the taxpayers' burden in these cases. On the claim of assessment in excess of actual valuation something more than a difference of opinion must be shown. Justice Bliss in the recent case of *Clark v. Lucas County Board of Review*, had this to say of the taxpayer's burden on appeal from an assessment:

"The burden on the complaining taxpayer is not met merely by showing a difference of opinion between his witnesses and the assessor, unless it is manifest that the assessment is grossly excessive and is a result of the exercise of the will and not of the judgment." [citations omitted.]

Although not reported, Justice Bliss held "Even though the complaining taxpayer be relieved from the burden of overcoming the presumption that the assessors valuation is correct, he nevertheless **has the statutory burden of proof establishing his contention that the valuation is excessive, inadequate, or inequitable.**" *Clark v. Lucas County Board of Review*, 242 Iowa 80, 96, 44 N.W.2d 748, 757 (1950), citing Sec 441.13, Code 1950, I.C.A.. The Iowa Court then went on to interpret the statutory burden as requiring the taxpayer to produce evidence that the valuation was "grossly excessive" and the result of what would amount in Nebraska to an illegal act. This conclusion formed the basis of the Nebraska Supreme Court holding.

## II. The "Unreasonable or Arbitrary" Standard before the Commission

The Tax Equalization and Review Commission is not a court. The Commission was created pursuant to state law to provide for an accessible and affordable system of review of valuation decisions. Under such circumstances, applying the standard devised by the Nebraska Supreme Court to the Commission would be presumptuous and ill-advised.

Therefore, the Commission must adopt a standard applicable to cases it hears and decides. This standard must be in keeping with the precept that tax laws are to be strictly construed, and construed in the 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). In determining that standard, resort must be made to the language of the statute. The Nebraska Supreme Court has often held that statutory construction is a simple task. The Court has held "In construing a statute, it is presumed that the Legislature intended a sensible rather than an absurd result. . . Statutory language is to be given its plain and ordinary meaning. . . " *Metropolitan Utilities Dist. v. Twin Platte Natural Resources Dist.*, 250 Neb. 442, 451, 550 N.W.2d 907, 913 (1996).

Therefore, the standard is that set forth in the statute. The word "arbitrary" is defined in the Webster's New Collegiate Dictionary (1981) as "arising from will or caprice; selected at random or without reason;" and "unreasonable" is defined as "not governed by or acting according to reason, not conformable to reason; absurd; exceeding the bounds of reason or moderation." Under these definitions, the Commission must affirm the decision of a county board of equalization unless that decision was determined by will or caprice or selected at random; or if the board's decision was not governed by reason; was absurd; or exceeded the bounds of reason or moderation.

## CONCLUSIONS OF LAW

The evidence before the Commission does not include the record of proceedings before the Property Tax Administrator. The evidence before the Commission does not include the record of proceedings before the SBEA. The transcript of the proceedings before the County (Exhibit 1, p. 5) establishes that Mr. Hewitt alleged that "We went to the State Board and the State Board said that we

could carry as industrial property and terminal property that property which is contiguous to the railroad tracks. If there is any intervening ownership then we can't carry it on the terminal tax return. . . We have been holding this for the construction of an intermodal terminal. . ." Assuming without deciding that the property is being held for the purposes of constructing an intermodal terminal, the Commission cannot, from the evidence before it, determine as a matter of law that property being held for such a purpose constitutes "operating property." More importantly, this decision is left in the first instance to the Property Tax Administrator.

Furthermore, assuming without deciding that the decision of the SBEA directed that the subject property should be assessed by the State, the Commission, based on the evidence before it, cannot conclude as a matter of law that such a decision would be binding a newly created office, that is the office Property Tax Administrator. It is important to note that the statutes regarding railroad property which are cited above have an effective date of January 1, 1996. Under such circumstances, the issue must first be presented to the Property Tax Administrator. The record does not establish that such is the case.

Where, as here, the Commission is obliged under Neb. Rev. Stat. §77-1511 (Reissue 1996) to affirm the decision of the County unless evidence is adduced establishing that the actions of County were unreasonable or arbitrary (as those terms are defined above), the Commission must, and hereby does conclude as a matter of law that the Lancaster County Board of Equalization was neither unreasonable nor arbitrary in determining the subject property should be locally assessed and therefore should be added to the tax rolls of Lancaster County for tax year 1996.

### ORDER

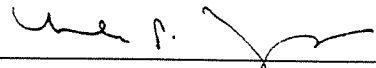
IT IS, THEREFORE, ORDERED as follows:

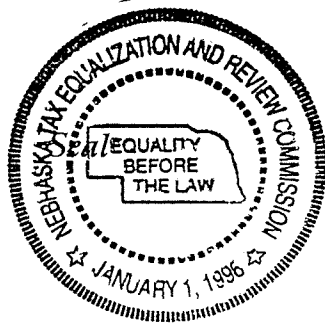
- I. The order of the Lancaster County Board of Equalization denying Taxpayer's protest is affirmed.
- II. That this decision, if no appeal is filed, shall be certified within thirty days to the Lancaster County Treasurer, and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).

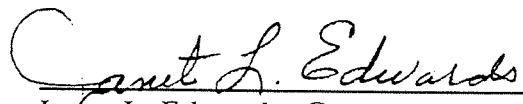
That each party is to bear its own costs in this matter

IT IS SO ORDERED.

Dated this 21st day of February, 1997.

  
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Mark P. Reynolds, Chairman



  
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Janet L. Edwards, Commissioner