

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

LOUP CITY PUBLIC SCHOOLS,)
SCHOOL DISTRICT #1 OF)
SHERMAN COUNTY,)
)
Petitioner,)
)
vs.)
)
NEBRASKA DEPARTMENT OF)
REVENUE, and STATE TAX)
COMMISSIONER, M. BERRI BALKA,)
)
Defendants.)

Docket 519

Page 055

ORDER

Under 1994 Neb. Laws, LB 1290 § 7 (codified at NEB. REV. STAT. § 79-3809(1) (Reissue 1994)), the Nebraska Department of Revenue is required to compute the "adjusted valuation" of each class of property in school districts in Nebraska for purposes of determining state aid pursuant to the Tax Equity and Educational Opportunities Support Act. School districts are provided the opportunity to file written objections to the adjusted valuations prepared by the Department, and a hearing on such objections is then provided before the Tax Commissioner. NEB. REV. STAT. § 79-3809(4) (Reissue 1994). After such hearing, the Tax Commissioner may enter an order modifying, or declining to modify, the adjusted valuations, and then certifies the order to the State Department of Education for use in determining state aid to the school district.

Pursuant to Section 79-3809(4), Loup City Public Schools, School District #1 of Sherman County (the "District") filed written objections with the Department to the adjusted valuations prepared by the Department for purposes of determining state aid to the District for 1994-95. A hearing on the District's objection was held before a Hearing Officer designated by the Tax Commissioner on August 10, 1994. Following the hearing, the Commissioner entered his Order affirming the adjusted valuations of the District as originally determined by the Department.

The District has appealed the Commissioner's final determination pursuant to NEB. REV. STAT. § 79-3809(4) (Reissue 1994), which provides that such appeals "shall be in accordance with the Administrative Procedures Act."

NEB. REV. STAT. § 84-917(5) (Reissue 1994) requires this court to review the matter de novo on the record of the agency. In *Slack Nursing Home, Inc. v. Department of Soc. Serv.*, 247 Neb. 452, 462 (1995) our court stated:

Pursuant to the 1989 amendments to § 84-917, a district court is required to conduct a de novo review of agency determinations in the record of the agency. The district court is not limited to a review subject to the narrow criteria found in § 84-917(6)(a) but is required to make independent factual determinations based upon the record.

With respect to the valuation and equalization of real estate, our court generally has held that there is a presumption that the officials have faithfully performed their duties unless there is competent evidence to the contrary presented. See *Fremont Plaza, Inc., v. Dodge Cty. Bd. of Equal.*, 225 Neb. 303, 405 N.W.2d 555 (1987). In *Gradoville v. Board of Education*, 207 Neb. 615, 618, 301 N.W.2d 62, 64 (1981), the Nebraska Supreme Court stated:

And, likewise, in *Newman v. County of Dawson*, 167 Neb. 666, 672-73, 94 N.W.2d 47, 50-51 (1959), we said, in part: "It has been frequently recognized by this court that absolute or perfect equality and uniformity in taxation cannot be attained. Something more than a difference of opinion must be shown. It must be demonstrated by evidence that the assessment is grossly excessive and is a result of arbitrary or unlawful action, and not a mere error of judgment. . . . The law imposes the duty of valuing and equalizing of property for taxation purposes upon the county assessor and the county board of equalization. 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. The valuation of property is largely a matter

of judgment, but mere differences of opinion, honestly entertained, though erroneous, will not warrant the interference of the courts. If uniformity of opinion were required, no assessment could ever be sustained."

The main issue of disagreement here is the Department's reliance on four sales of agricultural land that occurred in 1993 in arriving at adjusted values for this class of property in the District.

The evidence presented by the District, while characterized as "testimony," is more in the nature of general statements or unsupported conclusions. The District did present the affidavits of the county assessor and Norman L. Anders, a registered real estate appraiser who stated he has concentrated his work in Sherman County. Neither of these affidavits are persuasive. Mr. Anders discounts one of the sales because the property was purchased by an "investor." Another sale price was discounted by him because the property was sold at public auction and there were two active bidders. It is difficult to conceive of a more representative determiner of current market value than a sale at public auction with active bidders.

It is unfortunate that the "hearing" here was conducted in such an informal manner. It may have lulled the District into a false impression that the making of general statements and friendly discussions would result in a record adequate for judicial review. While the presumption of regularity in assessment and valuation disappears once competent evidence to the contrary is presented, the "evidence" presented by the District here merely represents differences of opinion.

A de novo review of the record shows that the adjusted values adopted by the Department are supported by the evidence and were adopted pursuant to law.

IT IS ORDERED that the Order of the State Tax Commissioner dated August 30, 1994
be affirmed. All costs are taxed to the Loup City Public Schools.

Dated May 10, 1995.

BY THE COURT:



District Judge