Bartel

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CASS COUNTY SCHOOL DISTRICT 001, CASS COUNTY SCHOOL DISTRICT 022, CASS COUNTY SCHOOL DISTRICT 032, CASS COUNTY SCHOOL DISTRICT 056, CASS COUNTY SCHOOL DISTRICT 097, Petitioners, vs. NEBRASKA DEPARTMENT OF REVENUE, Defendant.	Docket 519 Page 073	ORDER

COPY

DEPT. OF JUSTICE
FEB 14 1996

NEB. REV. STAT. § 79-3809(1) (Reissue 1994) requires the Nebraska Department of Revenue 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), Cass County School Districts 001, 022, 032, 056 and 097 (the "Districts") filed written objections with the Department to the adjusted valuations prepared by the Department for purposes of determining state aid to the Districts for 1994-95. A hearing on the Districts' objections 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 Districts as originally determined by the Department.

The Districts have 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 on 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 contrary competent evidence is 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 Districts contend that the use of eight sales of agricultural land is unreliable from a statistical standpoint, that the Department failed to compute the adjusted valuations by school district as required by Section 79-3809, that the Department failed to adopt rules and regulations as required by Section 79-3809 and that the Department's refusal to provide the plaintiffs with the specific sales information concerning the agricultural sales relied upon by the Department was a denial of fundamental due process.

Unfortunately, the "hearing," as conducted, results in a record lacking substance. The "evidence," while characterized as "testimony," is no more than conclusiory statements or unsupported opinions. This is equally true of the evidence offered by the petitioners and the Department. Much of the foundation for the Department's exhibits was provided by "testimony" of the attorney for the Department, albeit not under oath. At times, the attorney submitted herself to questions.

Apparently the Department used eight (or nine) sales of agricultural property to arrive at the ratio of current valuation to market value. However, even though the plaintiffs have the burden of showing that the Department's conclusions are incorrect, the Department contends that it does not have to identify or disclose such sales to the districts. In effect, if in fact there were no sales, it would be difficult if not impossible, to prove otherwise.

This court does not reach the issue as to whether the plaintiffs have met their burden of proof since there exists a critical and fundamental flaw in these proceedings. NEB. REV. STAT. § 79-3809(1) (Reissue 1994), provides:

> On or before July 1 for 1994 and on or before June 1 for each year thereafter, the Department of Revenue shall compute and certify to the State Department of

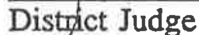
> Education the adjusted valuation of each district for each class of property in each such district so that the valuation of property for each district, for purposes of determining state aid pursuant to the Tax Equity and Education Opportunities Support Act, shall reflect as nearly as possible state aid value as defined in subsection (2) of this section. Establishment of the adjusted valuation shall be based on assessment practices established by rule and regulation adopted and promulgated by the Department of Revenue. The assessment practices may include, but not be limited to, the appraisal techniques listed in section 77-112. (Emphasis added).

There are no such rules or regulations in existence. This statutory language is clear and mandatory. It was unlawful for the Department to establish adjusted valuations in the absence of duly adopted rules and regulations.

IT IS ORDERED that the order dated August 30, 1994, of the Nebraska State Tax Commission be reversed and that this matter be remanded to the Department of Revenue for the purpose of affording the plaintiffs a hearing pursuant to rules and regulations mandated by NEB. REV. STAT. § 79-3809(1) (Reissue 1994). The costs of this appeal are taxed to the defendant.

Dated February 13, 1996.

BY THE COURT:



District Judge