

OHIO BOARD OF TAX APPEALS

Nordonia Hills City School District)	
Board of Education,)	CASE NO. 01-R-782
)	
Appellant,)	
)	(REAL PROPERTY VALUE)
vs.)	
)	
Summit County Board of Revision,)	DECISION AND ORDER
Summit County Auditor, and)	
Eaton Estate Community Assn.,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant Property Owner	- Robert A. Brindza, Esq. Taft, Stettinius & Hollister, LLP 1500 BP Tower 200 Public Square Cleveland, OH 44114-2302
For the County Appellees	- Sherri Bevan Walsh, Esq. Summit County Prosecuting Attorney By: Milton C. Rankins, Esq. Assistant Prosecuting Attorney 906 Key Building 159 South Main Street Akron, OH 44308-1317
For the Appellee Property Owner	- Jeffrey J. Snell, Esq. 253 West Aurora Road, Suite 200 P.O. Box 569 Sagamore Hills, OH 44067-0569

ENTERED: February 15, 2002

Mr. Johnson, Ms. Jackson, and Ms. Margulies concur.

This matter comes to be considered by the Board of Tax Appeals upon a Motion to Vacate and Order Remanding Case filed by Nordonia Hills City School District Board of Education (“BOE”).

On February 1, 2001, Eaton Estate, through its “Board President,” David Watroba, filed a complaint against the valuation of certain property owned by it and located in the Sagamore Hills Township – Nordonia Hills CSD taxing district of Summit County for tax year 2000. After a hearing, the BOR determined that the value of the subject property should be reduced to zero and issued a decision accordingly August 3, 2001.

On August 31, 2001, the BOE filed a notice of appeal with this Board. Then, on November 13, 2001, the BOE filed the Motion to Vacate and For Order Remanding Case, which is under consideration here. In its motion, the BOE seeks an order from this Board vacating the Summit County Board of Revision’s (“BOR”) August 3, 2001 final determination, which established a value for the subject property that was lower than the Summit County Auditor’s value for tax year 2000. The BOE also requests an order remanding the matter to the BOR with instructions to dismiss the complaint filed by the property owner, Eaton Estate Community Association, Inc. (“Eaton Estate”), which would reinstate the Auditor’s original value.

The Board of Tax Appeals issued a Show Cause Order on November 30, 2001, requiring the property owner to show cause why the Board should not order the BOR to dismiss the decrease complaint filed on the property owner’s behalf. Counsel for the property owner filed a response to the BOE’s motion and this Board’s show cause order on December 24, 2001.

In *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479, and its ensuing decision in *Worthington City School Dist. Bd. of Edn. v. Franklin*

Cty. Bd. of Revision (1999), 85 Ohio St.3d 156, the Supreme Court of Ohio concluded that only individual owners of real property and attorneys-at-law were authorized to prepare and file real property complaints. In response to the consequences of the *Sharon Village* decision, the General Assembly enacted Sub.H.B. 694 (147 Ohio Laws, eff. Mar. 30, 1999). Through that enactment, both R.C. 5715.13 and 5715.19 were amended to allow real property complaints to be filed by designated persons who were statutorily authorized to act in a representative capacity.¹ However, the Cuyahoga County Court of Appeals determined, in *C.R. Truman, L.P. v. Cuyahoga Cty. Bd. of Revision* (July 27, 2000), Cuyahoga App. No. 76713, unreported, discretionary appeal denied April 11, 2001, that the amendments to R.C. 5715.13 allowing real property complaints to be filed by designated persons were unconstitutional violations of the separations of powers.

The original complaint requesting a decrease in the subject property's valuation for tax year 2000, which is at issue in this appeal, was filed on behalf of Eaton Estate Community Assn. by "David Watroba." Mr. Watroba is identified on Line 3) of the property owner's complaint as "Board President." Neither the complaint nor the remainder of the record, including Eaton Square's response to the Board's show cause order, indicates that Mr. Watroba is an attorney.² Therefore, we must conclude that Eaton Square's complaint was invalid, and thus jurisdiction did not vest with the BOR.

¹ Additionally, R.C. 5715.19(A)(3) allowed for the refiling of complaints previously dismissed if certain time limitations were met. The General Assembly later extended the time limitations in Sub.H.B. 694 (147 Ohio Laws, eff. July 1, 1999).

² Counsel for the BOE represents that he has inquired of the Ohio Supreme Court Attorney Registration Office and been told that Mr. Watroba is not registered as an attorney in the State of Ohio. Furthermore, Mr. Watroba

In his response to the Board's Show Cause Order, counsel for Eaton Estate asks this Board to consider the fact that a public official, the county auditor, advised the property owner to file the complaint and indicated that the complaint would be acceptable. See David Watroba's Affidavit, items 4 and 5. And, indeed, the BOR considered the complaint and reduced the subject property's value to zero.

Eaton Square raises the equitable principle of estoppel. However, the BOR, as a statutory body, cannot expand its jurisdiction beyond what has been provided by the General Assembly. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363; *Friendly's v. Franklin Cty. Bd. of Revision* (Sept. 20, 1994), Franklin App. No. 94APH03-347, unreported. Further, the Board of Tax Appeals has no express or implied equity jurisdiction to excuse or ignore jurisdictional defects. *Columbus Southern Lumber Co. v. Peck* (1953), 159 Ohio St. 564. See, also, *Steward v. Evatt* (1944), 143 Ohio St. 547; *Leiphart Lincoln-Mercury, Inc. v. Bowers* (1958), 107 Ohio App. 250. As a creature of statute, we, too, must strictly comply with any jurisdictional requirements set by the statutes of this state. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192. See, also, *Fineberg v. Kosydar* (1975), 44 Ohio St.2d 1; *Zephyr Room, Inc. v. Bowers* (1955), 164 Ohio St. 287.

The principle of estoppel does not apply against a state or its agencies in the exercise of a governmental function. *Sekerak v. Fairhill Mental Health Ctr.* (1986), 25 Ohio St.3d 38, 39. See, also, *Sun Refining & Marketing Co. v. Brennan* (1987), 31

admits in his Affidavit, attached to his response to the Board's Show Cause Order, that he personally prepared

Ohio St. 3d 306. Estoppel cannot be invoked even where a government employee or official makes a misleading or confusing statement. *American Handling Co. v. Kosydar* (1975), 42 Ohio St.2d 150; *Recording Devices, Inc. v. Bowers* (1963), 174 Ohio St. 518, paragraph one of the syllabus.

In *Loveland Park Baptist Church v. Kinney* (May 25, 1983), Warren App. No. 126, unreported, a property owner failed to timely file a notice of appeal with this Board, and we dismissed the matter. On appeal to the Twelfth District Court of Appeals, the property owner argued that it was misled by the statements of public officials as to what steps it needed to pursue to appeal an order of the Tax Commissioner to the Board of Tax Appeals. In affirming the dismissal, the court stated:

“Even assuming *arguendo* that there were verbal misrepresentations, there is no provision for extending the time for an appeal on the grounds that the public officials made confusing and misleading statements inasmuch as collateral estoppel does not apply to the State with regard to a taxing statute. *Ormet Corp. v. Lindley* (1982), 69 Ohio St.2d 263; *American Handling Co. v. Kosydar* (1975), 42 Ohio St.2d 150 (collateral estoppel does not apply to confusing or misleading statements made by the Tax Commissioner and his agents).

“Therefore, this Court concludes that the appellant’s administrative appeal was properly dismissed for want of jurisdiction.” *Id.* at 2.

The actions of an employee of the BOR or public official, such as the county auditor, no matter how well meaning, confusing, or misleading, do not serve to excuse

and filed the complaint in this matter, and he does not claim to be an attorney.

a jurisdictional defect. *Perusek v. Lake Cty. Bd. of Revision* (Dec. 7, 2001), B.T.A. No. 01-T-773, unreported; *Reynolds Ave. Transfer Station v. Franklin Cty. Bd. of Revision* (Nov. 30, 2001), B.T.A. No. 01-S-217, unreported; *Brennan v. Franklin Cty. Bd. of Revision* (Nov. 9, 2001), B.T.A. No. 01-T-580, unreported; *R.W. Sidley, Inc. v. Lake Cty. Bd. of Revision* (Nov. 2, 2001), B.T.A. No. 01-V-682, unreported. While the circumstances in the instant appeal may be regrettable, we must apply the pertinent law to the facts.

It is axiomatic that a jurisdictional defect cannot be waived and may be raised at any time. *Jenkins v. Keller* (1966), 6 Ohio St.2d 122; *In re claim of King* (1980), 62 Ohio St.2d 87; see, also, *Davison v. Rini* (1996), 115 Ohio App.3d 688 (where parties fail to raise a jurisdictional defect, it is incumbent upon an appellate tribunal to raise that issue *sua sponte*.) Therefore, considering the record before us, the statutes, and the case law, we are constrained to find the BOR erred in considering the value of the subject property.

Accordingly, the matter is remanded to the BOR with instructions to dismiss the complaint filed in 2001 concerning the 2000 tax year, and we order the Summit County Auditor to reinstate his original value assigned to the property by the auditor for 2000.