

OHIO BOARD OF TAX APPEALS

Brown County Board of Health,)
)
Appellant,)
)
vs.)
)
Brown County Budget Commission;)
the Townships of Byrd, Clark, Eagle,)
Franklin, Green, Huntington, Jackson,)
Jefferson, Lewis, Perry, Pike, Pleasant,)
Scott, Sterling, Union, and Washington;)
and the Villages of Aberdeen, Mt. Orab,)
Fayetteville, Georgetown, Hamersville,)
Higginsport, Sardinia, Russellville,)
Ripley, and St. Martin,)
)
Appellees.)

CASE NO. 2008-T-1604

(BUDGET COMMISSION:
DISTRICT HEALTH FUND)

DECISION AND ORDER

APPEARANCES:

For the Appellant -	John Woliver Attorney at Law P.O. Box 279 204 North Street Batavia, Ohio 45103	For the Appellee Village of Sardinia -	George E. Pattison Village Solicitor 285 E. Main Street Batavia, Ohio 45103
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Entered April 14, 2009

Ms. Margulies, Mr. Johrendt, and Mr. Dunlap concur.

Appellee, Brown County Budget Commission, has filed a motion asking us to dismiss the instant appeal. The budget commission asserts that the BTA has no jurisdiction to consider an appeal filed by a general health district's board of health because such a board is not statutorily authorized to file an appeal from the actions of a county budget commission. We agree, and therefore we find that we lack subject-matter jurisdiction over this appeal.

The notice of appeal was filed by the Brown County Board of Health ("BCBH"). BCBH is the regulatory body of a general health district created by the townships and villages of Brown County.¹ Under R.C. 3709.28, BCBH is required to

¹ R.C. 3709.01 provides: "The state shall be divided into health districts. *** The townships and villages in each county shall be combined into a health district and shall be known as a 'general health district.'" R.C. 3709.02(A) further requires each general health district to have a board of health consisting of five members. The board of health is charged with making "such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances." R.C. 3709.21.

annually adopt an itemized appropriation measure, which sets forth the amounts for the district's current expenses. The appropriation measure must be certified to the county auditor, who, in turn, submits the measure to the county budget commission. The budget commission then reviews the measure and may reduce any item in the appropriation measure. Once set by the budget commission, the aggregate appropriation, less amounts available to the general health district from other sources of revenue, is apportioned by the county auditor among the member townships and villages.

At issue before us is BCBH's 2009 appropriation measure. BCBH represents that, upon review of the measure, the budget commission concluded that there was no need to assess the townships and villages for additional revenue to meet the health district's 2009 budget because there was sufficient carryover from 2008 to meet the district's needs. BCBH appealed the budget commission's action to this board, specifying in its notice of appeal that the commission's action was based upon inaccurate facts. BCBH asserts that the commission's action has resulted in a \$271,111 shortfall and asks this board to order that a corresponding increase in revenue be apportioned among the townships and villages. In its motion to dismiss, however, the budget commission maintains that BCBH lacks standing to appeal the commission's action to this board.

R.C. 5705.37 governs the filing of an appeal from the actions of a county budget commission:

"The taxing authority of any subdivision, or the board of trustees of any public library, nonprofit corporation, or

library association maintaining a free public library that has adopted and certified rules under section 5705.28 of the Revised Code, that is dissatisfied with any action of the county budget commission may, through its fiscal officer, appeal to the board of tax appeals within thirty days after the receipt by the subdivision of the official certificate or notice of the commission's action. In like manner, but through its clerk, any park district may appeal to the board of tax appeals. ***"

Ohio tribunals have clearly established that "*** [w]here a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant and Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 150. See, also, *Queen City Valves, Inc. v. Peck* (1954), 161 Ohio St. 579, and *Olympic Steel, Inc. v. Cuyahoga Cty. Bd. of Revision*, 110 Ohio St.3d 1242, 2006-Ohio-4091, reconsideration denied, 2006-Ohio-5351. Specific to the issue now before us, the court has found that "[t]he right to appeal granted by R.C. 5705.37 is statutory, and an appellant must follow the statute." *Cincinnati v. Hamilton Cty. Budget Comm.* (1988), 35 Ohio St.3d 252, at 253. See, also, *Cincinnati v. Hamilton Cty. Budget Comm.* (1979), 59 Ohio St.2d 43, *Budget Comm. of Brown Cty. v. Georgetown* (1986), 24 Ohio St.3d 33, and *N. Perry v. Lake Cty. Budget Comm.* (1994), 70 Ohio St.3d 46. Cf. *Painesville v. Lake Cty. Budget Comm.* (1978), 56 Ohio St.2d 282, at 284 (holding that "[t]he right to appeal an allocation of a local government fund to the Board of Tax Appeals is created by statute. (R.C. 5747.55.) Therefore, if appellant has failed to comply with the appropriate statutory requirements, the board lacks subject-matter jurisdiction to hear the appeal.").

R.C. 5705.37 specifies that an appeal may be taken from a budget commission by only those entities listed in the statute, including the taxing authority of a subdivision. R.C. 5705.01 defines those terms applicable to R.C. Chapter 5705. The definition of “subdivision” is contained in R.C. 5705.01(A); however, the definition does not include either a general health district or its board of health. Similarly, R.C. 5705.01(C) does not list a “taxing authority” for a general health district.²

² R.C. 5705.01 provides:

“As used in this chapter:

“(A) ‘Subdivision’ means any county; municipal corporation; township; township police district; township fire district; joint fire district; joint ambulance district; joint emergency medical services district; fire and ambulance district; joint recreation district; township waste disposal district; township road district; community college district; technical college district; detention facility district; a district organized under section 2151.65 of the Revised Code; a combined district organized under sections 2152.41 and 2151.65 of the Revised Code; a joint-county alcohol, drug addiction, and mental health service district; a drainage improvement district created under section 6131.52 of the Revised Code; a union cemetery district; a county school financing district; or a city, local, exempted village, cooperative education, or joint vocational school district. ***

“(C) ‘Taxing authority’ or ‘bond issuing authority’ means, in the case of any county, the board of county commissioners; in the case of a municipal corporation, the council or other legislative authority of the municipal corporation; in the case of a city, local, exempted village, cooperative education, or joint vocational school district, the board of education; in the case of a community college district, the board of trustees of the district; in the case of a technical college district, the board of trustees of the district; in the case of a detention facility district, a district organized under section 2151.65 of the Revised Code, or a combined district organized under sections 2152.41 and 2151.65 of the Revised Code, the joint board of county commissioners of the district; in the case of a township, the board of township trustees; in the case of a joint fire district, the board of fire district trustees; in the case of a joint recreation district, the joint recreation district board of trustees; in the case of a joint-county alcohol, drug addiction, and mental health service district, the district’s board of alcohol, drug addiction, and mental health services; in the case of a joint ambulance district or a fire and ambulance district, the board of trustees of the district; in the case of a union cemetery district, the legislative authority of the municipal corporation and the board of township trustees, acting jointly as described in section 759.341 of the Revised Code; in the case of a drainage improvement district, the board of county commissioners of the county in which the drainage district is located; in the case of a joint emergency medical services district, the joint board of county commissioners of all counties in which all or any part of the district lies; and in the case of a township police district, a township fire district, a township road district, or a township waste disposal district, the board of township trustees of the township in which the district is located. ‘Taxing authority’ also means the educational service center governing board that serves as the taxing authority of a county school financing district as provided in section 3311.50 of the Revised Code.”

In *Warren Cty. Park Dist. v. Warren Cty. Budget Comm.* (1988), 37 Ohio St.3d 68, the Ohio Supreme Court considered a matter similar to the one now before us. There, a county park district had filed an appeal to this board under R.C. 5705.37. At that time, a park district was not listed in R.C. 5705.37 as an entity that could file an appeal, nor was a park district included in the R.C. 5705.01 definitions. The court concluded that we were prohibited from accepting jurisdiction over the appeal: “We interpret the above statutes to mean that only those taxing authorities of subdivisions defined in R.C. 5705.01 have standing to appeal the action of a budget commission to the Board of Tax Appeals. *** Appellant is not an R.C. 5705.01 ‘subdivision’ and, thus, does not have standing. The BTA did not have jurisdiction to hear this appeal and, consequently, should have dismissed it.” *Id.* at 70. See, also, *Greever, et al. v. Jackson Cty. Bd. of Revision* (Sept. 28, 1990), BTA No. 1988-F-1101, unreported, appeal dismissed (1991), 58 Ohio St.3d 704 (holding that R.C. 5705.37 “restricts those entities entitled to appeal thereunder to the Board of Tax Appeals to those specifically listed therein. Health districts are not included.”).

Although it acknowledges that it is not a subdivision of a county, BCBH nevertheless argues that, because it is composed of villages and townships that are identified as subdivisions in R.C. 5705.01, it should be considered a separate subdivision capable of filing an appeal under R.C. 5705.37. We disagree. Statutory definitions of terms are controlling in the application of the statute to which such definitions pertain. *Terteling Bros. v. Glander* (1949), 151 Ohio St. 236, at paragraph one of the syllabus. See, also, *Woman's Intern. Bowling Congress, Inc. v. Porterfield*

(1971), 25 Ohio St.2d 271. The language contained in R.C. 5705.01, which reads, “As used in this chapter,” makes it clear that the statutory definitions of “subdivision” and “taxing authority” contained in R.C. 5705.01(A) and 5705.01(C) control the meaning of those terms as they appear in R.C. 5705.37. As a general health district’s board of health is not included in the statutory definitions, BCBH has no standing to file the instant appeal.³

In conclusion, we find that we lack jurisdiction to consider the instant appeal.⁴ Accordingly, the Board of Tax Appeals dismisses BTA No. 2008-T-1604.

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³ While BCBH argues that our interpretation of the statutory scheme would prohibit a general health district from appealing an erroneous or unlawful action of a county budget commission, we note that case law has recognized the ability of a general health district’s township and village members to initiate an appeal in their own names. See, e.g., *Summit Cty. Budget Comm. v. Coventry Twp.* (1990), 67 Ohio App.3d 13. Townships and villages are subdivisions under R.C. 5705.01(A).

⁴ The budget commission also argues in its motion to dismiss that the notice of appeal is defective because the appeal was not made through the county auditor, as the health district’s fiscal officer. Given our decision concerning BCBH’s standing, we need not address this issue. However, see *Montgomery Cty. Park Dist. v. Montgomery Cty. Budget Comm.* (June 6, 1986), BTA No. 1981-D-58, unreported, which addresses a similar question.