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| National Church Residence, |) | CASE NO. 95-K-384 |
| |) | |
| Appellant, |) | (REAL PROPERTY TAX) |
| |) | |
| vs. |) | ORDER |
| |) | |
| Licking County Board of |) | (Requiring Appellant |
| Revision and the Licking |) | to Show Cause) |
| County Auditor, |) | |
| |) | |
| Appellees. |) | |

APPEARANCES:

For the Appellant - Todd W. Sleggs
 Todd W. Sleggs & Associates
 Third Floor
 1015 Euclid Avenue
 Cleveland, Ohio 44115

For the County Appellees - Robert L. Becker
 Licking County Prosecuting
 Attorney
 By: Dennis E. Dove
 Assistant Prosecuting Attorney
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 P.O. Box 830
 Newark, Ohio 43058-0830

Entered July 31, 1997

The above-captioned appeal is now considered, sua sponte, by the Board of Tax Appeals following a review of matters presently pending on the Board's docket. Through a review of the present appeal, several issues are apparent. Most fundamental, however, is whether this Board has been vested with jurisdiction in this instance.

By virtue of R.C. 5715.19, certain persons may file a complaint with the county auditor contesting the valuation or assessment of real property. Pursuant to R.C. 5715.19(A)(1), the "county auditor shall present to the county board of

revision all complaints filed with him." When a complaint is filed with the county auditor seeking a change in a property's value of at least \$17,500, within thirty days after the last day for making such filings, he is to give notice to the board of education in whose school district the property is situated. R.C. 5715.11 further requires each county board of revision to "hear complaints relating to the valuation or assessment of real property as the same appears upon the tax duplicate of the then current year." R.C. 5715.02 indicates that a majority of the county board of revision constitutes a quorum to hear and determine any complaint. R.C. 5715.08 and R.C. 5715.09 provide for the holding of meetings by county boards of revision, the keeping of records of their proceedings and the preservation of minutes and documentary evidence offered in connection with each complaint filed. Once a county board of revision has rendered its decision, pursuant to R.C. 5715.14, it is then required to certify its action to the county auditor.

A party dissatisfied with the decision of a county board of revision may either appeal that determination to the Board of Tax Appeals or to the the county court of common pleas. See R.C. 5717.01 and 5717.05. With respect to the former, R.C. 5717.01 provides in pertinent part:

"An appeal from a decision of a county board of revision may be taken to the board of tax appeals ***." (Emphasis added.)

Upon the filing of an appeal to this Board, pursuant to R.C. 5717.01, the county board of revision is to certify "a

transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith."

The present appeal, filed with this Board on May 9, 1995, is apparently taken from the correspondence¹ which is attached to the notice of appeal. This document, dated April 10, 1995, states as follows:

"As Secretary of the County Board of Revision I must advise you that the Complaint On The Assessment of Real Property you filed cannot be considered for tax year 1994.

"Section 5715.19 O.R.C. states in part 'No person, board, or officer shall file a complaint against the valuation or assessment of any parcel that appears on the tax list if they filed a complaint against the valuation of that parcel for any prior year in the same interim period
.....'

¹This correspondence appears on the stationary of the Licking County Budget Commission and is signed by George D. Buchanan "Secretary, Licking County Budget Commission." R.C. 5705.27 establishes in each county a "county budget commission" which is to be comprised of the county auditor, the county treasurer and the prosecuting attorney, with provision made for the addition of two more members. This statute sets forth the powers and duties of the county budget commission and also requires the county auditor to serve as the secretary to the county budget commission. See, also, R.C. 5705.27 through R.C. 5705.51.

In contrast, R.C. 5715.01 establishes in each county a "county board of revision" with powers and duties relating to the valuation and assessment of real property located within the county. Pursuant to R.C. 5715.02, a county board of revision is comprised of the county treasurer, the county auditor, who by virtue of R.C. 5715.09 serves as that body's secretary, and the president of the board of county commissioners.

"The interim period is described in Section 5715.24 O.R.C. It is immediately following a sexennial reappraisal or an update ordered by the tax commissioner in the third year after a sexennial reappraisal. Since you filed for tax year 1993, you may file again for tax year 1996, but not before."²

On July 13, 1995, the Licking County Auditor ("Auditor") certified to this Board a statutory transcript, represented as being a "full and true statement of the proceedings and a full and complete transcript of the record of the Board of Revision." Included as an attachment, and identified as Exhibit A, is the complaint which appellant's counsel filed with the Licking County Board of Revision ("BOR"). In that complaint, the appellant requested a decrease in the taxable value of the subject property, i.e., parcel number 53-180480-01.000, of \$334,850 for tax year 1994. The statutory transcript indicates that no case number was assigned to that complaint. The transcript is silent as to whether notice was given to the affected board of education of the filing of the appellant's complaint as required by R.C. 5715.19. More importantly, the statutory transcript suggests

²It should be noted that the statements set forth in this correspondence are not entirely accurate. R.C. 5715.19(A)(2) provides that no second complaint shall be filed in the same interim period by the same person, board or officer for the same property unless that person, board or officer alleges that the valuation or assessment should be changed due to one or more of four specifically enumerated circumstances which occurred after the tax lien date at issue in the prior complaint and which were not previously considered by the county board of revision.

that no "decision" was issued by the BOR with respect to said complaint. For example, the transcript provides in part:

"That said county board of revision, on the _____ day of N/A 19____ rendered its decision ***[.]"

In yet another location, the statutory transcript states:

"That on the _____ day of N/A 19____, a copy of the county board of revision's decision was mailed to the Complainant by registered or certified mail ***[.]"

When the Auditor identified and described documents purportedly attached to the statutory transcript, reference was made to an Exhibit D. Although none of the attachments are identified as Exhibit D, it is described as follows:

"No proceedings in accordance with R.C. 5715.19 filed for 1993 and currently on appeal BTA Case #94-S-1232"

However, included among the attachments to the statutory transcript is second letter, dated May 18, 1995 and signed by the Auditor in his capacity as the Secretary of the BOR, which states:

"THIS LETTER IS TO ADVISE ALL CONCERNED THAT A COMPLAINT WAS FILED WITH THE LICKING COUNTY BOARD OF REVISION OF THE ABOVE PARCEL FOR THE 1994 TAX YEAR. A LETTER WAS SENT AT THAT TIME STATING THAT THE BOARD COULD NOT RE-CONSIDER THIS PARCEL PER O.R.C. 5715.19 (COPY ATTACHED).

"PLEASE BE ADVISED, AS A RESULT, A SECOND COUNTER COMPLAINT HAS BEEN FILED WITH THE OHIO BOARD OF TAX APPEALS (COPY ATTACHED)."

From the existing record, it appears that the Auditor determined that appellant's complaint relating to tax year 1994 could not be considered by the BOR on the basis that a prior complaint had been filed on appellant's behalf within the same interim period. The earlier filed complaint to which reference has been made was the subject of a prior appeal recently decided by this Board. See National Church Residence v. Licking Cty. Bd. of Revision (July 18, 1997), B.T.A. No. 94-M-1232, unreported. In that appeal, the appellant had sought this Board's review of a decision of the BOR finding that no change in the property's value was warranted. Following the filing of the notice of appeal, counsel on behalf of the county appellees moved this Board to dismiss the appeal on the basis that the underlying complaint had been filed by an inappropriate agent. The complaint, which requested a decrease in the value of the subject property for tax year 1993, had been filed on the property owner's behalf by Doug Parobek, president of Ambassador Research. As a result of matters then pending before the Supreme Court of Ohio, this Board reserved ruling upon the motion to dismiss.

On May 21, 1997, the court announced its decision in Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St. 3d 479, in which it held in its syllabus: "The preparation and filing of a complaint with a board of revision

on behalf of a taxpayer constitute the practice of law." In reaching this conclusion, the court affirmed this Board's decision ordering the dismissal of a complaint filed with a county board of revision by a non-attorney, i.e., Doug Parobek of Ambassador Research, on behalf of a property owner. Based upon the holding in Sharon Village, we issued our decision in National Church Residence, supra, B.T.A. No. 94-M-1232, dismissing that appeal.

Although the preceding procedural history provides some background for the Auditor's action, and calls into question whether he, in his capacity as Auditor and secretary of the BOR,³ and, in turn, the BOR, have fulfilled the duties

³Although this Board would be without jurisdiction to require a county auditor to perform duties required of him by statute, a party aggrieved by such failure is presumably not without a remedy. In State ex rel. Wedgewood 129 Corp. v. Olenick (1973), 36 Ohio St. 2d 111, the county auditor rejected the property owners' complaints for allegedly failing to comply with R.C. 5715.13. The property owners then sought from the common pleas court an order in mandamus compelling the county auditor to present their complaints to the county board of revision. Although the trial court dismissed the complaints, the court of appeals reversed, holding as follows:

"We hold that under R.C. 5715.19 the county auditor has a mandatory duty to present all complaints as to the valuation or assessment of real property to the county board of revision. As a member of the county board of revision he can consider whether a complaint is defective because incomplete, but he has no authority to do this in his individual capacity as county auditor.

"The question of whether these complaints were defective because they were incomplete was not properly before the county auditor when he refused to present them to the board of revision ***." Id. at 113.

imposed upon them by statute, the question remains as to whether the present appeal has been taken from a "decision" of the BOR. Cf. Kinloch EG v. Bd. of Revision of Perry Cty. (May 12, 1995), B.T.A. No. 94-N-1236, unreported (dismissing as premature an appeal taken from a letter of a county board of revision indicating that a hearing regarding the property owner's complaint would be delayed until a later date).

It is therefore the order of this Board that appellant show cause why this Board should not dismiss the present appeal as having been prematurely filed. All parties who wish to be heard upon the question of the legal sufficiency of the appellant's notice of appeal to establish jurisdiction in this Board shall file a written response to this Order within twenty-one days of its issuance.