

OHIO BOARD OF TAX APPEALS

Township of Green,)	CASE NO. 96-T-1215
)	96-T-1216
Appellant,)	
)	
vs.)	(BUDGET COMMISSION)
)	(ULGF & LGRAF)
)	
Gallia County Budget Commission;)	
Villages of Centerville, Cheshire, Crown)	INTERIM ORDER
City, Rio Grand, and Vinton,)	
)	
Appellees.)	(Ordering Certification)

APPEARANCES:

For the Appellant

- John R. Varanese
Attorney at Law
804 South Fifth Street
Suite 101
Columbus, Ohio 43206

For the Appellees

- James R. Gorry
Teaford, Rich, Crties & Wesp
Twenty East Broad Street
Columbus, Ohio 43215-3682

And

-Brent A. Saunders
Gallia County Prosecuting Attorney
18 Locust Street
Gallipolis, Ohio 45631

ENTERED: February 26, 1999

This matter is before the Board of Tax Appeals, *sua sponte*, following receipt of a letter from Appellees' counsel, regarding the Budget Commission's failure to comply with a request of this Board. The record herein demonstrates that the Attorney Examiner assigned to this matter has made several requests throughout these proceedings seeking a supplementation of the

transcript required to be certified to this Board under R.C. 5705.37. These requests specifically sought certified copies of the resolutions of the various Gallia County political subdivisions which purport to approve the alternate formulas being challenged in this matter and which should have been made part of the certified transcript. No response was received from this Board's earlier, informal requests. During this Board's October 26, 1998, merit hearing, however, counsel for the Township of Green offered into evidence, over the Appellees' objections, copies of the subject resolutions. Counsel indicated that these copies were acquired from the Budget Commission's secretary, who is the County Auditor. This Board then ordered the Budget Commission to file certified copies of all resolutions as part of the statutory transcript.

The certified copies were not received by the date specified by this Board. Subsequently, and in response to a letter of inquiry from Green's counsel, the Budget Commission filed a letter stating that it would not file the certified copies and withdrawing all objections to the exhibits offered by Green at the hearing. The Board now considers this matter upon the correspondence received from the parties, the record of the hearing in this matter, and the applicable law.

R.C. 5705.37 provides for the appeal of the decisions of a county budget commission to the Board of Tax Appeals, and reads, in pertinent part:

“Upon receipt of the notice of appeal, the commission, by certified mail, shall notify all persons who were parties to the proceeding before the commission of the filing of the notice of appeal and shall file proof of notice with the board of tax appeals. The secretary¹ of the commission shall forthwith certify to the board a transcript of the full and accurate record of all proceedings before the commission, together with all evidence presented in the proceedings or considered by the commission, pertaining to the action from which the appeal is taken. The secretary of the commission also shall certify to the board any additional information that the board may request.”

¹ The county auditor serves as secretary of the budget commission. R.C. 5705.27.

Initially, the Budget Commission argues that “[u]nder no circumstances was the Auditor required or requested to go out and obtain a copy of each resolution adopted by a subdivision in order to present the same to this Board.” (Appellees’ letter of Dec. 23, 1998.) As R.C. 5705.37 indicates, however, the Auditor, as secretary of the Budget Commission, is required to certify to this Board those items considered by the Commission. This would include any resolutions passed by the political subdivisions in adopting the subject alternative formulas under R.C. 5747.53 and 5747.63. Additionally, R.C. 5705.37 mandates that the Auditor, as secretary, certify any additional information requested by this Board. In contradistinction to the Budget Commission’s representation, this Board made such a request. We refer to the hearing record, at pages 7-8:

“THE EXAMINER: I will permit the documents to come into the record with this further qualification: [Mr. Gorry,] the BTA has in the past requested copies of these documents from the County Auditor.

“I am again restating that the Board would like to have copies of these documents. It’s obvious that they exist, and I am ordering the County Auditor, through you, [Mr. Gorry] to provide certified copies of these documents to the Board of tax Appeals within the next 14 days.

“Anything else on that, Mr. Gorry?

“MR. GORRY: No. We will get those to you immediately.”

Manifestly, the Appellees’ initial claim must fail.

Next, the Budget Commission states that it withdraws any objections to the copies of resolutions submitted by Green during the hearing. While the Board appreciates the Budget Commission’s willingness to cooperate in this manner, it does not excuse the Commission’s failure to comply with this Board’s Order. First, there are inherent differences between documents

offered at hearing, without authentication or any testimony regarding their accuracy or reliability, and those documents certified as part of the transcript. Second, we simply cannot ignore that the Commission's secretary has the legal obligation to ensure (a) that a complete and accurate transcript of the Commission's acts are certified to this Board and (b) that such transcript contains all documentation material to such activities. While some discretion rests with the Commission's secretary regarding what to include in the official transcript, this Board does not approve of any public body selectively choosing to hold back evidence of its activity, especially in situations like the present, where it is evident that the documents in question are readily available. While we do not accuse the Budget Commission of doing so in this case, to allow such wide discretion would be to permit any budget commission to hide information which it considers detrimental to its determinations, thereby hampering the ability of any reviewing entity, such as this Board, to accurately and confidently evaluate the matter before it. Whether bolstering or nocent, all evidence presented to or considered by the Budget Commission must be certified to this Board.

Similarly, this Board must consider the present matter upon the record before it, including, to a great degree, the statutory transcript. This Board thus has a duty to see that the transcript is complete and accurate. Where, as here, the Board learns that information exists which may be fundamental to its determination of a matter in the public interest, it must act to see that such information is made part of the record, not only for its own purposes but also for the benefit of any court which may later review this Board's decision. See *Margaret Remy v. Limbach* (Aug. 24, 1989), Pickaway App. No. 88CA5, *et seq.*, unreported (BTA may be required to obtain all information, either from parties or through independent investigation, under certain circumstances, including when it is a matter of public interest). Since the information in issue is the type that should be part of the statutory transcript, and as it appears to be available to the Commission's

secretary, it is not unreasonable for this Board to seek certified copies of all subdivision resolutions pertaining to the adoption at issue.

Next, the Budget Commission states that the “Auditor is not the appellant in this matter.” However, we note that the Auditor is the secretary of the Gallia County Budget Commission, which is a party to this action. R.C. 5705.27. It is evident that a duty therefore rests with the Auditor to meet his obligations under R.C. 5705.37. Moreover, the implication of this statement is that the Auditor need not comply with any request for documents because the burden rests with Green Township, and not the Appellees, to come forward with evidence in support of its claims.

Proceedings of the kind here in issue, however, are not considered to be adversarial in nature. Alternatively, our proceedings are in the nature of an inquiry, administrative rather than judicial. *City of Brookpark v. Cuyahoga Cty. Budget Comm.* (1968), 16 Ohio St.2d 199, 123-124; *Brooklyn v. Cuyahoga Cty. Budget Comm.* (1965), 2 Ohio St.2d 181, 186. Upon appeal to the Board of Tax Appeals, our findings are to be substituted for those of the Budget Commission, *Cleveland Public Library v. Budget Comm* (1970), 23 Ohio St.2d 217, 30, and neither party has the burden of proof. *City of Brookpark* and *Brooklyn, supra*. To be sure, when a party brings an appeal to challenge the actions of a Budget Commission, it is in that party’s interest to come forward with some proof that persuades this Board to make a determination different than that arrived at by the Budget Commission, just as it is in the Budget Commission’s interest to bring evidence supportive of its actions. *City of Brookpark*, 124. Nevertheless, we will neither condone nor tolerate any party’s apparent unwillingness to cooperate in this Board’s inquiry.

As a final matter, this Board cannot overlook the fact that the Budget Commission has chosen not to comply with a reasonable Order of this Board. In such circumstances, there are a

wide variety of sanctions available for use at this Board's discretion.² However, we choose to forgo this course of action at this time and instead provide the Budget Commission an opportunity to comply with this Board's earlier Order.

Therefore, based upon all of the foregoing, it is the Order of the Board of Tax Appeals that the Gallia County Budget Commission, by and through its Secretary, certify to this Board copies of all resolutions pertaining the adoption of the alternate formulas at issue in this matter within FOURTEEN (14) days of the issuance of this Order.

It is further Ordered that the Budget Commission, by and through its Secretary, make diligent search of its records to ensure that all evidence presented to or considered by it in the adoption of said formulas has been properly certified to this Board, and, if any additional information is found which has not been made part of the statutory transcript, to forthwith certify the same to this Board within FOURTEEN (14) days of the issuance of this Order. ohiosearchkeybta

² See, *e.g.*, R.C. 5703.031, which provides that the Board may order either the attorney general or a prosecuting attorney to take action on behalf of the Board for the violation of law, the enforcement of orders, or for the imposition of sanctions for violation of the Board's orders.