

Education is jurisdictionally defective because it was neither prepared nor filed by an attorney, as prescribed in Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479. Consequently, Novy asserts that the Board of Education never became a party to the proceedings before the Board of Revision and cannot be a party in an appeal to this Board.

A review of the statutory transcript certified to this Board by the Cuyahoga County Auditor discloses that Novy's counsel prepared and filed an original complaint with the Board of Revision on March 28, 1995. Thereafter, on May 26, 1995, the Board of Education filed a counter-complaint with the Board of Revision, seeking an increase in the subject property's value. This counter-complaint was signed Jerry Zawadiwsky, Treasurer of the Parma Board of Education. Attached to the counter-complaint was a resolution of the Board of Education, authorizing Mr. Zawadiwsky to make the filing. The counter-complaint further lists Sam Canitia as its appraiser.¹

The Board of Education filed a "Brief in Opposition to Motion to Strike Board of Education as a Party Appellee" under date of September 5, 1997. In its brief, the Board of Education does not contend that Mr. Zawadiwsky is an attorney. Instead, the Board of Education first argues that Sharon

¹ The record indicates that Mr. Canitia, a nonattorney, appeared before the Board of Revision on Parma's behalf. No party has questioned whether Mr. Canitia could represent Parma, given the Court's holding in Sharon Village. We offer no opinion on this issue.

Village has no application to an increase complaint filed under R.C. 5715.19. Based upon this premise, the Board of Education claims that its treasurer is permitted to prepare and file the counter-complaint; and, any irregularity in the signing of the counter-complaint is not a jurisdictional defect according to Jemo Assoc., Inc. v. Lindley (1980), 64 Ohio St.2d 365. Alternatively, the Board of Education argues that the filing of the counter-complaint by a nonattorney is a procedural defect that has been effectively waived by Novy in allowing the Board of Education to proceed before the Board of Revision without objection.

On the issue of waiver, we first note that Novy is not raising a mere "procedural defect," as suggested by the Board of Education. Novy asserts that the preparation and filing of the counter-complaint on behalf of the Board of Education by a nonattorney was the unauthorized practice of law and that the rule in Sharon Village deprived the Board of Revision of jurisdiction over the counter-complaint. As a result, claims Novy, the Board of Education never became a party to the proceedings. 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). We also hold that, as the Court found in Sharon Village, Jemo, supra, is not controlling. Sharon

Village at 483. Therefore, we proceed to consider the merits of Novy's motion.

We recently rejected the argument that an increase complaint filed under R.C. 5715.19 should be given treatment different than that given to decrease complaints filed under R.C. 5715.13. In Bd. of Edn. of the Orange City Schl. Dist. v. Cuyahoga Cty. Bd. of Revision (Nov. 21, 1997), BTA Nos. 96-P-1744 & 96-P-1745, unreported, at 6, we held that the determining factor is not whether the complainant seeks an increase or a decrease in a property's value. Instead, the qualifications of the individual who prepares and files a complaint dictate whether or not the unauthorized practice of law has occurred.

With regard to the preparation and filing of a complaint by a board of education's treasurer, we observe that the Court, in Sharon Village, opined as follows:

"R.C. 5715.13 states that a board of revision may make no decrease in 'any valuation complained of unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made.' (Emphasis added.) We interpret the term 'agent' as used in R.C. 5715.13 to include the affected party's attorney and, in the case of a corporation, a regularly connected agent who is an attorney authorized by the corporation and possessing sufficient knowledge to verify the facts averred in the complaint." Id. at 483.

In Orange City, supra, we recognized the well established proposition that a board of education is a body

corporate. Orange City referenced the Supreme Court's decision in Finch v. Bd. of Edn. of the City of Toledo (1871), 30 Ohio St. 37, wherein the Court held that a board of education is "declared to be a body politic and corporate in law, with capacity to sue and be sued. *** It is a corporation of a public nature, and charged with the performance of public duties." Id. at 41-42. See, also, Wayman v. Bd. of Edn., Akron City Schl. Dist. (1966), 5 Ohio St.2d 248; Cline v. Martin (1916), 94 Ohio St. 420; and see R.C. 3313.17 (specifically providing that a Board of education "shall be a body politic and corporate").

We have recently addressed the capacity of a corporate officer to bring a valuation complaint on corporate property. In Bd. of Edn. of the Worthington City Schl. Dist. v. Bd. of Revision of Franklin Cty. (Aug. 8, 1997), BTA No. 96-D-1218, unreported, appeal pending, S.Ct. No. 97-1880, we held:

"No person is permitted to practice as an attorney or counselor at law, or to commence, conduct or defend any action or proceeding in any court or administrative tribunal, unless admitted to the bar by order of the Supreme Court. R.C. 4705.01. A corporation cannot maintain litigation in propria persona, or appear in court or [an] administrative quasi-judicial tribunal through an officer of the corporation or an appointed agent not admitted to the practice of law. Union Savings Assn. v. Homes Owner's Aid (1970), 23 Ohio St.2d 60; Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479." Id. at 8.

The Court's decision in Union Savings Assn., cited above, considered a corporate officer's representative capacity

and his or her ability to maintain litigation on the corporation's behalf:

"Beyond what has been concluded hereinabove in importance as a basis for our decision is the statutory prohibition regarding the practice of law. R.C. 4705.01 prohibits anyone from practicing law or commencing or defending an action 'in which he is not a party concerned, *** unless he has been admitted to the bar by order of the Supreme Court ***.'

"It is the responsibility of this court to provide effective standards for admission to the practice of law and for the discipline of those admitted to practice. Litigation must be projected through the courts according to established practice by lawyers who are of high character, skilled in the profession, dedicated to the interests of their clients, and in the spirit of public service. In the orderly process of the administration of justice, any retreat from those principles would be a disservice to the public. To allow a corporation to maintain litigation and appear in court represented by corporate officers or agents would lay open the gates to the practice of law for entry to those corporate officers or agents who have not been qualified to practice law and who are not amenable to the general discipline of the Court." Union Savings at 63-64.

See, also, Mirge Corp. v. Hamilton Cty. Bd. of Revision (Oct. 24, 1997), BTA No. 97-P-1026, unreported; and Orange City, supra.

Based upon the foregoing, we must conclude that Mr. Zawadiwsky, through his preparation and initiation of a complaint with the Cuyahoga County Board of Revision, has engaged in the practice of law. As he is not an attorney, we must further conclude that his activity as a corporate officer is precluded under Sharon Village and Orange City.

Consequently, the Board of Revision was without jurisdiction to consider the merits of the Board of Education's counter-complaint.

Once an initial complaint is filed with a board of revision, R.C. 5715.19(B) provides that:

"Within thirty days after the last date such complaints may be filed, the auditor shall give notice of each complaint in which the stated amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination is at least seventeen thousand five hundred dollars to *** each board of education whose school district may be affected by the complaint. Within thirty days after receiving such notice, a board of education *** may file a complaint in support of or objecting to the amount of alleged overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect determination stated in a previously filed complaint or objecting to the current valuation. Upon the filing of a complaint under this division, the board of education or the property owner shall be made a party to the action." (Emphasis added.)

It is well established that only complainants before a board of revision have a right to appeal to this Board or to participate in its proceedings. N. Olmsted v. Bd. of Edn. (1980), 62 Ohio St.2d 218; Bd. of Edn. of Cleveland City Schl. Dist. v. Cuyahoga Cty. Bd. of Revision (1973), 34 Ohio St.2d 231; Lindholm v. Bd. of Tax Appeals (1949), 151 Ohio St. 250; Buckeye Boxes, Inc., Columbus Cello-Poly Corp. v. Franklin Cty. Bd. of Revision (Aug. 9, 1991), Interim Order, BTA No. 90-1389, unreported, rev'd on other grounds (1992), 78 Ohio App.3d 634. Thus, a board of education will automatically be made a party

once it files a complaint under R.C. 5715.19(B). Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision(1982), 70 Ohio St.2d 103, 104 at fn. 4.

In the instant matter, however, the Board of Education's complaint was jurisdictionally defective. Consequently, the Board of Revision was never empowered to consider the merits of that complaint. Sharon Village. See, also, Stanjim Co. v. Bd. of Revision (1974), 38 Ohio St.2d 233, cert. denied (1974), 419 U.S. 1109. Because the Board of Revision lacked jurisdiction to consider the Board of Education's counter-complaint, the Board of Education never became a party to the proceedings. May Dept. Stores v. Cuyahoga Cty. Bd. of Revision (1977), 49 Ohio St.2d 183, at 188; N. Olmsted, supra, at 220.

In conclusion, we find that the Cuyahoga County Board of Revision was without jurisdiction to consider the complaint filed by the Board of Education under R.C 5715.19(B). We further find that, as a result, the Board of Education never became a party to the proceedings before the Board of Revision. Based upon the foregoing, it is therefore the order of the Board of Tax Appeals that the Parma Board of Education must be, and the same hereby is, dismissed as a party to this appeal. It is further ordered that the captioned appeal be retained for further proceedings in accordance with the Board's Rules of Practice and Procedure.