

OHIO BOARD OF TAX APPEALS

City of Youngstown, Ohio,)	CASE NO. 99-M-1987
)	
Appellant,)	(REAL PROPERTY TAX)
)	
)	DECISION AND ORDER
vs.)	
)	
Thomas M. Zaino,)	
Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant	- William T. Carnie Assistant Law Director City of Youngstown 26 South Phelps Street Youngstown, OH 44503
For the Appellee	- Betty D. Montgomery Ohio Attorney General By: Richard Farrin Assistant Attorney General 30 E. Broad Street, 16 th Floor Columbus, Ohio 43215

Entered: November 30, 2001

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

This cause and matter is considered by the Board of Tax Appeals pursuant to a Notice of Appeal filed herein by the above-named appellant. This appeal is taken from a final determination of the Tax Commissioner, wherein that official denied an application for exemption of real property from taxation filed by the City of Youngstown. The property in issue is a plat of land of less than one acre located on East Federal Street in Youngstown.

The matter is considered upon the Notice of Appeal, the Statutory Transcript filed by the Tax Commissioner and the legal argument provided by the City of Youngstown (“Youngstown”). Hearing on the matter was waived.

The record in this matter is replete with inconsistencies. The Tax Commissioner’s journal entry, dated September 29, 1999, denies exemption from real property taxation for tax year 1997. Youngstown suggests that its application requested exemption of the subject property for tax year 1996 and remission of taxes, interest and penalties for years back through 1969. Its application does appear to have an interlineation on the front page. (S.T. p. 6) However, the treasurer’s certificate completed by the Mahoning County Treasurer indicates that taxes had been paid in full through tax year 1995 and were owed only for tax year 1996.

There is also a possible inconsistency in the parcel under consideration. The application, filed with the Mahoning County Auditor’s office on October 31, 1997 and with the Division of Tax Equalization on February 20, 1998, seeks exemption of Parcel No. 53-002 A-002.00. The application is again interlineated and the parcel number has been changed to Parcel No. 53-002 A-022.00. The following is then added “(Now pt of C.L. 38649 p.p.# 53-002-A-017.00 Replatted Vol 93 pg 224 10/24/97)” However, Youngstown explains by way of brief that the small plat under consideration was a part of a 13-parcel purchase in 1969 under an Urban Renewal project. The 13 parcels were unused until 1978 when Youngstown developed a parking lot for city employees and the general public. In 1996, the city attempted to replat the 13 parcels into two parcels. It was then discovered that the Parcel No. 53-002-A-022.00 had never been transferred to the city. Youngstown then instituted a quiet-title action and, at its completion, filed the application for exemption which is the subject of this appeal.

The Tax Commissioner's journal entry refers to exemption of real property from taxation for 1997 with remission of taxes, penalties and interest for tax year 1995 and 1996. The journal entry also refers to Parcel No. 53-002-A-017.00T, apparently the new parcel number. To further confuse matters, the 123rd General Assembly, on June 24, 1999 (while this application was pending), enacted an amnesty bill, granting "qualified property" tax exempt status notwithstanding the limitations found in R.C. 5713.081. "Qualified property" was defined as property meeting the qualifications for tax exemption under the provisions of, *inter alia*, R.C. 5709.08, the section under which Youngstown originally sought exemption. The amnesty provision provided property owners a manner by which to identify tax-exempt property which, like the subject property, had somehow not been removed from the tax lists. The amnesty provisions were in effect for six months from the enactment date of the act. Further, the act included the following:

"The Tax Commissioner may apply this section to any qualified property that is the subject of an application for exemption pending before the commissioner on the effective date of this section, without requiring the property owner to file an additional application. The commissioner also may apply this section to any qualified property that is the subject of an application for exemption filed on or after the effective date of this section and on or before six months after that effective date, even though the application does not expressly request abatement of unpaid taxes."

Youngstown indicates by way of brief that it filed a second application for exemption from real property taxation regarding this parcel number under the amnesty provision of Sub. H.B. 27. Youngstown informs us that the application was originally granted, but vacated when the Tax Commissioner was informed of the inconsistencies of his determinations.

This Board has no way of knowing who marked-out the dates for which remission was requested or who changed the parcel number and added the information regarding the new replatted number. Youngstown suggests that it was an employee of the tax department. We are convinced that the changes were made to aid Youngstown in its exemption request. However, the assistance was particularly ill-timed because of the enactment of the amnesty provisions while this application was pending. If the application had not been interlineated and the parcel number had not been changed, the Tax Commissioner would have had the ability to at least consider the effect of the amnesty provisions on the pending application.

We have previously held that an employee of the county auditor's office was without authority to make changes to a complaint in order for such complaint to satisfy the requirements imposed by R.C. 5715.19(A). *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 8, 1994), B.T.A. Nos. 93-K-1088, *et seq.*, unreported. Therein we concluded that a county board of revision had no express or implied authority to amend a complaint filed with it. With regard to an administrative body's implied authority, this Board cited the Supreme Court's holding in *State ex rel. A. Bentley & Sons, Co. v. Pierce* (1917), 96 Ohio St. 44, 47:

“Such grant of power, by virtue of a statute, may be either express or implied, but the limitation put upon the implied power is that it is only such as may be reasonably necessary to make the express power effective. In short, the implied power is only incidental or ancillary to an express power, and, if there be no express grant, it follows, as a matter of course, that there can be no implied grant. In construing such grant of power, particularly administrative power through and by a legislative body, the rules are well settled that the intention of the grant of power, as well as the extent of the grant, must be clear; that in case of doubt that doubt is to be resolved not in favor of the grant but against it. It is

one of the reserved powers that the legislative body no doubt had, but failed to delegate to the administrative board or body in question.”

We must find that the Tax Commissioner, being a creature of statute, also holds only limited powers concerning his jurisdiction. If Sub. H.B. 27 had not been enacted, the Commissioner would have been limited by R.C. 5713.081. That section provides in part:

“No application for real property tax exemption and tax remission shall be filed with, or considered by, the tax commissioner in which tax remission is requested for more than three years, and the commissioner shall not remit more than three years’ delinquent taxes, penalties, and interest.”

While the actions of the Tax Commissioner were understandable and certainly illustrative of a genuine interest in assisting a municipality in having its application considered to its fullest, in this case, the well-meaning act may have served to remove a significant number of years from the Tax Commissioner’s consideration.

We acknowledge that the Tax Commissioner has concluded that the property under consideration does not meet the provisions of either R.C. 5709.08 or R.C. 5709.10 so as to qualify for exemption. However, Youngstown argues by way of brief that the property, currently in use as a part of a parking lot, remained a part of an urban renewal project from 1969 to 1978. We note that Section 3 of Sub. H.B. 27 indicates that the subject property must currently be used in a tax-exempt manner, so remand of this appeal does not suggest that Youngstown will ultimately be successful. However, it does not appear to this Board that the request for exemption made by Youngstown was ever considered by the Tax Commissioner in its entirety or in the manner contemplated by Sub. H.B. 27. Therefore, we must find that the Tax Commissioner erred in not considering the application filed with him.

Considering the record before this Board, the statutes and the case law, the Board of Tax Appeals finds and determines the Tax Commissioner erred in not considering Youngstown's application under Sub. H.B. 27. The matter is therefore remanded to the Tax Commissioner for further consideration.

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