

**BEFORE THE NEBRASKA TAX EQUALIZATION  
AND REVIEW COMMISSION**

P. G. R. LIMITED PARTNERSHIP,	)	
	)	
Appellant,	)	CASE NO. 97R-279
	)	
vs.	)	
	)	
SHERIDAN COUNTY BOARD OF	)	FINDINGS AND ORDERS
EQUALIZATION,	)	
	)	
Appellee.	)	
	)	

Filed July 7, 1999

Appearances:

For the Appellant:	Terry Curtis, Esq. Attorney at Law 416 Niobrara Avenue Alliance, NE 69301
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For the Appellee:	Dennis D. King Sheridan County Attorney P. O. Box 302 Gordon, NE 69343-0302
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Before: Commissioners Edwards, Hans and Reynolds

Reynolds, Chairman, for the Commission:

**SUMMARY OF DECISION**

The Commission affirms the decision of the Sheridan County Board of Equalization which denied Taxpayer's protest, and denies Taxpayer's request for a reduction in the assessed value of the subject property.

## NATURE OF THE CASE

P. G. R. Limited Partnership ("Taxpayer") owns certain agricultural real property located in Sheridan County, Nebraska. Taxpayer filed five protests with the Sheridan County Board of Equalization ("County") alleging that "The valuation does not reflect actual value, but is unfair and arbitrarily set in excess of actual value. The value is not uniform and proportionate when compared to the values of like real estate in surrounding counties." (E1 - E5). During the hearing before the County, Taxpayer was asked ". . . So your basic complaint then is that the land is misclassified." (E29:6). Taxpayer answered "Sure enough, right." (E29:6). The County denied the protest, from which decision Taxpayer appeals.

## EVIDENCE BEFORE THE COMMISSION

This appeal was consolidated for purposes of hearing with a case found in the Commission records at 97R-279. The Commission took notice of the following documents as authorized by Neb. Rev. Stat. §77-5016 (Reissue 1996) without objection: the Commission's case file for this appeal (97R-162) and 97R-279; the *1997 Nebraska Assessor's Reference Manuals*, Volumes 1 and 2; the *1997 Nebraska Agricultural Land Valuation Manual*; the Nebraska Constitution; the Nebraska State Statutes; 1997 Neb. Laws, L. B. 1104; *Title 442, Nebraska Administrative Code* (the Tax Equalization and Review Commission's Rules and Regulations); three standard reference works published by the International Association of Assessing Officers: *Property Assessment Valuation, Second Edition* (1996); *Property Appraisal and Assessment Administration* (1990); and *Glossary for Property Appraisal and Assessment* (1998); the Property Tax Division of the Department of Revenue's 1997 Ratios and Measures of

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Central Tendency which are published pursuant to Neb. Rev. Stat. §77-1327(6); the 1997 County Profiles for Sheridan County; the 1997 Equalization Proceedings of the Tax Equalization and Review Commission; *Uniform Standards of Professional Appraisal Practices*, 1997 Edition; and the Preliminary Soil Survey for Sheridan County.

The Commission also received certain exhibits and testimony during the course of the hearing.

### ISSUES BEFORE THE COMMISSION

Neb. Rev. Stat. §77-1502 (Reissue 1996) requires a taxpayer to identify the issues to be presented to the County Board of Equalization. The Commission's jurisdiction is limited to those issues presented to the County Board of Equalization. Neb. Rev. Stat. §77-1511 (Reissue 1996). The issues before the Commission are, therefore, Taxpayer's allegations that:

1. "The value is not uniform and not proportionate when compared to the values of like real estate in surrounding counties." (E1 - E5).
2. The classification of the subject property. (E29:6).

### FINDINGS OF FACT

The Commission, in determining cases, is bound to consider only that evidence which has been made a part of the record before it. No other information or evidence may be considered. Neb. Rev. Stat. §77-5016 (3) (Reissue 1996). The Commission may, however, evaluate the evidence presented utilizing its experience, technical competence, and specialized knowledge. Neb. Rev. Stat. §77-5016 (4) (Reissue 1996).

From the pleadings and the evidence contained in the record before it, the Commission finds and determines as follows:

**A.  
PROCEDURAL FINDINGS**

1. That Taxpayer is the owner of record of certain agricultural real property located in Sheridan County, Nebraska ("subject property").
2. That the Sheridan County Assessor ("Assessor") proposed valuing the subject properties for purposes of taxation as of January 1, 1997 ("assessment date"). (E1 - E5).
3. That Taxpayer timely filed a protest of the proposed valuation, and requested that the subject properties be reduced. (E1 - E5).
4. That the County denied the protests. (E1 - E5).
5. That thereafter, the Taxpayer timely filed an appeal of the County's decision to the Commission. (Appeal Form).

**B.  
SUBSTANTIVE FINDINGS AND FACTUAL CONCLUSIONS**

1. That the only issue raised by the Taxpayer in the Form 422 concerns equalization of agricultural land values between counties.
2. That transcript of the proceedings before the Sheridan County Board of Equalization establishes that the issue presented to the Sheridan County Board of Equalization was "classification of the land. (E29:6).

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3. That all of Taxpayer's evidence in the hearing before the County concerned challenges to valuation based on agricultural land values in an adjoining county.
4. That although the Taxpayer retained the services of an expert witness, that expert witness would not offer an opinion of the actual or fair market value of the subject property.
5. That no one testified on behalf of the Taxpayer in the hearing before the Commission, and no opinion of value for the subject properties was presented by the Taxpayer.
6. That Taxpayer's only evidence of actual or fair market value of the subject property was based on assessed values of agricultural land in an adjacent county.
7. That the Commission's Order for Hearing, Paragraph 2, requires "Any party utilizing comparable properties as evidence shall provide complete and legible copies of the County's property record cards for those comparable properties.
8. That Taxpayer offered no Property Record Cards for the allegedly comparable properties as required by Paragraph 2 the Commission's Order for Hearing.
9. That the County had no jurisdiction over the equalization of agricultural land values between counties.
10. That the decision of the County to deny Taxpayer's request for relief under these facts and circumstances was neither unreasonable nor arbitrary.
11. That the decision of the County must therefore be affirmed.

#### ANALYSIS

The Commission's jurisdiction, in hearing appeals pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996), is limited to "... questions raised before the county board of equalization which

relate to the liability of property to assessment, or the amount thereof." The Court of Appeals has determined that the Commission has jurisdiction over the issues identified in the protest form, and also has jurisdiction over those issues presented either directly to the County and those issues presented indirectly to the County through the Referee. *Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 504, 583 N. W. 2D 353, 356 (Neb. App. 1998). The Form 422 filed by the Taxpayer demonstrates that the only issue raised by the Taxpayer was equalization of agricultural land values between counties. (E1 - E5). The transcript of the proceedings before the County was marked as Exhibit 29. Although Taxpayer alleged during the course of the hearing before the County that the issues were valuation and classification. Taxpayer later admitted that the only issue was classification of the subject properties. The Commission must therefore conclude that the only issues presented to the County were the equalization of agricultural land values between counties and classification of land.

Identification of the issues raised before the County is essential in determining whether the Commission has subject matter jurisdiction in an appeal. "Subject matter jurisdiction" has been defined as the hearing body's power to hear and determine a case of the general class or category to which the proceedings in question belong and to deal with the general subject involved in the action before the hearing body." See, e. g., *Norwest Bank Nebraska, N.A. v. Bellevue Bridge Com'n.*, 7 Neb. App. 750, 585 N.W.2d 505 (1998). There is no presumption that the Commission has subject matter jurisdiction. The Court of Appeals, in addressing the issue, has held:

"At the threshold, we address Arcadian's argument that because the jurisdictional issue was raised by the Commission and not by the parties, there should be a

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'presumption ... that issues being raised on appeal were those issues, in fact, before the Sarpy County Board of Equalization ....' The fact is that lack of jurisdiction may exist even where the parties submit an issue to an administrative agency in the mistaken belief that the agency has statutory authority to resolve it. The parties' understanding or intentions are irrelevant to the issue of whether the Commission had jurisdiction, since the parties cannot confer subject matter jurisdiction upon a tribunal by either consent or acquiescence. *Thomas v. Omega Re-Bar, Inc.*, 234 Neb. 449, 451 N. W. 2D 396 (1990). There is, accordingly, no 'presumption' that the Commission had jurisdiction. "*Arcadian Fertilizer, L.P. v. Sarpy County Bd. of Equal.*, 7 Neb. App. 499, 504, 583 N. W. 2D 353, 356 (Neb. App. 1998). (Citations omitted).

The Court of Appeals has also held that "If the court from which an appeal was taken lacked jurisdiction, the appellate court acquires no jurisdiction." [Citations omitted.] *State v. Erb*, 6 Neb. App. 672, , 576 N.W.2d 839, 842 - 843 (1998). The Commission is not a court. However, the principals governing subject matter jurisdiction in the courts apply with equal force and effect to the Commission, as demonstrated by the Court of Appeals' holding in *Arcadian. supra*.

In this appeal, the County Board of Equalization had no authority to equalize assessment between counties. As noted above, administrative agencies have only that authority specifically conferred upon them by statutes or by construction necessary to achieve the purpose of the relevant act. *Arcadian Fertilizer, supra*. The County Board of Equalization, at the time this protest was filed, was required to "make its adjustment so that the value of the protested property

compares to the average level of value *of the class or subclass of property in which the protested property is categorized.*" Neb. Rev. Stat. §77-1504 (Reissue 1996.) (Emphasis added). (This same language was transferred to Neb. Rev. Stat. §77-1501 by 1997 Neb. Laws, L. B. 270, which had an effective date of January 1, 1998). Nothing in the statute allows a county board of equalization to equalize the assessed value of the subject property with the assessed values of similar property in a different county. This authority is, in fact, reserved to the Agricultural and Horticultural Land Valuation Boards. Neb. Rev. Stat. §77-1380 (Reissue 1996).

Taxpayer offered no evidence or argument to contradict this position. The Commission must, under these circumstances, conclude that the County had no authority to equalize assessments between the classes of property within the County and classes of property outside the County. Since the County had no subject matter jurisdiction, this Commission cannot acquire subject matter jurisdiction as to the equalization issue.

Taxpayer, as noted above, alleged in the hearing before the County that the valuation of and the classification of the subject property were at issue. Sheridan County, at the time of Taxpayer's protest, did not have a published Soil Survey. *1997 Nebraska Agricultural Land Valuation Manual*. ("Manual"), p.13. The Soil Survey is one of the cornerstones of the Property Tax Administrator's Agricultural Land Valuation Manual. "Soil surveys are one of the principal tools and sources of information used in the classification of agricultural land in Nebraska. Please see the Status of Recent Soil Surveys in Nebraska on the following page. The classification of agricultural land for assessment purposes is based on each county's most recent soil survey and the most recent technical updates available." *Manual*, p.13. The Property Tax Administrator has created "Land Valuation Groups" ("LVGs) based on soils ". . . according to

their limitations for field crops, the risk of damage if they are used for crops, and the way they respond to average management.” *Manual*, p. 61. The Property Tax Administrator notes that “Grouping soils in this way creates a uniform classification system and is the first step in the assessment process for agricultural land. It is important to note that even though similar soils throughout an area are classified in the same LVG, the market value of the land may vary from county to county or within a county due to factors which affect the market value of the land. These factors include location, size, shape, farm programs, zoning, market areas, supply and demand of land for sale, and any other factors considered when purchasing land.” *Manual*, pp. 65. The “LVGs” in turn, are assigned a range of values based on sales of comparable agricultural land within a county. *Manual*, p. 73. Agricultural land values for the County for tax year 1997 are set forth in the *Manual* at page 93.

The Property Tax Administrator, in creating the LVGs, exercised administrative authority conferred upon her by state law. *See, e. g., Neb. Rev. Stat. §77-1362 (Reissue 1996)*. Taxpayer’s evidence challenging “carrying capacity” of the soil types, or the conversion of soil types into LVGs, is therefore challenging an administrative decision of the Property Tax Administrator. Such a challenge is a “collateral attack.” A “collateral attack” has been defined as follows:

“When a judgment is attacked in a way other than by proceedings in the original action to have it vacated, reversed, or modified, or by a proceeding in equity to prevent its enforcement, the attack is a “collateral attack.” This rule is not limited to courts of general jurisdiction, and has been held to apply to administrative boards and tribunals acting in a quasi-judicial character. *County of Adams*

*v. Nebraska State Board of Equalization and Assessment*, 252 Neb.

847, 854, 566 N. W. 2d 392, 397 (1997).

The Commission has no subject matter jurisdiction over a collateral attack of a decision of the Property Tax Administrator.

Finally, Taxpayer alleged in its hearing before the County that he was challenging the valuation of the subject property. Taxpayer, however, offered no opinion of value. Taxpayer's only evidence of value, both in the hearing before the County, and in the appeal heard by the Commission, was based entirely on assessed land values in Garden County. As noted above, agricultural land values may differ between counties. *Manual*, p. 65 - 66. Taxpayer adduced no evidence which would establish that agricultural land in Garden County has the same market value as agricultural land in Sheridan County. Furthermore, Taxpayer's expert in this appeal would not express an opinion of value for the subject property. These facts are analogous to the facts presented in *DeBruce Grain v. Otoe Cty. Bd. Of Equal.*, 7 Neb. App. 688 (1998). The Court held in that case, "Comparing assessed values of other properties with the subject property to determine actual value has the same inherent weakness as comparing sales of other properties with the subject property. The properties must truly be comparable." *DeBruce Grain, supra*, at p. 698. There is no evidence that the agricultural land which Taxpayer seeks to utilize as "comparables" are in fact "truly comparable" to the subject property. The Commission cannot therefore, determine that the decision of the County regarding the valuation of Taxpayer's property was unreasonable or arbitrary.

## JURISDICTION

Jurisdiction of the Tax Equalization and Review Commission is set forth in Neb. Rev. Stat. §77-5007 (Reissue 1996).

## STANDARD OF REVIEW

The Commission is required by Neb. Rev. Stat. §77-1511 (Reissue 1996) to affirm the decision of the County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary. Neb. Rev. Stat. §77-1511 (Reissue 1996). The Nebraska Court of Appeals, in interpreting this statute, has held that "There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board." *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).

## CONCLUSIONS OF LAW

The Commission has only that jurisdiction specifically conferred upon it by law or by the construction of the law necessary to achieve the purpose of the law. *Arcadian Fertilizer, supra*. If the County Board of Equalization lacked subject matter jurisdiction, the Commission cannot

acquire subject matter jurisdiction by either consent or acquiescence. *Arcadian Fertilizer, supra*.

There is no presumption that the Commission has subject matter jurisdiction in any appeal pending before it, and the Commission may raise the issue of subject matter jurisdiction on its own motion. *Arcadian Fertilizer, supra*. If the Commission lacks subject matter jurisdiction, any ruling made by the Commission is "a nullity." See, e. g., *Norwest Bank Nebraska, N.A. v. Bellevue Bridge Com'n*, 7 Neb. App. 750, 585 N.W.2d 505 (1998).

Furthermore, the Commission is required by Neb. Rev. Stat. §77-1511 (Reissue 1996) to affirm the decision of the County unless evidence is adduced establishing that the action of the County was unreasonable or arbitrary. The Courts, in interpreting this provision of law, have held:

"There is a presumption that a board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action. That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence on appeal to the contrary. From that point on, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board." *Kawasaki Motors v. Lancaster Cty. Bd. Of Equal.*, 7 Neb. App. 655 (1998).

The Commission, from the record before it, finds and determines that insufficient evidence has been adduced to establish that the action of the County in this case was

unreasonable or arbitrary. The Commission must also note that the appraisal of real estate is not an exact science. *Matter of Bock's Estate*, 198 Neb. 121, 124, 251 N. W. 2d 872, 874 (1977).

The Commission must therefore, and hereby does, conclude as a matter of law that the decision of the Sheridan County Board of Equalization which set the assessed value of the subject properties for tax year 1997 was neither unreasonable nor arbitrary. That decision must therefore be affirmed.

### ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. That the decision of the Sheridan County Board of Equalization which denied Taxpayer's ten protests is affirmed.
2. That Taxpayer's agricultural real property, legally described as follows, shall be valued as determined by the Sheridan County Board of Equalization for tax year 1997:
  - a. The E 1/2 E 1/2 of Section 27, Township 24 North, Range 42, in Sheridan County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$14,374	
Improvements	\$ -0-	
Total	\$14,374	as shown in Exhibit 1.

- b. The S ½ S ½ N ½ of Section 26, Township 24 North, Range 42, in Sheridan County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$41,551	
Improvements	\$ -0-	
Total	\$41,551	as shown in Exhibit 2.

- c. The N ½ N ½ of Section 26, Township 24 North, Range 42, in Sheridan County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$14,227	
Improvements	\$ -0-	
Total	\$14,227	as shown in Exhibit 3.

- d. All of Section 34, Township 24 North, Range 42, in Sheridan County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$58,781	
Improvements	\$ -0-	
Total	\$58,781	as shown in Exhibit 4.

- e. All of Section 35, Township 24 North, Range 42, in Sheridan County, Nebraska, shall be valued as follows for tax year 1997:

Land	\$57,816	
Improvements	\$ -0-	
Total	\$57,816	as shown in Exhibit 5.

3. That this decision, if no appeal is filed, shall be certified to the Sheridan County Treasurer, and the Sheridan County Assessor, pursuant to Neb. Rev. Stat. §77-1511 (Reissue 1996).
4. That this decision shall only be applicable to tax year 1997.
5. That each party is to bear its own costs in this matter.

**IT IS SO ORDERED.**

Dated this 7<sup>th</sup> day of July, 1999.



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A handwritten signature in black ink, appearing to read "Mark P. Reynolds".

*Mark P. Reynolds, Chairman*

A handwritten signature in black ink, appearing to read "Janet L. Edwards".

*Janet L. Edwards, Commissioner*

A handwritten signature in black ink, appearing to read "Robert L. Hans".

*Robert L. Hans, Commissioner*