

IN THE SUPREME COURT OF OHIO

APPEAL FROM THE BOARD OF TAX APPEALS

13-1426

CINCINNATI CITY SCHOOL DISTRICT BOARD OF EDUCATION,

APPELLANT,

v.

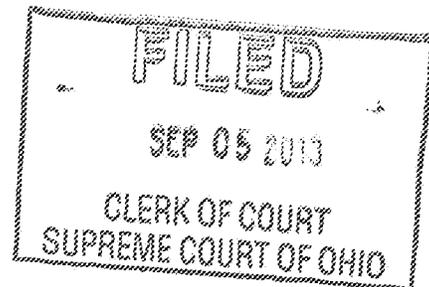
JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO,

THE CITY OF CINCINNATI,

APPELLEES.

SUPREME COURT CASE NUMBER:

BOARD OF TAX APPEALS CASE NO. 2012-Q-1047



NOTICE OF APPEAL

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IN THE SUPREME COURT OF OHIO
APPEAL FROM THE BOARD OF TAX APPEALS

CINCINNATI CITY SCHOOL)	
DISTRICT BOARD OF EDUCATION,)	
)	SUPREME COURT CASE NUMBER:
APPELLANT,)	
)	
v.)	
)	BOARD OF TAX APPEALS CASE NO.
JOSEPH W. TESTA, TAX)	2012-Q-1047
COMMISSIONER OF OHIO,)	
)	<u>NOTICE OF APPEAL TO THE</u>
)	<u>SUPREME COURT OF OHIO</u>
CITY OF CINCINNATI)	<u>PURSUANT TO SECTION 5717.04</u>
)	<u>REVISED CODE</u>
APPELLEE.)	

The Appellant, City of Cincinnati School District Board of Education, by and through counsel, hereby gives notice of its appeal to the Supreme Court of Ohio from a Decision and Order of the Ohio Board of Tax Appeals rendered on the 9th day of August, 2013, a copy of which is attached hereto as "Exhibit A" and which is incorporated herein as though fully rewritten in this Notice of Appeal.

The Errors complained of are attached hereto as "Exhibit B" which is incorporated herein by reference.

Respectfully submitted,

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OHIO BOARD OF TAX APPEALS

City of Cincinnati School District Board of Education,)	CASE NO. 2012-Q-1047
)	
Appellant,)	(REAL PROPERTY TAX EXEMPTION)
)	
vs.)	DECISION AND ORDER
)	
Joseph W. Testa, Tax Commissioner of Ohio, Hamilton County Auditor, and The City of Cincinnati,)	
)	
Appellees.)	

APPEARANCES:

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For the City of Cincinnati	- Bricker & Eckler LLP Jonathan T. Brollier 100 South Third Street Columbus, Ohio 43215

Entered **AUG 09 2013**

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

This matter is now considered upon the appellee Tax Commissioner's motion to dismiss. Specifically, the commissioner asserts that this board is without

jurisdiction to consider this appeal because the appellant board of education (“BOE”) failed to follow the requisite statutory procedures to participate in the commissioner’s proceedings on the City of Cincinnati’s real property tax exemption application. We proceed to consider the matter on the notice of appeal, the statutory transcript certified by the commissioner, the motion, and the BOE’s response thereto.

A brief history of the events leading to the present appeal is appropriate. The subject real property tax exemption application was originally filed in 2006 by the City of Cincinnati (“the City”); in March 2011 the commissioner found that the property, i.e., parcel number 145-0002-0057, was not entitled to exemption. The City appealed that determination to this board. In the interim, the General Assembly enacted 2011 Am.Sub.H.B. No. 153, modifying the applicable exemption statute, effective September 29, 2011.¹ As a result of this legislation, the City and the commissioner agreed to remand their appeal to the commissioner for further proceedings. On September 29, 2011, the BOE filed a request with the commissioner to participate in the exemption process.² Finally, on February 21, 2012 the

¹ 2011 Am.Sub.H.B. No. 153 added the following language to R.C. 5709.084: “Real and personal property comprising a convention center owned by the largest city in a county having a population greater than seven hundred thousand but less than nine hundred thousand according to the most recent federal decennial census is exempt from taxation, regardless of whether the property is leased to or otherwise operated or managed by a person other than the city.” The act further stated, in uncodified section 757.95: “Section 5709.084 of the Revised Code, as amended by this act, is remedial in nature and applies to the tax years at issue in any application for exemption from taxation or any appeal from such application pending before the Tax Commissioner, the Board of Tax Appeals, any Court of Appeals, or the Supreme Court on the effective date of this act and to the property that is the subject of any such application or appeal.”

² On the same date, the BOE filed a complaint in the Franklin County Court of Common Pleas arguing that the amendments of H.B. 153 violated the Ohio Constitution. *Bd. of Edn. of the Cincinnati City School Dist. v. City of Cincinnati, et al.*, Franklin C.P. No. 11CVH-09-12158. The BOE represented in its response to the instant motion that those proceedings have been stayed pending the outcome of this matter. Memorandum in Opposition at 5.

commissioner issued a final determination finding that the subject property qualifies for exemption and, further stating that:

“In compliance with the ruling of the Court in *State ex rel. Strongsville Bd. Of Educ. v. Zaino* (2001), 92 Ohio St. 3d 488, the Commissioner is constrained from allowing any involvement from any other party. Specifically, in accordance with *Strongsville Bd. Of Educ.*, supra, the Commissioner cannot permit the Cincinnati City School District (“School District”) to participate as has been requested by the School District. The School District’s formal request for intervention is denied.”

The commissioner, through the instant motion, essentially seeks to have his prior determination affirmed by asserting that this board is without jurisdiction to entertain the BOE’s appeal because it was not filed by one authorized to do so by R.C. 5707.02. That section provides, in pertinent part:

“Appeals from a decision of the tax commissioner or county auditor concerning an application for a property tax exemption may be taken to the board of tax appeals by the applicant *or a school district that filed a statement concerning that application under division (C) of 5715.27 of the Revised Code.*” (Emphasis added.)

Also relevant, R.C. 5715.27 provides:

“(B) The board of education of any school district may request the tax commissioner or auditor to provide it with notification of applications for exemption from taxation for property located within that district. If so requested, the commissioner or auditor shall send to the board on a monthly basis reports that contain sufficient information to enable the board to identify each property that is the subject of an exemption application, including, but not limited to, the name of the property owner or applicant, the address of the property, and the auditor’s parcel number. The commissioner or auditor shall mail the reports by the fifteenth day of the month following the

end of the month in which the commissioner or auditor receives the applications for exemption.

“(C) A board of education that has requested notification under division (B) of this section may, with respect to any application for exemption of property located in the district and included in the commissioner’s or auditor’s most recent report provided under that division, file a statement with the commissioner or auditor and with the applicant indicating its intent to submit evidence and participate in any hearing on the application. The statement shall be filed prior to the first day of the third month following the end of the month in which that application was docketed by the commissioner or auditor. *A statement filed in compliance with this division entitles the district to submit evidence and to participate in any hearing on the property and makes the district a party for purposes of sections 5717.02 to 5717.04 of the Revised Code in any appeal of the commissioner’s or auditor’s decision to the board of tax appeals.*” (Emphasis added.)

In *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, the court reviewed the requirements for filing a notice of appeal set forth in G.C. 5611, the predecessor to R.C. 5717.02, holding at paragraph one of the syllabus that “where a statute confers the right to appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the rights conferred.” The court has reaffirmed this position on numerous occasions. See, e.g., *Craftsman Type, Inc. v. Lindley* (1983), 6 Ohio St.3d 82, 85 (“It is axiomatic that when a right to appeal is conferred by legislative enactment, the statute’s prescriptions must all be strictly complied with in order to invoke the jurisdiction of the appropriate appellate tribunal.”).

The court also noted in *Southside Community Dev. Corp. v. Levin*, 119 Ohio St.3d 521, 2008-Ohio-4839, ¶6, “[t]he right to prosecute an application for exemption involves an administrative procedure statutorily created and delimited. See

Performing Arts School of Metro. Toledo, Inc. v. Wilkins, 104 Ohio St.3d 284, 2004-Ohio-6389, ***, ¶19; *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision* (1999), 86 Ohio St.3d 181, 183, ***, quoting *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70, 77, ***, fn. 4 (in administrative proceedings, ‘“parties must meet strict standing requirements in order to satisfy the threshold requirement for the administrative tribunal to obtain jurisdiction” ’).”

Based upon the foregoing, we find that the BOE failed to meet the statutory prerequisites of R.C. 5715.27(C) and therefore cannot invoke this board’s jurisdiction on appeal.³ Accordingly, the commissioner’s motion is well taken, and this matter must be, and hereby is, dismissed for lack of jurisdiction.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



A.J. Groeber, Board Secretary

³ We acknowledge the court’s statements in past cases regarding this board’s role as “a receiver of evidence for constitutional challenges.” *MCI Telecommunications Corp. v. Limbach* (1994), 68 Ohio St.3d 195. However, we find that the appellant in this matter has not satisfied the threshold requirement of R.C. 5717.02 to invoke our jurisdiction to do so.

EXHIBIT "B"

ASSIGNMENT OF ERRORS

ASSIGNMENT OF ERROR NO. 1

The Board of Tax Appeals Decision and Order granting the Tax Commissioner's Motion to Dismiss is unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 2

The Board of Tax Appeals Decision and Order denying the City of Cincinnati School District Board of Education's request for intervention for the limited purpose of establishing a record before the Board to challenge the constitutionality of 2011 Am.Sub.H.B. No. 153 that added language to R.C. 5709.084 and uncodified section 757.95 was unreasonable and unlawful.

ASSIGNMENT OF ERROR NO. 3

The Board of Tax Appeals Decision and Order denying the City of Cincinnati School District Board of Education's request for intervention for the limited purpose of establishing a record to challenge the constitutionality of 2011 Am.Sub.H.B. No. 153 that added language to R.C. 5709.084 and uncodified section 757.95 ignores the fact that the statute being challenged was enacted years after the time period set forth in R.C. 5715.27 that requires the filing of a statement of interest by a school board and at a time when the statute being challenged was neither enacted nor effective.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing NOTICE OF APPEAL was mailed via certified United States mail, postage prepaid, to Michael DeWine, Attorney General of Ohio c/o Daniel W. Fausey, Assistant Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, Attorney for the Tax Commissioner of the State of Ohio, Thomas J. Scheve, Assistant County Prosecutor, 230 East Ninth Street, Cincinnati, Ohio 45202, Counsel for the Hamilton County Auditor, and Jonathan T. Broiler, Bricker & Eckler, 100 South Third Street, Columbus, Ohio 43215, Counsel for City of Cincinnati this 4th day of September, 2013.

