SUPREME COURT OF NEBRASKA

County of Douglas v. Nebraska Tax Equalization and Review Commission

635 N.W.2d 413, 262 Neb. 578 (2001) · No. No. S-00-529 · Decided September 21, 2001

SUMMARY

Douglas County appealed a Nebraska Tax Equalization and Review Commission order increasing the assessed value of commercial property in the county by 7 percent. The Nebraska Supreme Court reviewed whether TERC's findings and adjustment were supported by competent evidence and consistent with statutory equalization requirements, including issues concerning sales chasing, assessment-sales ratios, and uniformity and proportionality of taxation.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Wright, J.; Hendry, C.J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	September 21, 2001
DOCKET	No. S-00-529
DISPOSITION	affirmed
PROCEDURAL POSTURE	Douglas County appealed the Nebraska Tax Equalization and Review Commission's order increasing the value of commercial property in Douglas County by 7 percent. The Nebraska Supreme Court granted the county's petition to bypass the Nebraska Court of Appeals.
STANDARD OF REVIEW	Under Neb. Rev. Stat. § 77-5019(5), the court reviews TERC's decision for error on the record, asking whether the decision conforms to law, is supported by competent evidence, and is not arbitrary, capricious, or unreasonable. Questions of law are reviewed de novo on the record.
PRECEDENTIAL VALUE	Published state supreme court opinion; precedential
PARTIES	County of Douglas, Nebraska v. Nebraska Tax Equalization and Review Commission

TOPICS

property tax · administrative law · judicial review of agency action · tax · real estate

PRACTICE AREAS

property tax · administrative law · constitutional law · real estate valuation

QUESTIONS PRESENTED

1. Whether TERC's findings that Douglas County's commercial-property assessments were inequitable, that sales chasing had occurred, and that a 7-percent increase was necessary were arbitrary, unsupported by competent evidence, or contrary to law.
2. Whether TERC improperly treated Douglas County differently from other counties by relying on one year of sales data rather than a three-year period, in violation of the uniformity clause of the Nebraska Constitution.
3. Whether TERC was barred by res judicata from relying on prior-year sales data or making findings inconsistent with its prior equalization proceedings.
4. Whether TERC's order violated the Nebraska Constitution's separation-of-powers or due-process guarantees.

HOLDINGS

1. TERC's findings that sales chasing had occurred, that the prior sales data was unreliable, that the 4-percent time adjustment was unsupported, and that a 7-percent increase was necessary were supported by competent evidence and were not arbitrary, capricious, unreasonable, or contrary to law.
2. TERC did not violate Nebraska's constitutional uniformity requirement by using one year of sales data for Douglas County because substantial evidence showed that the county's longer-period data had been contaminated by sales chasing, while no such contamination was shown for the comparison counties.
3. Res judicata did not bar TERC from using prior sales data or evaluating the reliability of that data in the later tax year because tax-year assessments involve distinct issues and the relevant property values had not previously been adjudicated.

KEY QUOTATIONS

> *“"Sales chasing" was demonstrated by the 14-percent decrease in the median level of assessment between the last quarter of 1998, when the prior assessor was in office, and the first two quarters of 1999, when Morrissey took office, based on the trimmed profile for commercial property.”* (424)

> *“Based upon the factual situation presented, we cannot say that TERC erred in using only 1 year of sales data to evaluate the level of assessment of the commercial property in Douglas County.”* (427)

FACTUAL BACKGROUND

For tax year 2000, Douglas County's commercial-property assessment-sales ratio was reported as 90 percent based primarily on one year of sales data, while the statutory acceptable range was 92 to 100 percent. The

Property Tax Administrator applied a 4-percent adjustment to raise the reported ratio to 94 percent, but TERC's expert testified that the adjustment was not a professionally accepted mass-appraisal method. TERC found that the county's prior assessor had engaged in sales chasing, causing a substantial decline in the assessment-sales ratio after January 1999 and rendering earlier sales data unreliable. TERC therefore ordered a 7-percent increase in commercial and industrial real-property values to bring the median assessment-sales ratio to 96 percent.

PROCEDURAL HISTORY

For the 2000 tax year, TERC determined that Douglas County's commercial-property assessments were unjust and inequitable because sales-chasing had tainted earlier assessment-sales data and the Property Tax Administrator's 4-percent time adjustment was unsupported. TERC ordered a 7-percent increase in commercial and industrial real-property values. Douglas County appealed to the Nebraska Court of Appeals, and the Nebraska Supreme Court granted a petition to bypass.

DISPOSITION

affirmed

CASES CITED

- Pfizer v. Lancaster Cty. Bd. of Equal., 260 Neb. 265, 616 N.W.2d 326 (2000)
- Hall County v. State Bd. of Equal. & Assessment, 250 Neb. 323, 549 N.W.2d 164 (1996)
- County of Douglas v. OEA Senior Citizens, Inc., 172 Neb. 696, 111 N.W.2d 719 (1961)
- Brandeis Inv. Co. v. State Bd. of Equalization & Assessment, 181 Neb. 750, 150 N.W.2d 893 (1967)
- Constructors, Inc. v. Cass Cty. Bd. of Equal., 258 Neb. 866, 606 N.W.2d 786 (2000)

INSTRUCTIONS FOR AN AI ASSISTANT