

OHIO BOARD OF TAX APPEALS

Columbus City School District)	CASE NO. 99-M-1563
Board of Education,)	
)	
Appellant,)	(REAL PROPERTY TAX)
)	
)	DECISION AND ORDER
vs.)	
)	
James J. Lawrence,)	
Tax Commissioner of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant	- Martin J. Hughes III Green & Hughes Co., LPA 100 E. Wilson Bridge Road, Suite 210 Worthington, Ohio 43085
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
For the Appellee Property Owner	- HMH Realty Co. Attn: Dept. 906-VL0200HC 10400 Fernwood Road Bethesda, MD 20817

Entered: October 19, 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 dismissed a complaint against the continuing exemption of certain real

property from taxation, filed by appellant, the Columbus City Schools Board of Education (“BOE”).

The property which is the subject of this appeal is located in the City of Columbus, Columbus City School taxing district of Franklin County and is owned by HMH Realty Co., Inc. The subject property was granted exemption from taxation pursuant to R.C. 3735.65 *et seq.* Through those statutes, the General Assembly prescribed a method for creating a Community Reinvestment Area (“CRA”) and allowed for a grant of exemption from real property provided certain conditions are met. Notwithstanding the specific provisions contained in R.C. 3735.68 to revoke an exemption, the BOE sought the Tax Commissioner’s review under his authority to consider the continued grant of real property tax exemption pursuant to R.C. 5715.27. The Commissioner concluded that R.C. 3735.65, *et seq.*, being a specific statute, prevails over the general provisions of R.C. 5715.27. Therefore, the Tax Commissioner concluded that he had no jurisdiction to consider the continued exemption of property receiving exemption under R.C. 3735.65 *et seq.*

The Ohio Supreme Court in *Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino* (2001), 93 Ohio St.3d 231, addressed the issue of the harmonization of R.C. 3735.65, *et seq.* and R.C. 5715.27. The Court held:

“When two statutory provisions are alleged to be in conflict, R.C. 1.51 requires us to construe them, where possible, to *give effect to both*. *Schindler Elevator Corp. v. Tracy* (1999), 84 Ohio St.3d ***. ‘Only where the conflict is deemed *irreconcilable* does R.C. 1.51 mandate that one provision shall prevail over the other.’ (Emphasis added.) *United Tel. Co. of Ohio v. Limbach* (1994), 71 Ohio St.3d 369, 372 ***. Our comparison of R.C. 3735.65 *et seq.* and 5715.27(E) fails to convince us that these statutes are irreconcilable.

“As noted above, R.C. 3735.68 explains the circumstances under which a housing officer or local legislative authority may revoke a CRA exemption. The statute does not,

however, contain a provision authorizing a board of education to commence proceedings seeking to revoke a CRA exemption. The appellees view this omission as evidence of the General Assembly's 'clear intent' to have R.C. 3735.68 act as the 'exclusive means' for revoking tax exemptions previously granted to property in a CRA. But it is just as likely that R.C. 5715.27(E) remains available to parties like Gahanna-Jefferson [Board of Education] as a means to seek revocation of the CRA exemption. The General Assembly did not expressly preclude all commissioner involvement in the CRA exemption revocation process, though it could have done so within R.C. 3735.68 or anywhere else within R.C. 3735.65 *et seq.*

"The lack of an explicit preclusion of commissioner involvement makes R.C. 3735.65 *et seq.*'s procedure for revoking CRA exemptions easily reconcilable with R.C. 5715.27(E). On the one hand, we may give effect to R.C. 3735.68's enumeration of specific methods of revoking CRA exemptions. That is, R.C. 3735.68 expressly allows housing officers and local legislative authorities to revoke CRA exemptions in the specific situations stated in the statute. If the party seeking to revoke a CRA exemption is a housing officer or local legislative authority, R.C. 3735.68 is the appropriate statute governing the revocation. On the other hand, R.C. 5715.27(E) provides a means for revoking a CRA exemption—via a complaint filed with the commissioner—for parties *other than* a housing officer or a local legislative authority. By its express terms, R.C. 5715.27(E) provides for commissioner jurisdiction over complaints filed by specified persons and entities against the continued exception of *any* property. This general grant of authority does not irreconcilably conflict with the specific scheme of R.C. 3735.65 *et seq.* And without an irreconcilable conflict, R.C. 1.51 requires us to give effect to *both* R.C. 5715.27(E) *and* 3735.65 *et seq.*" (Parallel citations omitted, emphasis in original)

In other words, the Supreme Court concluded that R.C. 3735.65 *et seq.* and R.C. 5715.27 were not in conflict and both provided avenues for challenge to differing constituents. A board of education which meets the

complaint requirements of R.C. 5715.27(E) may challenge the continued exemption of a property granted exemption under a CRA to the Commissioner. Therefore, the Commissioner erred when he concluded that he was without authority to consider the continued exemption from real property tax of property granted exemption under a CRA.

Therefore, considering the record before us, this Board finds and determines that the Commissioner erred when he concluded he was without jurisdiction to consider the BOE's complaint. The matter is remanded to the Tax Commissioner for further consideration.

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