

PT 19-04
Tax Type: Property Tax
Tax Issue: Motion to Dismiss

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

IN RE 2018
PROPERTY TAX EXEMPTION
APPLICATION OF
OSF HEALTHCARE SYSTEM d/b/a
HEART OF MARY MEDICAL CENTER
Applicant

Docket # 19-PT-051
Tax Year 2018
Dept. Docket # 18-10-54

RECOMMENDATION FOR DISPOSITION

Appearances: Robin Gill, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Michael L. Jente, Michael P. Davidson, and Oliver H. Thomas of Lewis Rice LLC for OSF Healthcare System d/b/a Heart of Mary Medical Center; Jason E. Brokaw and Bailey E. Felts of Giffin, Winning, Cohen & Bodewes, P.C. and Joel Fletcher and Donna Davis, Assistant State’s Attorneys, for the Champaign County Board of Review; Frederic M. Grosser, Attorney at Law, for the City of Urbana and Cunningham Township

Synopsis:

OSF Healthcare System d/b/a Heart of Mary Medical Center (“OSF” or “applicant”) filed an application for non-homestead property tax exemptions for the year 2018 for 51 parcels of property comprising the Heart of Mary Medical Center in Champaign County. The application was filed with the Champaign County Board of Review (“Board”) and was filed on Form PTAX-300-H pursuant to section 15-86 of the

Property Tax Code (“Code”) (35 ILCS 200/15-86), which concerns exemptions for hospitals and hospital affiliates. The Board recommended that the exemptions be denied, but the Department of Revenue (“Department”) determined that most of the parcels should receive an exemption. On April 5, 2019, the Department issued a certificate granting the exemption for most parcels from February 1, 2018 to December 31, 2018. Within 60 days of the Department’s decision, the Board filed a petition for hearing pursuant to section 8-35(b) of the Code (35 ILCS 200/8-35(b)). Also within 60 days of the Department’s decision, the City of Urbana (“City”) and Cunningham Township (“Township”) filed petitions for hearing pursuant to section 8-35(b) of the Code and section 110.115(h)(3) of the Department’s regulations (86 Ill. Admin. Code §110.115(h)(3)).

The applicant has filed a Motion to Dismiss the petitions for hearing pursuant to the Department’s regulation (86 Ill.Admin.Code §200.185) and section 2-619 of the Code of Civil Procedure (735 ILCS 5/1-101 *et seq.*) on the basis that the Board, City, and Township were not “parties to the proceeding” as required under section 8-35(b). In addition, the applicant argues that even if it is found that the Board is a party to the proceeding, the Board was not “aggrieved” as required under section 8-35(b). The Board, City, and Township have filed responses to the motion, and the applicant has filed a reply. Oral arguments were also heard. For the following reasons, the Motion will be granted in part and denied in part.

FINDINGS OF FACT:

1. In 2018, the applicant filed an application for non-homestead property tax exemptions for the year 2018 for 51 parcels of property comprising the Heart of

Mary Medical Center in Champaign County. The application was filed on Form PTAX-300-H.

2. The application was filed with the Champaign County Board of Review.
3. On October 29, 2018, the applicant sent a letter to the City notifying it that the application was filed. The applicant did not send a letter to the Township, and the applicant did not give a copy of the Form PTAX-300-H to either the City or the Township. (Response of City and Township, Ex. #1)
4. On December 14, 2018, the Township's assessor sent an email to the Board stating as follows: "I would like to formally ask that Cunningham Township be heard in the matter of applications for exemptions for the Provena/OSF." On the same day, the Board responded by stating "We have received your request to be heard on the matter of Exemption Requests for Provena/OSF. The Board of Review will include Cunningham Township regarding Exemption Requests for Provena/OSF." (Response of City and Township, Ex. #3)
5. On February 19, 2019, the Board held a hearing on the application during which, among others, the Township's Chief Deputy Assessor and an Assistant City Attorney were present. (Response of City and Township, Ex. #3, #4)
6. On February 21, 2019, the Board held another hearing on the application during which, among others, an Assistant City Attorney was present. On that day, the Board recommended that the exemptions be denied and forwarded the application to the Department. (Response of City and Township, Ex. #4)
7. On April 5, 2019, the Department issued a certificate granting the exemption for most parcels from February 1, 2018 to December 31, 2018.

8. The Department sent a copy of the Certificate of Exemption to the Board. The Department did not send a copy of the Certificate of Exemption to either the City or the Township. The first notice that the City and Township received informing them that the Department had received the application was reading in the local newspaper that the Department had approved the exemption. (Response of City and Township, p. 5)
9. On May 8, 2019, the Board filed a petition for hearing with the Department.
10. On May 28, 2019, the City and Township each filed a petition for hearing with the Department. In their petitions, the City and Township “seek to intervene” pursuant to section 110.115(h)(3) of the Department’s regulations. (86 Ill. Admin. Code §110.115(h)(3))
11. On June 3, 2019, the Township Board passed a Resolution that stated that the Township Board “authorizes and ratifies Cunningham Township to protest/request a hearing/intervene in proceedings before the Illinois Department of Revenue in the case of OSF Healthcare System d/b/a OSF Heart of Mary Medical Center, Docket Number 18-010-00054, and any subsequent proceedings.” A copy of the Department’s decision dated April 5, 2019 was attached to the Resolution. (Reply of applicant, Ex. G, sec. 1)

CONCLUSIONS OF LAW:

The applicant has filed a Motion to Dismiss pursuant to section 2-619 of the Code of Civil Procedure. 735 ILCS 5/2-619; 86 Ill. Admin. Code §200.185(a). The motion asks that the petitions for hearing be dismissed because the Board, City, and Township

were not “parties to the proceeding” as required under section 8-35(b) of the Code, which provides, in relevant part, as follows:

If an exemption decision has been made by the Department and notice has been given of the Department's decision, *any party to the proceeding who feels aggrieved by the decision may file an application for hearing*. The application shall be in writing and shall be filed with the Department within 60 days after notice of the decision has been given by certified mail. Petitions for hearing shall state concisely the mistakes alleged to have been made or the new evidence to be presented. Emphasis added; 35 ILCS 200/8-35(b).

With respect to the Board, the applicant claims that the Board is neither a party to the proceeding nor aggrieved by the Department’s decision. With respect to the City and Township, the applicant claims that they are not parties to the proceeding because neither one intervened in writing pursuant to section 110.115(h)(3) of the Department’s regulations, which provides as follows:

Intervenors shall be either an entity with an interest in the property or a taxing district within whose territory the property lies in whole or in part. Intervenors shall have intervened in writing in the consideration of the application at the Board of Review or Board of Appeals level prior to such Board's determination (recommendation) or at the Department level prior to the Department's decision. 86 Ill. Admin. Code §110.115(h)(3).

The applicant claims that neither the City nor the Township intervened in writing either at the Board level or at the Department level before the Department issued a decision. See Housing Authority of County of Marion v. Department of Revenue, 389 Ill. App. 3d 1005, 1008-09 (5th Dist. 2009) (finding that taxing districts that did not intervene in writing either at the Board level or at the Department level prior to the Department’s decision were not “parties to the proceeding” for purposes of section 8-35(b)). The applicant argues that because the City and Township failed to intervene in writing either

at the Board level or the Department level prior to its decision, their petitions for hearing must be dismissed.

City and Township

The City has not alleged that it has intervened in writing either at the Board level or the Department level prior to the Department's decision as required under section 110.115(h)(3). Instead, the City and Township first argue that their petitions should not be dismissed because, even though their attorneys attended hearings before the Board, they claim that the applicant failed to give proper notice of the application by failing to send a copy of the PTAX-300-H to any taxing district.

The applicant sent letters to some taxing districts (including the City but not the Township) notifying them that the applicant applied for an exemption, but the City and Township argue that section 16-70 of the Code requires the applicant to deliver a copy of the application to the taxing districts. Section 16-70 of the Code provides as follows:

Determination of exemptions. The board of review shall hear and determine the application of any person who is assessed on property claimed to be exempt from taxation. However, the decision of the board shall not be final, except as to homestead exemptions. Upon filing of any application for a non-homestead exemption which would reduce the assessed valuation of any property by more than \$100,000, the owner shall deliver, in person or by mail, a copy of the application to any municipality, school district, community college district, and fire protection district in which the property is situated. *Failure of a municipality, school district, community college district, or fire protection district to receive the notice shall not invalidate any exemption.* The board shall give the municipalities, school districts, community college districts, fire protection districts, and the taxpayer an opportunity to be heard. The clerk of the board in all cases other than homestead exemptions, under the direction of the board, shall make out and forward to the Department, a full and complete statement of all the facts in the case. The Department shall determine whether the property is legally liable to taxation. It shall notify the board of review of its decision, and the board shall correct the assessment if necessary. The decision of the Department is subject to review under Sections 8-35 and 8-40. The extension of taxes on any

assessment shall not be delayed by any proceedings under this Section, and, if the Department rules that the property is exempt, any taxes extended upon the unauthorized assessment shall be abated or, if paid, shall be refunded. Emphasis added; 35 ILCS 200/16-70.

The City and Township believe that the language of section 16-70 that states that the failure of a municipality to receive notice shall not invalidate the exemption does not apply in this case because the applicant “made a deliberate decision to violate the statute.” (City and Township Response, p. 2) The City and Township also claim that they did not receive notice that the Department had received the application from the Board, and they first received notice that the Department had received the application by reading in the local newspaper that the Department had approved the application.¹

In reply, the applicant argues that it was not required to give a copy of its PTAX-300-H to the City or Township, citing a previous administrative decision, Department of Revenue v. Presence Covenant Medical Center, PT 14-05². The applicant cites the same decision for its argument that it was not required to provide notice to the Township because the Township is not a “municipality,” and under section 16-70, the failure to receive notice does not invalidate the exemption. The decision in Presence Covenant was ultimately upheld in a Rule 23 Order issued by the Fourth District Appellate Court on August 2, 2019.³

The City and Township correctly state that the Presence Covenant decision and the Rule 23 Order have no precedential value for this case. See Sup. Ct. Rule 23(e)(1); Board of Trustees of the University of Illinois v. Illinois Educational Labor Relations

¹ The City and Township have also argued that the amount of charity care provided by the applicant does not warrant an exemption. Because this argument is not relevant to this motion, it will not be addressed.

² This case is located on the Department’s website at <https://www2.illinois.gov/rev/research/legalinformation/hearings/pt/Documents/pt14-05.pdf>.

³ A Petition for Leave to Appeal was denied by the Illinois Supreme Court on November 26, 2019.

Board, 2015 IL App (4th) 140557, ¶51 (administrative agencies are not absolutely bound by their prior rulings). Nevertheless, the reasoning in the Presence Covenant case should still be followed. It was not necessary for the applicant to send the taxing districts a copy of the PTAX-300-H because the letters that the applicant sent to the taxing districts were sufficient notice under the Department's regulation. For applications where the exemption would reduce the property's assessed valuation by more than \$100,000, the Department's regulation states that the application must include, *inter alia*, the following: "copies of the letters the applicant sent notifying affected municipalities, school districts and community college districts of the application." 86 Ill. Admin. Code §110.115(a)(1)(A)(v). As the Department's regulation recognizes, the purpose of the notice provision in section 16-70 is satisfied when letters are sent to the various taxing districts notifying them that an application has been filed, and the letter that the applicant sent to the City was sufficient notice. Sending a copy of voluminous applications to each taxing district would not serve any additional purpose when a letter notifying them that an application has been filed is enough notice under the Department's regulation.

The City and Township argue that to the extent that the Department's regulation conflicts with the statute, the regulation is invalid. See Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351, 366 (2009) (administrative regulation that is inconsistent with the statute under which it was adopted is invalid). The regulation in this case, however, must be followed because "once an administrative agency establishes rules and regulations implementing a statute, it is bound to adhere to them so long as they remain in effect." Illinois Bell Telephone Company v. Allphin, 95 Ill. App. 3d 115, 125 (1st Dist. 1981), *aff'd*, 93 Ill. 2d 241 (1982). It was not necessary for the applicant to send the City or

Township a copy of the PTAX-300-H because the letter to the City was proper notice under the regulation.

It also was not necessary for the applicant to send a letter to the Township because the Township is not a municipality under section 16-70. Townships are units of local government, but they are not municipalities. Ill. Const. 1970, art. VII, §1; 5 ILCS 70/1.27; see also Diversified Computer Services, Inc. v. Town of York, 104 Ill. App. 3d 852, 856 (2nd Dist. 1982) (“townships are not included as municipalities subject to the proscriptions of the Illinois Municipal Code”); In the Matter of Town of Lisbon Election, 104 Ill. App. 3d 115, 117 (2nd Dist. 1982) (“a ‘town’ is a separate political unit and has a definite historical meaning other than municipality or incorporated town”); Committee of Local Improvements of the Town of Algonquin v. Objectors to Assessment, 39 Ill. 2d 255 258-259 (1968) (township separate and distinct from municipality and incorporated town). Furthermore, section 16-70 explicitly states that failure to receive notice does not invalidate the exemption.

With respect to the City, it received proper notice of the application but failed to intervene in writing either at the Board level or at the Department level prior to the Department’s decision. The failure to intervene in writing warrants dismissal of the City’s petition for hearing. In Housing Authority, *supra*, the court found that because the taxing districts did not intervene in writing at the Board level or at the Department level prior to their decisions, they were not “parties to the proceeding” under section 8-35(b). Housing Authority, at 1009-1013. For the same reason, the City of Urbana is not a party to the proceeding under section 8-35(b) and must be dismissed from this case.

With respect to the Township, although it claims that it did not receive notice of the application, it argues that it timely intervened before the Board with the email that the Township's assessor sent on December 14, 2018. The Township's assessor asked that the Township "be heard" on the applicant's application for exemption. The Township's deputy assessor attended the Board hearing on February 19, 2019, and the Township claims that it intended to further participate before the Department, but it did not receive notice from the Department that the application had been received.⁴

In reply, the applicant argues that the email does not constitute written intervention because the Township Assessor does not have the legal authority to act on behalf of the Township. The applicant notes that the assessor's power and duties are provided in the Code (see 60 ILCS 1/77-5; 35 ILCS 200/1-10), and none of the duties include intervening in exemption application proceedings on behalf of a township (see 35 ILCS 200/2-5, *et seq.*). The applicant contends that the Township could only intervene through the city council. See 60 ILCS 1/15-50 ("All the powers vested in the township . . . shall be exercised by the city council.").

The applicant also argues that the email only asked that Cunningham Township "be heard," which the applicant believes is different than requesting "to intervene." The applicant claims that the Board could have granted a request by *anyone* to "be heard." The applicant believes that the email is not written "intervention."

In addition, the applicant states that neither the Board nor the Department construed the email as a written intervention. The Board is required to transmit to the Department all copies of any written intervention as well as the names and addresses of

⁴ The applicant has correctly noted that the City and Township have failed to cite any legal authority that indicates that the Department has an obligation to provide notice that it received the application from the

the intervenors. See 86 Ill. Admin. Code §110.115(e). The Department, in turn, must transmit copies of its decision to any intervenors. See 86 Ill. Admin. Code §110.115(h)(2). According to the response filed by the City and Township, their first notice that the Department granted the exemption was an article in the local newspaper. In the applicant's view, the Township did not receive notice from the Department because the Township did not intervene in writing. Furthermore, in its petition for hearing, the Township wrote that it "seeks to intervene," and the applicant contends that this indicates that the Township did not previously intervene.

Finally, the applicant argues that the June 3, 2019 Resolution by the Township Board is further evidence that the email was not a written intervention because it demonstrates that the Township knew that it needed official action by the Board to authorize intervention. The applicant states that the June 3rd Resolution was clearly in response to the Department's Exemption Certificate dated April 5, 2019 because the Exemption Certificate was attached as an exhibit to the Resolution. The applicant, therefore, claims that even the Township's May 28, 2019 request to intervene was untimely because it was not authorized at the time it was filed. The applicant believes that it is beyond dispute that the Township failed to timely intervene prior to the Department's decision in this matter.

In response to the applicant's arguments, the Township contends that nothing in the Board's rules requires a Resolution to be attached to the request to intervene, and the Township can ratify an action after it happens. The Township argues that there was no other purpose for the email but to seek to intervene, and no "magic language" is required to make that request. The Township claims that the Board's failure to forward a copy of

Board.

the intervention request to the Department should not affect the Township's right to intervene. With respect to the assessor's authority to intervene on behalf of the Township, the Township argues that it has no employees and only has two elected officers: the supervisor and the assessor. The Township contends that someone had to type the email, and the assessor properly did so.

The applicant agrees that there is no "magic language" for an intervention request, but neither the Board nor the Department construed the email as an intervention request. The applicant believes that even the Township did not construe it as an intervention request because in its petition for hearing it "seeks to intervene." The applicant believes that anyone can ask to be heard, but an intervention forces a legally significant action. In addition, considering that the Resolution was not passed until June 3, 2019, the applicant argues that there are too many obstacles to recognizing the email as a written intervention.

Even if the email could be construed as a request to intervene, the evidence does not support a finding that the assessor had authority to intervene on behalf of the Township. The applicant has argued that the Township could only intervene through the city council, citing section 15-50 of the Township Code that states, in relevant part, as follows:

All the powers vested in the township described in Section 15-45, including all the powers now vested by law in the highway commissioners of the township and in the township board of the township, shall be exercised by the city council. 60 ILCS 1/15-50.

Section 15-45 of the Township Code provides as follows:

The territory of any organized city, within the limits of any county under township organization and not situated within any township, shall be deemed a township. 60 ILCS 1/15-45.

Section 80-5(b) of the Township Code provides as follows:

In towns organized under Article 15, all the powers vested by law in the township board shall be exercised by the city council. 60 ILCS 1/80-5(b).

Article 15 concerns a township within a city, which includes Cunningham Township.

See <https://www.urbanaininois.us/boards/cunningham-township-board> (Cunningham Township has the same boundaries as the City of Urbana). The Urbana City Council members serve ex-officio as Cunningham Township's Board. *Id.* Powers exercised by Cunningham Township's Board, therefore, are also exercised by the city council.

Although the Township must act through its board, nothing in the documents presented by the parties indicates that the Township Board authorized the assessor to intervene on its behalf before the Board of Review. The Township's assessor sent the email to the Board of Review on December 14, 2018, but the Township Board's Resolution that "authorize[d] and ratifie[d]" the Township's request to intervene was not passed until June 3, 2019, and that Resolution specifically authorized and ratified the Township's intervention "before the Illinois Department of Revenue . . . Docket Number 18-010-00054, and any subsequent proceedings." (Reply of applicant, Ex. G, sec. 1). In other words, the Resolution authorized the filing of the petition for hearing in this case, but it did not authorize intervention at the Board of Review level. Nothing in the Resolution or the other documents presented by the parties indicates that the Township assessor had authorization to intervene on behalf of the Township before the Board of Review. The assessor did not have authority to intervene on behalf of the Township at the Board level, and the Township did not intervene in writing at the Department level prior to its decision. The Township was not a party to the proceeding under section 8-

35(b). See Housing Authority, at 1009-1013. The applicant's request to dismiss the Township's petition for hearing must, therefore, be granted.

Board of Review

The applicant also asks that the Board's petition for hearing be dismissed because the Board is not a "party to the proceeding" as required under section 8-35(b) of the Code. The applicant argues that at the initial proceeding, the Board conducted a hearing on the applicant's application for a non-homestead property tax exemption, after which it made findings of fact and a recommendation to the Department that the exemption be denied. The applicant claims that the Board's role in the proceeding before itself was exclusively that of initial administrative decision maker (albeit making only a non-final recommendation). It, therefore, was not a "party to the proceeding."

The applicant also argues that the Board was not a party to the subsequent proceeding before the Department because the Board had no role at the Department-level proceeding and has no legal authority to be a party to the proceeding before the Department. The applicant contends that section 16-20 of the Code defines the Board's "powers and duties," and filing a petition for hearing before the Department is not included. The applicant refers to the following section of the Board's rules for 2019:

G. Freedom of Information Act. The Board is a public body and is subject to the Freedom of Information Act as defined in Illinois Law (5 ILCS 140/2). The following information is provided in accordance with the Act:

1. The Board is responsible for hearing appeals, corrections and requests for Certificate of Errors on property assessments from the County's thirty townships, acting on these applications, reviewing and making recommendations on exempt property applications and representing the interest of Champaign County before the Illinois Property

Tax Appeal Board. (2019 Rules of Champaign County Board of Review, <http://www.co.champaign.il.us/BoardofReview/pdfs/2019rules.pdf> at p. 3)

The applicant believes that the Board's role is limited to what is enumerated in this provision and does not include authority to represent Champaign County in exemption proceedings before the Department.

Finally, the applicant argues that even if the Board is a party to the proceeding, then the petition for hearing should still be dismissed because the Board was not "aggrieved" by the Department's decision as required by section 8-35(b). The applicant claims that to be "aggrieved," the Board's "rights, duties or privileges" must have been "adversely affected by the decision." See *e.g.* Williams v. Department of Labor, 76 Ill. 2d 72, 77 (1979). The applicant claims that unlike an entity such as a school district or taxing district, the Board cannot claim an interest in the tax revenues that would have been generated if the Department had denied the exemptions. The applicant, therefore, contends that the Board was not "aggrieved" by the Department's decision.

In response, the Board argues that a county board of review is always a party of record before the Department when a taxpayer has sought a non-homestead exemption before that board of review. The Board claims that it became a party to these proceedings "as a matter of law" because the applicant filed its application for an exemption with the Board. The Board refers to section 16-70 of the Code and believes that its role is not to passively make an initial exemption recommendation and then play no further role in questioning the Department's decision. The Board states that if the applicant's position is accepted, then a county board of review would never be able to seek review of a Department's decision that grants a non-homestead exemption.

The Board contends that it has broad authority and a statutory responsibility to revise and adjust assessments as may be just. See 35 ILCS 200/16-30, 16-55(a); Highland Park Women’s Club v. Department of Revenue, 206 Ill. App. 3d 447, 461 (2nd Dist. 1990) (“an exemption may be viewed as an assessment of \$0”). The Board also refers to section 16-55(e) of the Code, which provides that a board of review “shall have full power over the assessment” and “may do anything in regard thereto that it may deem necessary to make a just assessment.” 35 ILCS 200/16-55(e).

The Board also claims that it is a party to the proceeding because the Department sent the Champaign County’s Chief County Assessment Officer (who is designated as the clerk of the Champaign County Board of Review pursuant to section 3-30 of the Code (35 ILCS 200/3-30)) notice of its decision, which provided, in part, the following: “If you do not agree, you must file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of this notice.” The Board claims that it simply responded to this “invitation” from the Department and filed a petition for hearing pursuant to section 8-35(b). The Board argues that in every non-homestead property tax exemption case, the Department’s decision will affect “the legal rights, duties or privileges” of the particular board of review because the Code mandates that it is the board’s duty to “correct the assessment if necessary.” 35 ILCS 200/16-70. During oral arguments, the Board also argued that it represents the County’s interest in this case.

In reply, the applicant argues that the Department’s notice of its decision was not an “invitation” for the Board to file a petition for hearing, and the “boilerplate instructions” for challenging the Department’s decision are only for an applicant or intervenor. The applicant contends that section 16-70 of the Code only requires the

Department to provide notice of its decision to the Board so that the Board can correct the assessment books, if necessary.

According to the applicant, the Board is neither an entity with an interest in the property nor a taxing district, so the Board cannot be an intervenor and cannot be a party to the proceeding. The applicant also argues that the Board's duty to correct the assessment books to reflect the Exemption Certificate does not make the Board "aggrieved."

With respect to the Board's contention that it represents the County's interest in this case, the applicant argues that the Board does *not* represent the County's interest because the County represents its own interest and is its own advocate. The applicant claims that the *County* is not seeking to intervene, and the Board is not seeking to intervene for the County. The applicant contends that this is the Board of Review itself seeking to intervene, and the Board is not a taxing district and has no stake in the outcome. The applicant believes that the Board is not an advocate for the County. The applicant states that counties participate in this type of proceeding on a regular basis, but they do not do it through a board of review.

Although the applicant correctly states that counties often participate in this type of proceeding, the Highland Park court found that a board of review may do the same. The Highland Park case does not specifically address the issue of whether a board of review may file a petition for hearing pursuant to section 8-35(b), but the court found that a board of review may be a party in this type of proceeding. In that case, a taxpayer who lived in Lake County (and paid taxes on his Lake County property) challenged the property tax exemptions that had been granted to the Highland Park Women's Club and

the Ravinia Festival Association. One of the issues addressed by the court was whether the taxpayer had standing to challenge the exemptions. Although the court found that the taxpayer did not have standing, the court also found that under the Property Tax Code, both the Lake County Board of Review and the Department had the authority to review the exemptions on their own initiative. Highland Park at 461-462. The applicants argued that even if the Lake County Board of Review and the Department may review exemptions *sua sponte*, the case should be dismissed because the proceedings were initiated by the taxpayer. The court disagreed and found that the determinative factor was that both the Lake County Board of Review and the Department had the authority to review the exemptions. *Id.* at 462. The case, therefore, was not dismissed, and the court addressed the merits of the issues raised by the Board of Review and the Department.⁵

One of the provisions relied upon by the Highland Park court is currently codified at section 16-55(e) of the Code and provides as follows:

(e) The board may also, at any time before its revision of the assessments is completed in every year, increase, reduce or otherwise adjust the assessment of any property, making changes in the valuation as may be just, and shall have full power over the assessment of any person and may do anything in regard thereto that it may deem necessary to make a just assessment, but the property shall not be assessed at a higher percentage of fair cash value than the assessed valuation of other property in the assessment district prior to equalization by the board or the Department.⁶
35 ILCS 200/16-55(e).

In finding that this provision authorized the Board to review exemptions on its own initiative, the court rejected the applicants' argument that this provision applies only to "assessments" and not "exemptions." The court stated that an exemption may be viewed

⁵ The court noted that the only issue raised by the Board was whether the taxpayer had standing. *Id.* at 463.

⁶ The previous version relied upon by the court varies slightly and stated as follows: "The board may also of its own motion, at any time before its revision of the assessments is completed in every year, increase,

as an assessment of \$0 for purposes of property taxation. Highland Park at 461. The court also stated that accepting the applicants' argument would mean that there would be no provision in the Revenue Act authorizing review of existing exemptions. *Id.* The court found that this result would be absurd. *Id.*

As the Board has indicated, accepting the applicant's position in this case would mean that a board of review would never be able to challenge a Department decision that grants a non-homestead exemption. This result would be contrary to the broad authority under section 16-55(e) and inconsistent with the Highland Park case. If a board of review were to challenge an exemption on its own motion as the court found that it could in Highland Park, then the procedures set forth in section 16-70 would require a Department review to determine whether the property is entitled to the exemption. See 35 ILCS 200/16-70. Under section 16-70, the Department's decision is then subject to review under section 8-35. *Id.* Under these circumstances, if the Department decided that the exemption should be granted, then the board of review would have the option of filing a petition for hearing pursuant to section 8-35(b). In other words, if a board of review challenges an exemption on its own motion, then the procedures set forth in section 16-70 must be followed, and a board of review may file a petition for hearing, if necessary. If a board of review may be a party to an exemption proceeding by challenging the exemption on its own motion, then it is consistent to find that it may be a party to the proceeding to challenge the Department's decision in the present case.

In addition, although the Board is not the same entity as the County, it represents the interest of the County in the same manner that it represents the interest of the County

reduce or otherwise adjust the assessment of any individual or corporation, on real property, making changes in the valuation thereof as may be just . . ." Ill. Rev. Stat. 1985, ch. 120, par. 589(4).

before the Illinois Property Tax Appeal Board. (See 2019 Rules of Champaign County Board of Review, p. 3). The County is a taxing district that was “aggrieved” by the Department’s decision because of the potential loss of tax revenue if the Department’s decision is upheld. The Board’s petition for hearing, therefore, should not be dismissed.

Recommendation:

For the foregoing reasons, it is recommended that the Motion to Dismiss be granted in part and denied in part. The motion is granted with respect to the City of Urbana and Township of Cunningham, and it is denied with respect to the Board of Review.

Linda Olivero
Administrative Law Judge

Enter: December 23, 2019