

***Mineral County v. State, Bd. Equalization, 121 Nev. Adv. Op. 55***  
**(September 15, 2005)<sup>1</sup>**

**ADMINISTRATIVE LAW - JUDICIAL REVIEW OF  
ADMINISTRATIVE DECISION**

**Summary**

Defendant/Appellant Mineral County ("County") appealed from the district court's dismissal of its petitions for review of decisions issued by the Nevada State Board of Equalization ("State Board") under the Nevada Administrative Procedure Act ("APA"), Nevada Revised Statutes ("NRS") Chapter 233B.

**Disposition**

Reversed and remanded. The court concluded that NRS 361.420, which specifies procedures for "property owner" appeals of State Board determinations, and which is silent with regard to a county's ability to seek judicial review of State Board decisions, permits a county to petition for judicial review of such decisions under the APA.

**Factual and Procedural History**

Pursuant to a federal contract, Day & Zimmerman Hawthorne Corporation ("DZHC") manages and maintains the Hawthorne Ammunition Depot ("the Depot") in Mineral County, Nevada. DZHC disputed the County's tax valuations of the Depot for the tax years 1998-99 and 2000-01. After reviewing the County's valuations, the State Board issued two decisions, which resulted in a significant net decrease in the taxable value of the Depot. The County subsequently filed separate petitions for judicial review under the Nevada APA. After the State Board and DZHC moved jointly to dismiss the petitions, the district court granted the motions, concluding that NRS 361.420 impliedly prohibits challenges to State Board determinations by persons or entities other than "property owners."

In its appeal to the Nevada Supreme Court, the County claimed that NRS 233B.130(1)<sup>2</sup> gave the County the authority to challenge State Board decisions. The County relied on language from NRS 233B.020(2), which states that "[t]he provisions of [NRS Chapter 233B] are intended to supplement statutes applicable to specific agencies"<sup>3</sup> in making its contention that the APA simply augments the taxpayer appeal provisions of NRS Chapter 361. According to the County, then, local governmental entities are permitted to petition for judicial review of agency determinations.

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<sup>1</sup> By Patrick Murch

<sup>2</sup> "Any party who is: a) Identified as a party of record by an agency in an administrative proceeding; and b) Aggrieved by a final decision in a contested case, is entitled to judicial review of the decision." NEV. REV. ST. § 233B.130(1) (2003).

<sup>3</sup> NEV. REV. ST. § 233B.020(2).

The State Board, on the other hand, contended that a reading of other language in the APA requires courts to defer to the administrative procedures set forth in NRS Chapter 361. It relied on NRS 233B.020(2), which states that "[NRS Chapter 233B] does not abrogate or limit additional requirements imposed on such agencies by statute or otherwise recognized by law."<sup>4</sup> It also pointed to NRS 361.420(2), which specifies that property owners may bring an action if the State Board denies relief.<sup>5</sup> Thus, according to the State Board, NRS 361.420(2), read in conjunction with NRS 233B.020(2), limits state court jurisdiction over State Board decisions to petitions for judicial review brought by property owners or taxpayers. Furthermore, the State Board referred to NRS 361.410(1), which states in part that "[n]o taxpayer may be deprived of any remedy or redress in a court of law relating to the payment of taxes, but all such actions must be for redress from the findings of the State Board of Equalization."<sup>6</sup>

The crux of the State Board's argument was that NRS Chapter 361 procedures preempt the APA under fundamental principles of statutory construction - that is, that "statutes specific to particular sets of circumstances take precedence over statutes of general application."<sup>7</sup> According to the State Board, then, NRS 361.410(1) and NRS 361.420(2) govern judicial review of State Board decisions and deprive local governments of a means for obtaining judicial review of adverse decisions.

## **Discussion**

Construction of a statute is a question of law which the Nevada Supreme Court reviews de novo.<sup>8</sup> The court "interprets statutes according to their plain meaning unless such an interpretation would run contrary to the spirit of the statutory scheme."<sup>9</sup> "Potentially conflicting are harmonized whenever possible."<sup>10</sup>

The court stated that neither NRS 361.410(1) nor NRS 361.420(2) explicitly preclude local governments from protesting State Board valuations, and that neither statute limits nor abrogates property holders' rights to challenge adverse decisions of the State Board.<sup>11</sup> Thus, even though the statutes cited by the State Board contain specific

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<sup>4</sup> *Id.*

<sup>5</sup> "The property owner, having protested the payment of taxes . . . and having been denied relief by the State Board . . . , may commence a suit in any court of competent jurisdiction in the State of Nevada against the State and county in which the taxes were paid . . . ." NEV. REV. ST. § 361.420(2).

<sup>6</sup> *Mineral County v. Bd. of Equalization*, 121 Nev. Adv. Op. 55, at 4 (2005), *citing* NEV. REV. ST. § 361.410(1).

<sup>7</sup> *Id.*, *citing* *SIIS v. Miller*, 112 Nev. 1112, 1118, 923 P.2d 577, 580 (1996).

<sup>8</sup> *Gilman v. State, Bd. of Vet. Med. Exam'rs*, 120 Nev. 263, 271, 89 P.3d 1000, 1005-06 (2004).

<sup>9</sup> *Mineral County*, 121 Nev. Adv. Op. 55, at 2 (2005), *citing* *Univ. Sys. v. Nevadans for Sound Gov't*, 120 Nev. \_\_\_, \_\_\_, 100 P.3d 179, 193 (2004).

<sup>10</sup> *Id.*, *citing* *Beazer Homes Nevada, Inc. v. Dist. Ct.*, 120 Nev. 575, 587, 97 P.3d 1132, 1140 (2004).

<sup>11</sup> The State Board also claimed that the Legislature's explicit provision for county petitions for judicial review of Nevada Tax Commission decisions pursuant to NEV. REV. ST. § 360.245(7) demonstrates the Legislature's intent to preclude county petitions for judicial review of State Board decisions. The Court disagreed, concluding that if the Legislature meant to preclude such petitions, "it could have explicitly stated that intent." Moreover, the Court rejected the State Board's contention that the history of the legislation introduced during the 2005 legislative session as S.B. 186 - which shows that the bill "died" in committee - determined the issue presented here. "An uncontradicted affidavit submitted by a proponent of the bill, who also represents Mineral County in this case, indicates that the proponents withdrew the bill before the Legislature could fully consider it." *Id.* at 5, n. 5.

provisions concerning protections for taxpayers, they do not take precedence over the APA under the circumstances of this case because they do not expressly govern the rights of a local government such as the County. Therefore, the court concluded that "the provisions of NRS Chapter 361 supplement, rather than preempt, the provisions of NRS Chapter 233B, particularly NRS 233B.130(1)'s provision that an aggrieved party may petition for judicial review of an agency decision."<sup>12</sup> According to the court, "[t]his interpretation is optimal because it permits harmonious construction of NRS Chapter 233B and NRS Chapter 361."<sup>13</sup>

### **Conclusion**

The Nevada Supreme Court concluded that NRS 361.420 does not prohibit a county from seeking judicial review of a State Board decision, so the County was entitled to seek judicial review under NRS 233B.130(1). Thus, the court reversed the district court's order dismissing the County's petitions for review and remanded the case for further proceedings.

### **Concurring Opinion**

Justice Rose concurred in the result, stating that "[a]ny party aggrieved by an administrative decision may appeal the decision to the district court for judicial review."<sup>14</sup> According to Justice Rose, the Legislature was aware of NRS Chapter 361's real property taxation scheme when it enacted NRS 233B.130(1) and the APA. If the Legislature had intended to prohibit a county from having the right to appeal an administrative decision, it could have done so. It did not. Moreover, the court has previously stressed that an agency should be allowed to appeal an adverse administrative decision.<sup>15</sup> Thus, Justice Rose stated that allowing both parties, regardless of whether one of those parties is a governmental entity, to appeal an administrative decision, is a "fundamentally fair process."<sup>16</sup>

### **Dissent**

Justice Hardesty, along with Chief Justice Becker and Justice Douglas, dissented, stating that taxpayers alone, and not counties, are entitled to sue to challenge the decisions of the State Board. Pursuant to the Nevada Constitution, the Legislature must

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<sup>12</sup> *Id.* at 5.

<sup>13</sup> *Id.* at 5-6. The Court also noted that policy reasons supported its decision on the issue, because: 1) denying a county of the right to judicial review would allow the State Board to set binding precedent regarding legislation on state tax issues, which could subject citizens of a county to an unjust result and an inequitable distribution of taxes if the State Board incorrectly interpreted and applied the law; and 2) interpreting NRS Chapter 361 as restricting a local government's right to petition for judicial review of an adverse State Board decision would leave local governments without a remedy.

<sup>14</sup> *Id.* at 7, *citing* NEV. REV. ST. § 233B.130(1).

<sup>15</sup> *See* Dept. of Motor Vehicles v. McGuire, 108 Nev. 182, 827 P.2d 821 (1992) ("[t]he right of appeal . . . should not be taken away unless clearly intended by the statute. Any doubt about the construction of statutes regulating the right of appeal should be resolved in favor of allowing an appeal."). *Id.* at 184, 827 P.2d at 822 (*quoting* Thompson v. Dist. Ct., 100 Nev. 352, 355, 683 P.2d 17, 19 (1984)).

<sup>16</sup> *Mineral County*, 121 Nev. Adv. Op. 55, at 8.

"provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all [real property]."<sup>17</sup> The Legislature thus "adopted NRS Chapter 361 to provide for the assessment and equalization of the value of real property."<sup>18</sup> After county assessors value real property for tax purposes, taxpayers who believe that the valuation of their property is inequitable or erroneous may appeal the valuation to the county board of equalization.<sup>19</sup> Following this appeal, either the county assessor or the taxpayer is entitled to appeal the decision of the county board to the State Board.<sup>20</sup>

The dissenting justices claimed that, contrary to the majority's contention that the appeal statutes do not limit or abrogate property owners' appeal rights, the Legislature requires a taxpayer to meet several conditions when seeking judicial review of the decision of the State Board. To challenge such a decision, the taxpayer is required to pay and protest any disputed taxes.<sup>21</sup> In a district court action, the taxpayer has the burden of proving, by clear and satisfactory evidence, that any valuation set by the county assessor or the county or State Board is inequitable and unjust.<sup>22</sup> The burden creates the presumption that the property valuation is reasonable.<sup>23</sup>

According to the dissenting justices, the Legislature did not grant a county the authority to seek judicial review of State Board decisions. When it has intended to do so, the Legislature has expressly provided counties with a right to appeal. When the Legislature has not expressly addressed the issue, the court should not "fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done."<sup>24</sup> The Legislature expressly granted the county assessor to the right to appeal county board decisions to the State Board.<sup>25</sup> Under NRS Chapter 360, where a county is a party and is aggrieved by a Nevada Tax Commission decision, the county may seek judicial review of that decision.<sup>26</sup> Thus, because the Legislature was silent as to the County's right to appeal a decision of the State Board, the Legislature has not expressed its intent to grant such a right.

The County relied on NRS 233B.130(1) for authority to seek judicial review of State Board decisions, but the dissenting justices disagreed for three reasons.

First, that statute specifies that any aggrieved party can seek judicial review of a final administrative agency decision. If the County can rely on the statute to seek judicial review, then a taxpayer should be able to do so also. However, as previously discussed, the Legislature imposed several requirements, not present in NRS 233B.130(1), on the

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<sup>17</sup> Nev. Const. art. 10, § 1(1).

<sup>18</sup> *Mineral County*, 121 Nev. Adv. Op. 55, at 9.

<sup>19</sup> NEV. REV. ST. §§ 361.356(1); 361.357(1).

<sup>20</sup> NEV. REV. ST. § 361.360(1).

<sup>21</sup> NEV. REV. ST. § 361.420(1), (2).

<sup>22</sup> NEV. REV. ST. §§ 361.410(2); 361.430.

<sup>23</sup> *Pittsburg Silver Peak v. Tax Comm'n*, 49 Nev. 46, 52, 235 P.643, 644 (1925); *Washoe County v. Golden Road Motor Inn*, 105 Nev. 402, 406, 777 P.2d 358, 360 (1989); *Imperial Palace v. Dep't Taxation*, 108 Nev. 1060, 1066, 843 P.2d 813, 817 (1992); *Sun City Summerlin v. Dep't Taxation*, 113 Nev. 835, 842, 944 P.2d 234, 238 (1997).

<sup>24</sup> *Mineral County*, 121 Nev. Adv. Op. 55, at 10, *citing* *Falcke v. Douglas County*, 116 Nev. 583, 589, 3 P.3d 661, 665 (2000) (*quoting* *McKay v. Bd. of County Comm'r*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987)).

<sup>25</sup> NEV. REV. ST. § 361.360(1).

<sup>26</sup> NEV. REV. ST. § 360.245(7).

taxpayer prior to seeking judicial review. Accepting the County's interpretation "would lead to an absurd result that violates the canon of statutory construction that requires statutes to be read in harmony but promotes the use of a specific statute over that of a general statute where they pertain to the same topic."<sup>27</sup> If the Court were to accept the County's argument, it must either accept that the statute applies only to the County, or it must permit taxpayers to rely on the same provision and avoid the requirements of burden of proof and that taxpayers pay taxes and protest before being permitted to appeal.

Second, one rule of statutory construction requires that specific statutes related to a particular subject matter come before statutes of general application. This rule demonstrates that NRS 233B.130(1) is inapplicable. NRS Chapter 361 deals with the procedures for determining the valuation and assessment of real property, and the provisions of the APA supplement Chapter 361.<sup>28</sup> Chapter 361 establishes a specific process for resolving questions of inequity and valuation and imposes a difficult burden of proof on taxpayers. "If the APA were controlling on the issue of judicial review, the statutory procedures and evidentiary burdens in NRS Chapter 361 would be abrogated."<sup>29</sup>

Third, the dissenting justices claimed that the Court previously determined that "where the APA departs from a specific statutory scheme, the specific scheme controls."<sup>30</sup>

Finally, the dissenting justices took issue with the majority's policy arguments. The dissent stated that, in construing statutes, the Court aims to give effect to the intent of the Legislature.<sup>31</sup> If a statute's language is ambiguous or silent on an issue, the Court should construe the statute in accordance with what "reason and public policy would indicate the legislature intended."<sup>32</sup> The majority's policies disregard the fact that counties are "subordinate instrumentalities" that the State has created to exercise only the powers that the State has granted to them.<sup>33</sup> The County was not entrusted with the authority to challenge State Board decisions. Moreover, subordinate governmental entities such as the County do not have due process rights under the Fourteenth Amendment.<sup>34</sup> Thus, in the absence of a specific statutory grant of authority to appeal, the County may not remedy an alleged error in an adverse State Board decision. If the Court was required to consider public policy in this case, it should have determined that it

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<sup>27</sup> *Mineral County*, 121 Nev. Adv. Op. 55, at 11-12, *citing* *W. R. Co. v. City of Reno*, 63 Nev. 330, 337, 172 P.2d 158, 161 (1946).

<sup>28</sup> NEV. REV. ST. § 233B.020(2).

<sup>29</sup> *Mineral County*, 121 Nev. Adv. Op. 55, at 12.

<sup>30</sup> *Id.* at 13, *citing* *Sierra Life Ins. Co. v. Rottman*, 95 Nev. 654, 656, 601 P.2d 56, 57-58 (1979) (holding that NEV. REV. ST. § 680A.190, which gives the Commissioner of Insurance the authority to summarily revoke a certificate of authority, took precedence over NEV. REV. ST. § 233B.020, which requires an agency to provide notice and an opportunity to be heard to show compliance to the licensee before revocation).

<sup>31</sup> *Davenport v. Comstock Hills-Reno*, 118 Nev. 389, 392 n. 4, 46 P.3d 62, 64 n. 4 (2002).

<sup>32</sup> *Mineral County*, 121 Nev. Adv. Op. 55, at 14, *quoting* *Davenport*, 118 Nev. 389, 392 n. 4, 46 P.3d 62, 64 n. 4 (internal quotation marks omitted).

<sup>33</sup> *First Nat. Bank of S. F. v. Nye County*, 38 Nev. 123, 134-35, 145 P. 932, 936 (1914); *Reynolds v. Sims*, 377 U.S. 533, 575 (1964).

<sup>34</sup> *Boulder City v. State*, 106 Nev. 390, 392, 793 P.2d 845, 846 (1990); *State v. County of Douglas*, 90 Nev. 272, 280, 524 P.2d 1271, 1276 (1974) (stating that a county may not invoke proscriptions of the Fourteenth Amendment against the will of its creator, the State).

was contrary to public policy, and thus contrary to the intent of the Legislature, to require a taxpayer to defend a favorable State Board decision against a County appeal.

In sum, the dissenting justices would have denied the County's appeal.