

BEFORE THE BOARD OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE
COMPLAINT OF KENNEDY,
MICHAEL T FOR THE YEAR 2022-
2023 IN DOUGLAS COUNTY,
KANSAS

Docket No. 2022-6149-RN

ORDER

Now the above-captioned matter comes on for consideration and decision by the Board of Tax Appeals of the State of Kansas.

The Board conducted a hearing in this matter on December 5, 2022. The Complainant, Michael T. Kennedy, appeared *Pro Se*. The testimony of Carrie Barth on behalf of Complainant was provided by Affidavit. Baldwin City, Kansas USD #348 School Board (herein "School Board") appeared by Bradley Finkeldei, Attorney. Other witnesses for the School Board were Kelley Bethell-Smith, Board President; Phillip Harvey, Board Vice President; Board Members Kelly Neufeld, Chris Perry, Ande Parks, and Tony Brown; and Mark Dodge, Superintendent. Prior to the evidentiary hearing, the Kansas Justice Institute, by and through counsel Sam G. McRoberts, filed its *Amicus Curie* brief. The tax year in issue is 2022-2023.

The Board has jurisdiction of the subject matter and the parties, as a complaint was properly filed with the Board pursuant to K.S.A. 79-2988.

Findings of Fact and Applicable Law

The parties stipulated to the admission of all exhibits offered at the hearing, and the testimony and evidence presented by the parties established that the facts underlying this matter are largely undisputed. On July 18, 2022, at a regularly-scheduled School Board meeting, the Board noted its intent to file notice with the county to exceed the revenue neutral rate. Notice was duly provided to the County Clerk prior to July 20, 2022. The Board then properly published notice that a public hearing would be held on the matter at a special meeting on September 14, 2022. The published notice consisted of a table with the heading "Exceeding the Revenue Neutral Tax Rate for the 2022-23 School Year," and indicated that the Board would meet "for the purpose of hearing and answering objections of taxpayers relating to the proposed use of all funds and the amount of tax to be levied."

The Agenda for the September 14 Special Meeting contained a subsection C entitled "Revenue Neutral Rate Hearing." The Agenda noted the type of the subject to be "Action," but unlike other sections of the Agenda, no recommended action was listed. During the meeting the Board heard a presentation by Superintendent Dodge and finance officer Nathan Oehlert. A powerpoint presentation contained a copy of the table published with the notice of public hearing, with the exception of the table header on the powerpoint reading "Revenue Neutral Tax Rate" rather than "Exceeding the Revenue Neutral Tax Rate for the 2022-23 School Year." The Board also heard testimony against exceeding the Revenue Neutral Rate from Complainant and another taxpayer, Carrie Barth. The Minutes of the September 14 Special Meeting reflect the following:

Action 1. Revenue Neutral Rate Hearing

Nathan Oehlert and Mr. Dodge presented the Revenue Neutral Rate to the board and asked for caps for the individual funds. There was opportunity for public comment, questions, and concerns to be brought to the board's attention, the board discussed all information brought to them, and proceeded to a vote.

Motion to accept the revenue neutral tax rate as presented.

Motion by Kelley Bethell-Smith, second by Chris Perry

Roll Call Vote:

Ande Parks – yay

Chris Perry – yay

Kelley Bethell-Smith – yay

Tony Brown – yay

Phil Harvey – nay

Kelly Neufeld – nay

Motion approved 4-2 by roll call vote

(emphasis added).

Subsequent to the hearing, Board President Bethell-Smith signed "A resolution expressing the property taxation policy of USD 348 Baldwin City with respect to exceeding the Revenue Neutral Tax Rate for financing the annual budget for 2022-2023." The Resolution states:

Whereas, 2022 HB 2239 amending K.S.A. 78-2988 (sic), provides that a levy of property taxes to finance the 2022-2023 budget of USD 348 exceeds the Revenue Neutral Tax Rate to finance the 2022-2023 budget of USD 348, be authorized by a resolution.

NOW, THEREFORE, BE IT RESOLVED by USD 348 *that the 2022-2023 budget with a levy of property taxes exceeding the Revenue Neutral*

Tax Rate calculated for 2022-2023, as adjusted pursuant to 2022 HB 2239 amending K.S.A. 79-2988 is hereby adopted.

Adopted the 14th day of September, 2022 by USD 348 Baldwin City in Douglas County, Kansas.

(emphasis added). Superintendent Dodge indicated that although the Resolution had been drafted prior to the September 14 meeting, it was not provided to any of the Board Members prior to or at the meeting, none of the Board members had it in front of them during the meeting, and the only copy of the Resolution at the meeting was in possession of the Board Clerk to record the roll call vote.

Subsequent to the Board's vote on agenda item C, the Board proceeded through a hearing on the proposed 2022-2023 budget. The Minutes reflect a "Motion to accept the 2022-2023 budget as presented, with the exception of the capital outlay line item going from 8.0 to 7.097...." The Board ultimately provided a certification to the County Clerk reflecting the same table originally published with the public notice entitled "Exceeding the Revenue Neutral Tax Rate for the 2022-2023 School Year" as well as a certification of the adopted budget relying upon a tax rate in excess of the revenue neutral rate.

The "Truth in Taxation Act," Kan. Leg. 2021 SB 13, as amended by Kan. Leg. 2022, Sen. Sub. for HB 2239, became effective on April 1, 2021. The Act established a complaint process for taxpayers in the event that a taxing entity did not follow the specific procedures required to exceed its revenue neutral rate. K.S.A. 79-2988(b), (c)(2), as amended. The Act provides that if a entity fails to comply with the statute, it shall revert to the revenue neutral rate by issuing tax refunds or reducing the rate for any unlevied taxes. *Id.* at (c)(1).

Complainant filed his case pursuant to K.S.A. 79-2988(c)(2). He argues that the School Board's levy of a tax rate that exceeded the revenue neutral rate is illegal and void because the School Board failed to strictly comply with the statutory provisions of K.S.A. 79-2988(b). Specifically, the Complainant argues that regardless of the Board's underlying intent with respect to exceed the revenue neutral rate, the motion the School Board actually passed adopted the revenue neutral rate. Complainant contends that the subsequent non-revenue neutral budget and levy implemented by the School Board are illegal, and a reduction or refund of real estate taxes is required pursuant to K.S.A. 79-2988(c)(1). Complainant presented a video recording of the September 14, 2022, Meeting as well as pertinent budget documents and meeting minutes in support of his arguments.

The School Board President, Vice President, and other members appearing at the evidentiary hearing testified that it was their intention at the September 14, 2022 Special Meeting, both individually and collectively, to pass a motion in favor of exceeding the revenue neutral rate. These individuals testified that although the Motion passed was to “adopt the revenue neutral rate, as presented,” the members understood the term “as presented” to reflect the Superintendent and finance officer’s request to exceed the revenue neutral rate. These individuals further testified that there was no confusion as to how they were voting that evening and that they understood a vote in favor of the motion would be a vote to exceed the revenue neutral rate. The testimony of Board member Tony Brown, an individual with some history in elected positions, indicated that motions to approve agenda items “as presented” were common within the District and within other local government elected bodies. There was some testimony that Board members were aware a resolution would be signed subsequent to their passage of a motion if they voted in favor of exceeding the revenue neutral rate, but the testimony was that no Board member had seen the actual Resolution signed by the Board’s President at any time prior to the President’s signature of that document. In support of its position, the School Board presented copies of documents, including the subsequently-adopted resolution and budget compiled subsequent to the Special Meeting that reflected and utilized the excess revenue neutral rate.

Conclusions of Law

The School Board has the duty to initiate the production of evidence to demonstrate, by a preponderance of the evidence, the validity of its levy. K.S.A. 79-2988(c)(2).

Kansas Law requires public notice and a public hearing if the proposed budget will exceed the revenue neutral tax rate. K.S.A. 79-2988. “Revenue neutral rate” is statutorily defined as the tax rate for the current tax year that would generate the same property tax as levied the previous tax year using the current tax year’s total asses valuaton. K.S.A. 79-2988(f)(2).

K.S.A. 79-2988(b) provides the statutory procedure a taxing subdivision must follow in order to levy a tax rate that exceeds the revenue neutral rate. K.S.A. 79-2988(b)((1)&(2) require the taxing subdivision publish notice and notify the county clerk of its intent to exceed the revenue neutral rate. K.S.A. 79-2988(b)(3) requires the taxing subdivision hold a public hearing to consider exceeding the revenue neutral rate no sooner than August 20 and no later than September 20. K.S.A. 79-2988(b)(4) requires the taxing subdivision adopt, by majority roll call vote, a resolution or ordinance to exceed the revenue neutral rate. There is no dispute here that the School Board’s actions complied with the requirements set forth in K.S.A.

79-2988(b)(1), (2), and (3). The legal issue presented to the Board here is whether the School Board's actions on September 14, 2022 complied with 79-2988(b)(4)'s requirement that the School Board adopt, by majority roll call vote, a *resolution or ordinance* exceeding the revenue neutral rate.

The evidence before the Board is clear that the Motion passed by the School Board at the September 14 Special Meeting was "to adopt the revenue neutral rate as presented." There was no evidence presented to the Board that the presentation at that Special Meeting included any discussion of the Resolution subsequently signed by the Board President. The undisputed testimony established that the Resolution signed by President Bethell-Smith had not been presented to the Board in any fashion prior to her signature on that document. The School Board members' testimony showed that those voting in favor of the Motion made on September 14 believed they were voting *on a motion* to exceed the revenue neutral rate. There is no evidence, however, that the actual *resolution* exceeding the district's revenue neutral rate, which was signed after the September 14 Special Meeting, was actually adopted by the School Board at the Special Meeting. Further, the Resolution itself is ambiguous as to its effect. While K.S.A. 79-2988(b)(4) clearly states that a resolution or ordinance "must *approve exceeding the revenue neutral rate*," the Resolution signed by President Bethell-Smith states that "the 2022-2023 *budget* with a levy of property taxes exceeding the Revenue Neutral Tax Rates ... *is hereby adopted*." (emphasis added). The subject of the Resolution therefore appears to be adoption of a budget which happens to rely upon a levy exceeding the revenue neutral rate, rather than a separate approval to exceed the revenue neutral levy as required by 79-2988(b)(4).

K.S.A 79-2988 is clear and unambiguous regarding the procedure a taxing authority must follow to adopt a tax rate exceeding the revenue neutral rate. It is a fundamental rule of statutory construction that the intent of the legislature governs if that intent can be ascertained. *In re Appeal of LaFarge Midwest / Martin Tractor Co., Inc.*, 293 Kan. 1039, 1045, 271 P.3d 732 (2012). To determine legislative intent, the tribunal must first examine the language used in the statute, giving common words their ordinary meaning. *LaFarge*, 293 Kan. at 1045; *In re Appeal of Wedge Log-Tech, L.L.C.*, 48 Kan. App.2d 804, 812, 300 P.3d 1105, *rev. denied* (2013). "When the plain language of a statute is unambiguous, we are to give effect to that language without resorting to principles of statutory construction or legislative history." *In re Application of TransCanada Keystone Pipeline, L.P.*, 48 Kan. App. 2d 838, 843, 301 P.3d 335, *rev. denied* (2013).

A plain reading of K.S.A. 79-2988(b) indicates that the School Board did not comply with the prescribed statutory procedure. The statute requires a majority roll call vote adopting a *resolution or ordinance* exceeding the revenue neutral rate for a given budget year. The majority roll call vote of the School Board adopted only

a *motion* to “approve the revenue neutral rate as presented.” While the School Board contends the “as presented” language modifies the motion such that the intent of the individual members becomes relevant, nothing in the written Minutes of the Meeting or said by the members during the Special Meeting was clearly indicative of that intent at the time of the vote. Further, the evidence clearly does not indicate any intent of the members to pass the Resolution ultimately signed by the Board President, as that Resolution was never presented to them prior to the vote on the motion.

This Board is not vested with the equitable authority to correct the School Board’s action to reflect what it may have intended. *See Sage v. Williams*, 23 Kan.App.2d 624, 627, 933 P.2d 775, 779 (1997). Further, the Kansas Supreme Court has ruled in an analogous situation that regardless of what a rule-making body “may have intended to do, if it did not in fact do it – under any reasonable interpretation of the language used – the defect is” not one that can be corrected by the judicial branch, or an administrative agency in this instance. *See Harris v. Shanahan*, 192 Kan. 183, 196 (1963). Even if the intent of the Board Members was to pass a resolution in favor of exceeding the revenue neutral levy for the 2022-2023 school budget year, the record before the board shows they did not do so under any reasonable interpretation of the language used by the School Board at the September 14, 2022 Special Meeting. Further, even if use of the “as presented” language is common with motions made in the School District, that usage does not comply with the explicit instructions of the statute at issue here. If the School Board had voted on a motion “to adopt the resolution approving a levy of property taxes in excess of the revenue neutral tax rate to finance the 2022-2023 budget of USD 348,” the outcome of this matter may have been different. That, however, is not the situation that has been presented to this Board, and this Board is bound to the strict construction of taxation statutes such as K.S.A. 79-2988. *See In re Appeal of Atchison Cablevision L.P.*, 262 Kan. 223, 228, 936 P.2d 721 (1997) (stating that tax statutes should not be read to add that which is not readily found in them or to read out what as a matter of ordinary language is in them).

Because the record evidence indicates that the School Board did not comply with the statutory requirements to exceed the revenue neutral tax rate, pursuant to K.S.A. 79-2988(c)(1), the School Board is ordered to refund to its taxpayers any property taxes over-collected based on the amount of the levy that was in excess of the revenue neutral rate, or reduce the levy on any uncollected taxes to the revenue neutral rate.

IT IS FURTHER ORDERED that the appropriate officials shall correct their records to comply with this order, re-compute the taxes owed by the Taxpayer, and issue a refund for any overpayment.

Any party who is aggrieved by this order may file a written petition for reconsideration with this Board as provided in K.S.A. 77-529. *See* K.S.A. 74-2426(b). The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Board's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to the Secretary of the Board of Tax Appeals. The written petition must be received by the Board within 15 days of the certification date of this order (allowing an additional three days for mailing pursuant to statute).

Rather than filing a petition for reconsideration, any aggrieved person has the right to appeal this order of the Board by filing a petition with the court of appeals or the district court pursuant to K.S.A. 74-2426(c)(4)(A). Any person choosing to petition for judicial review of this order must file the petition with the appropriate court within 30 days from the date of certification of this order. *See* K.S.A. 77-613(b) and (c) and K.S.A. 74-2426(c). Pursuant to K.S.A. 77-529(d), and amendments thereto, any party choosing to petition for judicial review of this order is hereby notified that the Secretary of the Board of Tax Appeals is to receive service of a copy of the petition for judicial review. Please note, however, that the Board would not be a party to any judicial review because the Board does not have the capacity or power to sue or be sued. *See* K.S.A. 74-2433(f).

The address for the Secretary of the Board of Tax Appeals is Board of Tax Appeals, Eisenhower State Office Building, 700 SW Harrison St., Suite 1022, Topeka, KS 66603. A party filing any written request or petition shall also serve a complete copy of any written request or petition on all other parties. Please be advised that the administrative appeal process is governed by statutes enacted by the legislature and no further appeal will be available beyond the statutory time frames.

IT IS SO ORDERED



THE KANSAS BOARD OF TAX APPEALS

KRISTEN D. WHEELER, CHAIR

VIRGINIA A. POWELL, MEMBER

DEVIN SPRECKER, MEMBER

JOYLENE R. ALLEN, SECRETARY