

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW
COMMISSION**

TONY FULTON, TAX
COMMISSIONER,

AND

RUTH SORENSEN,
PROPERTY TAX
ADMINISTRATOR,
APPELLANT(S),

V.

MORRILL COUNTY BOARD
OF EQUALIZATION,

AND

MORRILL COUNTY RODEO &
FARM RANCH,
APPELLEE(S).

CASE NOS: 19E 0009,
20E 0016 & 21E 0007

**DECISION AND ORDER
AFFIRMING THE DECISIONS
OF THE MORRILL COUNTY
BOARD OF EQUALIZATION**

For the Appellants:

Debra L. Williams,
Attorney, Property Assessment
Division

**For Morrill County Board of
Equalization:**

Excused by Order

**For Morrill County Rodeo &
Farm Ranch:**

No Appearance

This appeal was heard before Commissioners Steven Keetle and James Kuhn. Commissioner Keetle presided.

I. THE SUBJECT PROPERTY

The Subject Property is a 155.9-acre parcel located in Morrill County, Nebraska. The legal description and Property Record File (PRF) of the Subject Property are found at Exhibit 11.

II. PROCEDURAL HISTORY

Morrill County Rodeo and Farm Ranch¹ (the Taxpayer) filed an Exemption Application (Form 451) with the Morrill County Assessor (County Assessor) for tax year 2019.² The County Assessor recommended denial of the exemption application and the Morrill County Board of Equalization (the County Board) determined that a portion of the Subject Property was exempt for tax year 2019.³

The Taxpayer filed an Exemption Application (Form 451) with the County Assessor for tax year 2020.⁴ The County Assessor recommended denial of the exemption application and the County Board determined that a portion of the Subject Property was Exempt for tax year 2020.⁵

The Taxpayer filed a Statement of Reaffirmation of Tax Exemption (Form 451A) with the County Assessor for tax year 2021.⁶ The County Assessor reviewed the exemption and recommended denial of the exemption and the County Board determined that a portion of the Subject Property was Exempt for tax year 2021.⁷

Tony Fulton, Tax Commissioner and Ruth Sorensen, Property Tax Administrator (collectively the Department) appealed the exemption

¹ Also referred to as the Morrill County Rodeo and Farm Ranch Association

² Exhibit 1

³ Exhibit 1

⁴ Exhibit 2

⁵ Exhibit 2

⁶ Exhibit 10

⁷ Exhibit 3

decisions of the County Board to the Tax Equalization and Review Commission (the Commission).

The Commission held a hearing on October 7, 2022. Prior to the hearing the County Board was excused by order from participating in the hearing. The Department filed a pre-hearing report as ordered by the Commission that indicated that attempts to contact the Taxpayer had been made but that the Taxpayer had not responded. Exhibits 1 through 12 were offered by the Department and received into the record.

III. STANDARD OF REVIEW

The Commission's review of the County Board's determination is de novo.⁸ When the Commission considers an appeal of a decision of a county board of equalization, a presumption exists that the board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.⁹ That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary.¹⁰

The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.¹¹ Proof that the order, decision, determination, or action was

⁸ See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar County Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

⁹ *Brenner v. Banner County Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

¹⁰ *Id.*

¹¹ Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

unreasonable or arbitrary must be made by clear and convincing evidence.¹²

In an appeal, the Commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based.¹³ The Commission may take notice of judicially cognizable facts, may take notice of general, technical, or scientific facts within its specialized knowledge, and may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.¹⁴ The Commission's Decision and Order shall include findings of fact and conclusions of law.¹⁵

IV. RELEVANT LAW

The Nebraska Constitution specifies that property of the state and its governmental subdivisions used for authorized public purposes is exempt from taxation and the Legislature may classify other exempt properties "owned by and used exclusively for agricultural and horticultural societies and property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user."¹⁶ Pursuant to that Constitutional authorization, the Legislature has required the exemption of the following from property taxes:

- (c) Property owned by and used exclusively for agricultural and horticultural societies;
- (d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property

¹² *Omaha Country Club v. Douglas County Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹³ Neb. Rev. Stat. § 77-5016(8) (Reissue 2018).

¹⁴ Neb. Rev. Stat. § 77-5016(6) (Reissue 2018).

¹⁵ Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

¹⁶ Neb. Const., Art. VIII, § 2(1).

is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin... For purposes of [this] subdivision... educational organization means (I) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education, (II) a museum or historical society operated exclusively for the benefit and education of the public, or (III) a nonprofit organization that owns or operates a child care facility....¹⁷

Statutes exempting property from taxation are to be strictly construed, and the burden of proving the right to exemption is on the claimant.¹⁸ Exclusive use means the primary or dominant use of property, as opposed to incidental use.¹⁹ The exclusive use of the property is what determines the exempt status.²⁰ Further, a property owner's exemption from federal income taxation does not determine whether the owner's property is tax exempt under state law.²¹

There are two overriding factors Courts consider when a request for an exemption is before them. The first is that the property tax burden is necessarily shifted from the beneficiary of an exemption to others who own taxable property, and the second is that the power and right

¹⁷ Neb. Rev. Stat. § 77-202(1)(c) and (d) (Reissue 2018).

¹⁸ *United Way v. Douglas Cty. Bd. of Equal.*, 215 Neb. 1, N.W.2d 103(1983); *Fort Calhoun Baptist Church v. Washington Cty. Bd. of Equal.*, 277 Neb. 25, 30, 759 N.W.2d 475, 480 (2009); *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁹ *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993).
²⁰ See, *Nebraska Conf. Assn. of Seventh Day Adventists v. Bd. of Equalization*, 179 Neb. 326, 138 N.W.2d 455 (1965).

²¹ *Nebraska State Bar Found. v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 465 N.W.2d 111 (1991).

of the state to tax is always presumed.²²

In addition, the Courts in Nebraska have developed several principles concerning requests for exemptions: (1) an exemption is never presumed but must be applied for;²³ (2) the alleged exempt property must clearly come within the provision granting the exemption;²⁴ (3) the laws governing property tax exemptions must be strictly construed;²⁵ (4) the courts must give a “liberal and not a harsh or strained construction ...to the terms ‘educational,’ ‘religious,’ and ‘charitable’ in order that the true intent of the constitutional and statutory provisions may be realized”;²⁶ and (5) this interpretation should always be reasonable.²⁷

In accordance with Neb. Rev. Stat. §77-369, the Tax Commissioner has promulgated rules concerning the exemption of real property. The rules and regulations define an agricultural and horticultural society as a nonprofit organization promoting agricultural interests and includes, but is not necessarily limited to: the Nebraska State Board of Agriculture established by Chapter 2, article 1; county agricultural societies organized pursuant to Chapter 2, article 2; agricultural associations organized pursuant to Chapter 2, article 20; and agricultural organizations pursuant to Chapter 2, article 28.²⁸ The rules and regulations establish that for an educational exemption “[t]he five mandated criteria are ownership, exclusive use, no financial gain or profit, restricted alcoholic liquor sales, and prohibited

²² See, e.g., *Jaksha v. State*, 241 Neb. 106, 112, 486 N.W.2d, 858, 864 (1992); *Ancient and Accepted Scottish Rite of Freemasonry v. Board of County Com’rs*, 122 Neb. 586, 241 N.W. 93 (1932).

²³ *Pittman v. Sarpy Cty. Bd. of Equal.*, 258 Neb. 390, 398, 603 N.W.2d 447, 453 (1999).

²⁴ *Nebraska State Bar Foundation v. Lancaster Cty. Bd. of Equal.*, 237 Neb. 1, 4, 465 N.W.2d 111, 114 (1991).

²⁵ *Nebraska Annual Conference of United Methodist Church v. Scotts Bluff County Board of Equalization*, 243 Neb. 412, 416, 499 N.W.2d 543, 547 (1993).

²⁶ *Lincoln Woman’s Club v. City of Lincoln*, 178 Neb. 357, 363, 133 N.W.2d 455, 459 (1965).

²⁷ *Id.* (citing, *Young Men’s Christian Assn. of City of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593 (1921)).

²⁸ 350 Neb. Admin. Code, Chapter 40, § 004.03 (Rev. 7/3/2013).

discrimination. The property must meet all five criteria for the exemption to be allowed.”²⁹

V. SUMMARY OF THE ISSUES

The Department alleged that there were three unresolved issues in this appeal (a) whether the Subject Property is owned by an agricultural and horticultural society or educational organization (b) whether the Subject Property is used exclusively by an agricultural or horticultural society or for educational, religious, charitable, or cemetery purposes, and (3) whether the Subject Property is used for financial gain or profit to either the owner or user.

VI. FINDINGS OF FACT AND ANALYSIS

The Subject Property is a 155.9-acre parcel located in Morrill County Nebraska owned by the Morrill County Rodeo & Farm Ranch a Nebraska Non-Profit Corporation.³⁰ Only a portion of the Subject Property was exempted by the County Board described as “the fairground.” The Commission is only considering the exempt status of that portion of the Subject Property previously exempted by the County Board.

The Department called Ms. Rose Nelson, the Morrill County Assessor who offered testimony on the ownership and use of the Subject Property. Nelson testified that for each of the tax years involved she recommended that the exemption application for the Subject Property be denied based on ownership and use. Nelson testified that the Taxpayer was not an agricultural and horticultural society or an educational organization and therefore the Subject Property was not owned by a qualified organization. Nelson testified that the Subject Property is leased to the Morrill County Fair Board for approximately nine days a year to use for the County Fair. Nelson further testified that the Subject Property is used for the annual Camp

²⁹ 350 Neb. Admin. Code, ch. 40, § 005.01 (7/3/2013).

³⁰ See, Exhibit 12

Clarke Stampede Rodeo over the Fourth of July and is used for auctions and other events. Nelson testified that the Subject Property is gated and locked when not in use.

The Taxpayer applied for real property tax exemptions as an agricultural and horticultural society and as an educational organization.³¹

Agricultural and Horticultural Society

Neb. Rev. Stat. § 77-202(1)(c) provides exemptions for “[p]roperty owned by and used exclusively for agricultural and horticultural societies.”

The term “agricultural and horticultural societies” is not defined in statute. Nebraska Department of Revenue regulations define this term as:

An agricultural and horticultural society is a nonprofit organization promoting agricultural interests and includes, but is not necessarily limited to: the Nebraska State Board of Agriculture established by Chapter 2, article 1; county agricultural societies organized pursuant to Chapter 2, article 2; agricultural associations organized pursuant to Chapter 2, article 20; and agricultural organizations pursuant to Chapter 2, article 28.³²

The Department argues that the Taxpayer is not one of the four types of entities specially named in this section of the Nebraska Department of Revenue regulations and therefore is not an “agricultural and horticultural society” under the exemption statute. For purposes of construction, a rule or regulation of an administrative agency is generally treated like a statute, because properly adopted and filed regulations have the effect of statutory law. Absent a statutory or regulatory indication to the contrary, language contained in a rule or regulation is to be given its plain and ordinary meaning. A rule or regulation is open for construction only when the language used

³¹ See Exhibits 1,2,3, and 10.

³² 350 Neb. Admin. Code, Chapter 40, § 004.03 (Rev. 7/3/2013).

requires interpretation or may reasonably be considered ambiguous. A court will construe regulations relating to the same subject matter together to maintain a consistent and sensible scheme.³³

The evidence before the Commission shows that the Taxpayer is not one of the four specific entities named in the regulation. The Taxpayer is not the Nebraska State Board of Agriculture, known as the Nebraska State Fair Board since 2002,³⁴ established by Chapter 2, article 1. The Taxpayer is not a county agricultural society organized pursuant to Chapter 2, article 2 whose budget is subject to County Board review.³⁵

Agricultural associations organized pursuant to Chapter 2, article 20 are governed by Neb. Rev. Stat. §§ 2-2001, *et seq.* These statutes require an agricultural association to file with the Nebraska Secretary of State a copy of its constitution and bylaws,³⁶ and it must annually file a statement with a list of its members, names and addresses of its officers, and an itemization of its receipts and disbursements.³⁷ Failure to provide this annual statement results in the association ceasing to exist.³⁸ The Taxpayer has filed documents with the Nebraska Secretary of State as a public benefit corporation, but it has not filed the annual statements required to be an agricultural association.³⁹

Agricultural organizations pursuant to Chapter 2, article 28, are governed by Neb. Rev. Stat. §§ 2-2802, *et. seq.*, which require the organization to file with the Nebraska Secretary of State “a constitution and bylaws or articles of incorporation which are consistent with the purposes of section 2-2801 to 2-2812.”⁴⁰ The

³³ *Colwell v. Managed Care of N. Am., Inc.*, 308 Neb. 597, 605, 955 N.W.2d 744, 749-50 (2021).

³⁴ See, Neb. Rev. Stat. §2-101 *et. seq.* (Reissue 2002)

³⁵ See, Neb. Rev. Stat. §2-250 *et. seq.* (Reissue 2002)

³⁶ Neb. Rev. Stat. § 2-2001 (Reissue 2012)

³⁷ Neb. Rev. Stat. § 2-2002 (Reissue 2012).

³⁸ Neb. Rev. Stat. § 2-2003 (Reissue 2012).

³⁹ Exhibit 12

⁴⁰ Neb. Rev. Stat. § 2-2802 (Reissue 2012).

Taxpayer is not one of the entities, such as the Nebraska Dairymen’s Association, named in Chapter 2, article 28.

The Department’s argument that the Taxpayer is not an agricultural and horticultural society requires the Commission to read the second part of the regulation, which sets forth specifically included entities, as restricting the first part of the regulation which defines an agricultural and horticultural society as simply “a nonprofit organization promoting agricultural interests.”⁴¹ A plain and ordinary reading of the language of the regulation is that the definition of an agricultural or horticultural society is simply “a nonprofit organization promoting agricultural interests.” The language that follows “and includes, but is not necessarily limited to:” provides that the specific entities following the colon are included in this definition but does not exclude other nonprofit organizations that promote agricultural interests.

The record before the Commission is limited as the Department did not provide any of the foundational documents of the Taxpayer, such as the articles of incorporation or by-laws, and the Taxpayer did not participate in the hearing, making the Commission’s analysis more difficult. The Nebraska Secretary of State – Corporation and Business Entity Search provided by the Department however shows that the Morrill County Rodeo & Farm Ranch Association is a Nebraska nonprofit corporation whose nature of business is to “promote agricultural education, husbandry, etc.”⁴² This same search indicates that the Morrill County Rodeo & Farm Ranch Association is a non-profit domestic corporation.⁴³ The Morrill County Rodeo & Farm Ranch Association has been a 501(c)(3) non-profit entity since June of 2017.

Use

The portion of the Subject Property granted an exemption by the County Board is the portion of the parcel that Morrill County uses as

⁴¹ 350 Neb. Admin. Code, Chapter 40, § 004.03 (Rev. 7/3/2013).

⁴² Exhibit 12

⁴³ Exhibit 12

its Fairgrounds. Ms. Nelson testified that there is an exhibit hall, two beef barns, a swine barn, small animal barn, sheep and goat barn, a small show arena, and a large rodeo arena with stands and a crow's nest and pens, and an area that can be used for shooting sports and a dance hall. The evidence before the Commission is that the Subject Property leased to the Morrill County Fair Board for approximately nine days a year for use as the Morrill County Fair grounds.⁴⁴ The Subject Property is otherwise used for the Camp Clarke Stampede Rodeo for two days over the Fourth of July each year. The Subject Property is used for an auction at least annually and it is made available for other events. The Subject Property is locked to prevent access without permission.

Exclusive use means the primary or dominant use of property, as opposed to incidental use.⁴⁵ The Taxpayer maintains the grounds and buildings and leases the Subject Property to the County for use for the Morrill County Fair approximately nine days a year. The Subject Property is used for the Camp Clarke Stampede Rodeo for two days over the Fourth of July. The other uses of the property set forth in the testimony before the Commission are incidental to these uses. The primary use of the Subject Property is as the Morrill County Fairground and Camp Clarke Stampede Rodeo. A county fair is a fair usually held annually at a set location in a county especially to exhibit local agricultural products.⁴⁶ A rodeo is a public performance that features especially contests in bareback bronco riding, calf roping, saddle bronco riding, steer wrestling, and... bull riding.⁴⁷ The Exclusive use of the Subject Property is for activities that promote agriculture.

The Taxpayer is an agricultural and horticultural society as defined in the regulations of the Nebraska Department of Revenue. The portion of the Subject Property granted exemption by the County

⁴⁴ See, Exhibit 8 & 9

⁴⁵ *Neb. Unit. Meth. Ch. v. Scotts Bluff Cty. Bd. of Equal.*, 243 Neb. 412, 499 N.W.2d 543 (1993).

⁴⁶ Webster's Third New International Dictionary, Merriam-Webster, Inc., (2002) p. 521

⁴⁷ Webster's Third New International Dictionary, Merriam-Webster, Inc., (2002) p. 1967

Board is exclusively used by the Taxpayer for the promotion of agricultural activities. The exemption granted by the County Board should be affirmed.

Educational Organization

Because the portion of the Subject Property exempted by the County Board qualifies as exempt under Neb. Rev. Stat. 77-202(1)(c) as property owned and used exclusively for agricultural and horticultural societies it is not necessary for the Commission to address the issue of its qualification for an exemption as property owned and used exclusively by an educational organization.

VII. CONCLUSION

The Commission finds that there is not competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determination. The Commission also finds that there is not clear and convincing evidence that the County Board's decision was arbitrary or unreasonable.

For all of the reasons set forth above, the determination of the County Board is affirmed.

VIII. ORDER

IT IS ORDERED THAT:

1. The decisions of the Morrill County Board of Equalization determining the exempt status of the Subject Property for tax years 2019, 2020 and 2021 are affirmed.
2. This Decision and Order, if no appeal is timely filed, shall be certified to the Morrill County Treasurer and the Morrill County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018)
3. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
4. Each party is to bear its own costs in this proceeding.
5. This Decision and Order shall only be applicable to tax year 2019, 2020, and 2021.

6. This Decision and Order is effective for purposes of appeal on August 7, 2024.⁴⁸

Signed and Sealed: August 7, 2024

Steven A. Keetle, Commissioner

SEAL



James D. Kuhn, Commissioner

⁴⁸ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. § 77-5019 (Reissue 2018) and other provisions of Nebraska Statutes and Court Rules.