

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

WESTERN NEBRASKA MISSIONARY)	
BAPTIST CHURCH,)	
)	CASE NO. 04E-1
Appellant,)	
)	
vs.)	FINDINGS AND
)	FINAL ORDER
KIMBALL COUNTY BOARD OF)	
EQUALIZATION,)	
)	
Appellee.)	

Appearances:

For the Appellant: Kenneth Farrell
P.O. Box 30
Dix, NE 69133

For the Appellee: David Wilson, Esq.
Kimball County Attorney
116 West Second Street
Kimball, NE 69145

Before: Commissioners Hans, Lore, Reynolds, and Wickersham.

**I.
STATEMENT OF THE CASE**

The Western Nebraska Missionary Baptist Church ("the Applicant") owns a 2.76-acre tract of land in the SE Corner of SE¼ of Section 34, Township 15, Range 54, Kimball County, Nebraska. (E2:5; E2:4). The tract of land is improved with a forty-four year old, one-story modular structure with 462-square feet of above-grade finished area ("the subject property"). (E2:4).

The Applicant applied for exemption from real property taxation in November, 2003. (E1). The Kimball County Assessor

("the Assessor") recommended disapproval of the application on January 12, 2004. (E1). The Kimball County Board of Equalization ("the Board") denied the application on February 17, 2004. (E1).

The Taxpayer appealed the Board's decision on March 8, 2004. The Commission served a Notice in Lieu of Summons on the Board on March 15, 2004, which the Board answered on March 26, 2004. The Commission issued an Order for Hearing and Notice of Hearing to each of the Parties on June 29, 2004. An Affidavit of Service in the Commission's records establishes that a copy of the Order and Notice was served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Scottsbluff, Scotts Bluff County, Nebraska, on September 21, 2004. The Taxpayer appeared at the hearing through Kenneth L. Farrell. The Board appeared through David L. Wilson, the Kimball County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

II. ISSUES

The issue before the Commission is whether the Board's decision to deny an exemption from real property taxation for tax year 2004 was incorrect and either unreasonable or arbitrary.

**III.
APPLICABLE LAW**

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51)). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001). The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's decision to deny the requested exemption was unreasonable. *Pittman v. Sarpy County Bd. of Equal.*, 258 Neb. 390, 398 - 399, 603 N.W.2d 447, 453 - 454 (1999).

**IV.
FINDINGS OF FACT**

The Commission finds and determines that:

1. The Applicant has four members. Three of those members are related by blood or marriage.
2. The Applicant is not sponsored by any nationally or regionally organized religion.

3. The Applicant is not a recognized religious organization.
4. The Applicant agrees that the land component of the subject property is predominantly used for the storage of inoperable motor vehicles. The individual who stores the vehicles on the subject property renders services in return for the storage. These services include mowing the grass.
5. The property is not used exclusively or predominantly for religious purposes.

**V.
ANALYSIS**

State law provides a five-part test for determining exemption eligibility. Real property is exempt only when (1) the property is owned by an educational, religious, charitable or cemetery organization; (2) the property is used exclusively for educational, religious, charitable or cemetery purposes; (3) the property is not owned or used for financial gain or profit to either the owner or user; (4) the property is not used for the sale of alcoholic liquors for more than twenty hours per week; and (5) the property is not owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. Neb. Rev. Stat. §77-202(1)(d) (Reissue 2003). A "religious" organization is one whose purpose is the dedication to or profession of a sectarian creed and belief in divine or superhuman power or powers to be obeyed and worshiped,

or the furtherance and enrichment of spiritual faith involving a code of ethics and a spiritual philosophy. Title 350, Neb. Admin. Code, Ch. 40, §005.01. (04/2003).

Only the first three tests are at issue in this appeal. The first issue is whether the property is owned by a religious organization. The Taxpayer is not incorporated. There are four members of the Church, and one other person who attends services but is not a member. Three individual members of the Church are related by blood or marriage.

The Nebraska Supreme Court has noted that driving a Sunday school bus does not constitute a religious practice merely because the bus is owned by a religious organization, the driver is an ordained minister, and the bus is taking church members to a religious ceremony. *Medlock v. Medlock*, 263 Neb. 666, 684, 642 N.W.2d 113, 129, citing *Wollersheim v. Church of Scientology*, 212 Cal.App.3d 872, 66 Cal.Rptr.2d 1 (1989), vacated on other grounds 499 U.S. 914, 111 S.Ct. 1298, 113 L.Ed.2d 234 (1991). The facts of this case are analogous to that decision. The Applicant's Pastor holds a Bachelor's Degree in Theology and a Master's Degree in Theology from Sliddell Baptist Seminary. These degrees were conferred in 2002 and in January, 2004, respectively based on "distance learning" and correspondence courses. The Applicant is not affiliated with any other religious organization, and has no sponsoring church or other religious organization. The

Applicant's Pastor was ordained by his brother, one of the three other members of the Church.

It is uncontroverted that the land component of the subject property is not exclusively used for religious purposes and is used to store a recreational vehicle. The land component is also used to store inoperable motor vehicles and a recreational trailer. The building was used to store a variety of materials until 4 or 5 months ago, when the building was cleaned. The Applicant offered testimony that services are held in the building every Sunday for two members and one other individual.

The Applicant has failed to adduce clear and convincing evidence that the Board's decision was unreasonable or arbitrary. The Board's decision must therefore be affirmed.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
3. The Board is presumed to have acted upon sufficient competent evidence to justify its decision. These

presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's action becomes one of fact based upon all the evidence presented. The burden of showing the Board's action to be unreasonable rests on the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

4. Tax exemption provisions must be strictly construed. *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).
5. Tax exemption provisions cannot be extended by construction. *Id.* The burden of proof is on the party seeking the exemption. *Id.*
6. The Taxpayer has failed to adduce clear and convincing evidence that the Board's decision was incorrect and either unreasonable or arbitrary.
7. The Board's decision must accordingly be affirmed.

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Kimball County Board of Equalization's Order denying the exemption application for the subject property for tax year 2004 is affirmed.
2. The Kimball County Board of Equalization, as required by Neb. Rev. Stat. §77-5017(2) (Reissue 2003, as amended by 2004 Neb. Laws, L.B. 973, §61), is ordered to determine the taxable value of the subject property for tax year 2004.
3. The Kimball County Board of Equalization shall (a) assess such property using procedures for assessing omitted property; (b) determine the taxable value of the subject property within ninety days of the date of this Order; and (c) apply interest, but not penalty, to the taxable value as of the date of this Order, or the date the taxes were delinquent, whichever is later.
4. Any request for relief by any Party not specifically granted by this order is denied.
5. This decision, if no appeal is filed, shall be certified to the Kimball County Treasurer, and the Kimball County Assessor, pursuant to Neb. Rev. Stat. §77-5016(7) (Reissue 2003, as amended by 2003 Neb. Laws, L.B.973, §51).
6. This decision shall only be applicable to tax year 2004.

7. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that I made and entered the above and foregoing Findings and Orders in this appeal on the 21st day of September, 2004. The same were approved and confirmed by Commissioners Hans, Lore and Reynolds and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Reissue 2003).

Signed and sealed this 22nd day of September, 2004.

SEAL

Wm. R. Wickersham, Chair