

02-1185
MISCELLANEOUS
TAX YEAR: 2002
SIGNED: 08-28-2002
GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)	ORDER
)	
Petitioner,)	Appeal No. 02-1185
)	
v.)	Account No.
)	
PROPERTY TAX DIVISION OF)	Tax Type: Miscellaneous Taxes
THE UTAH STATE TAX)	
COMMISSION,)	Tax Year: 2002
)	
Respondent.)	Judge: Davis

Presiding:

G. Blaine Davis, Administrative Law Judge
Palmer DePaulis, Commissioner
Marc B. Johnson, Commissioner

Appearances:

For Petitioner: PETITIONER REP. 1
 PETITIONER REP. 2
For Respondent: RESPONDENT REP. 1, from the Property Tax Division
 RESPONDENT REP. 2, from the Property Tax Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. 59-1-502.5, on July 10, 2002.

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Petitioner is a special district authorized to levy and collect property taxes for the purposes of carrying on the operations and paying the obligations of the district.¹ Petitioner is developing a culinary water system in the AREA.

In 1998, funding commitments were obtained from the Board of Water Resources, the Permanent Community Impact Board, and the USDA Rural Development to cost share with the PETITIONER District the construction of a culinary water project. Progress in developing the construction project was slower than anticipated because of a change in the water sources. The initial plans were to develop the WATER SOURCE, but federal funding could not be obtained for that project. Therefore, the project design was changed to develop the culinary water project using wells instead of the WATER SOURCE. Several well sites were proposed on U.S. Forest Service land. However, approval could not be obtained to drill on Forest Service land, so a test well was then drilled at CANYON. That test well did not produce an adequate supply of water. Later, another test well was drilled at CITY 1, which did result in a good well. Another well was later also drilled on private property, called the WELL.

On December 12, 2001, Petitioner held a budget hearing with its board of directors and with members of the public. However, an amount was not included in the budget for the

¹ Evidence was not presented by either Petitioner or Respondent as to the type of special district. It is believed Petitioner is a metropolitan water district subject to the provisions of Utah Code Ann. §17A-2-801, et. seq. If that assumption is correct, taxes may be levied and collected pursuant to the provisions of Utah Code Ann. §17A-2-818(6). However, no evidence was presented to indicate the decision of the Commission should be different if Petitioner is a special district other than a metropolitan water district.

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development of the new culinary water system because approval had not been obtained from the U.S. Government for either the use of the wells, or for the expenditure of the funds. Based upon difficulties getting the matter approved, Petitioner did not believe it would be able to start the project during calendar year 2002. Therefore, it did not place funds in the budget for the development of the system.

On January 2, 2002, Petitioner received notice from the USDA Rural Development Agency that loan and grant funds had been approved for the development of their culinary water project.

On January 3, 2002, the Community Impact Board authorized a supplemental funding request for Petitioner for the PROJECT.

On February 21, 2002, Petitioner obtained signed agreements for source protection for the CITY 1 Well so that their water source was protected, and the purchase of that well from UDOT was later finalized on April 9, 2002.

On April 19, 2002, the Board of Water Resources reauthorized funding including the supplemental funds incurred by the delays of the project.

In May 2002, Petitioner finalized the property purchase agreement and source protection easements for the WELL and also finalized pipeline alignment easements and rights-of-way for the water system.

Thereafter, on May 24, 2002, Petitioner requested permission to impose a property tax levy and ad valorem tax to cover part of the construction and operational costs for the culinary water

system. The tax would be imposed on approximately (#) property owners in the district, at a rate of .0007, and would produce a total tax revenue of approximately \$\$\$\$\$.

On June 7, 2002, Respondent formally denied the request for the imposition of property taxes based upon Utah Code Ann. §59-2-918(1), which provides in relevant part:

". . . [A] taxing entity may not budget an increased amount of ad valorem tax revenue . . . unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year."

APPLICABLE LAW

Utah Code Ann. §59-2-918(1)(a) provides:

"(1)(a) Except as provided in Subsection (1)(b), a taxing entity may not budget an increased amount of ad valorem tax revenue exclusive of revenue from new growth as defined in Subsection 59-2-924(2) unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year."

Utah Code Ann. §59-2-918.5, provides in relevant part:

"(1) A taxing entity may not impose a judgment levy unless it first advertises its intention to do so and holds a public hearing in accordance with the requirements of this section."

• • • •

(3) The advertisement shall specify the date, time and location of the public hearing at which the levy will be considered and shall set forth the total amount of the eligible judgment and the tax impact on an average residential and business property located within the taxing entity."

(4) If a final decision regarding the judgment levy is not made at the public hearing, the taxing entity shall announce at the public hearing the scheduled time and place for consideration and adoption of the judgment levy.

(5) The date, time and place of public hearings required by Subsections 59-2-918.5(c)(i) and 59-2-918(c)(ii)(B) shall be included on the notice mailed to property owners pursuant to Subsection 59-2-919(4)."

Utah Code Ann. §59-2-923 provides in relevant part:

"Notwithstanding other provisions of law to the contrary, a taxing entity which intends to exceed its certified tax levy may not adopt its final budget until the public hearing specified in Section 59-2-919 has been held."

Utah Code Ann. §59-2-924.1, provides in relevant part:

(1) For purposes of this section:

(a) "Clerical error" means the following in an assessment roll:

- (i) an omission;
- (ii) an error; or
- (iii) a defect in form.

••••

(2) The commission shall adjust a taxing entity's certified tax rate as provided in Subsection (3) if the county legislative body in which the taxing entity is located certifies to the commission in writing that:

- (a) the taxing entity's assessment roll contained a clerical error;
- (b) the county adjusted the clerical error on the assessment roll;
- (c) the taxing entity's actual collections for the year were different than the taxing entity's budgeted collections for the year; and
- (d) the taxing entity notified the county legislative body of the clerical error after the county treasurer mailed the tax notices under Section 59-2-1317, but no later than 60 days after the date on which the county treasurer made the final annual settlement with the taxing entity under Section 59-2-1365.

DISCUSSION

In this matter, it is unfortunate that Petitioner did not advertise the proposed tax increase and comply with the truth in taxation process at the budget hearing. It is recognized by the Commission that Petitioner may have not anticipated that it would receive approval to go forward with the project as rapidly as ultimately happened. However, it is not known to what extent the Board may have considered including financing for the project in its budget for 2002, nor was

evidence presented as to why they may have decided to not include the matter in the budget if they did, in fact, consider that matter.

The statute in this matter is clear that "a taxing entity may not budget an increased amount of ad valorem tax revenue . . . unless it advertises its intention to do so at the same time that it advertises its intention to fix its budget for the forthcoming fiscal year." (U.C.A. §59-2-918). The statute is also clear that "a taxing entity which intends to exceed its certified tax levy may not adopt its final budget until the public hearing . . . has been held."

The legislature did provide for making corrections if there has been a problem created by a "clerical error." Nevertheless, in reviewing the statute relating to clerical error, (U.C.A. §59-2-924.1) the events at issue in this matter do not meet the definition of a "clerical error". Further, there has been no certification by the county legislative body that the problem occurred because of a "clerical error".

Fortunately, Petitioner does have other options such as postponing the development of the project or issuing bonds. At the hearing, it was represented that if the Commission did not grant the requested waiver, it would find other ways of obtaining the necessary financing.

The Commission is reluctant to exercise any powers it may have to waive the requirement to advertise this tax increase and to hold a hearing on such a tax increase in circumstances where it is not clear that the legislature has given a specific grant of authority to the Commission to grant such a waiver, and has not adopted or established the standards under which such a waiver might be given. This is not a case resulting from a natural calamity or catastrophe, nor

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is it a case that will cause a disruption in the provision of governmental services that are critical to the peace, health, safety or welfare of the citizens.

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DECISION AND ORDER

Based upon the foregoing, the Commission hereby denies the request of Petitioner to waive the truth in taxation budget hearing, including the required advertising for any tax increase. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2002.

G. Blaine Davis
Administrative Law Judge

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BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2002.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

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