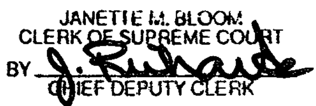
IN THE SUPREME COURT OF THE STATE OF NEVADA

THEODORE G. HARRIS AND MARY LOU HARRIS, HUSBAND AND WIFE; MARYANNE INGEMANSON, AN INDIVIDUAL; AND VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., A NEVADA NON-PROFIT CORPORATION, ON BEHALF OF ITS MEMBERS,
Appellants,
vs.
WASHOE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; WASHOE COUNTY BOARD OF EQUALIZATION, APPOINTED BY THE COUNTY COMMISSION OF WASHOE COUNTY; F. RONALD FOX, CHAIRMAN OF THE WASHOE COUNTY BOARD OF EQUALIZATION; AND MARTHA ALLISON, JON OBESTER, GARY SCHMIDT, AND STEVEN SPARKS, MEMBERS OF THE WASHOE COUNTY BOARD OF EQUALIZATION,
Respondents.

No. 42951

NOV 02 2004



ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellants' request for a preliminary injunction against the Washoe County Board of Equalization. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

Procedural history

This case arises from the Washoe County Board of Equalization's (County Board's) alleged violation of Nevada's Open

Meeting laws. Appellants Theodore and Mary Lou Harris, Maryanne Ingemanson and members of the Village League to Save Incline Assets, Inc., (collectively referred to as "property owners"), noted an increase in their property value by the county assessor's office. In December 2003, the Harrises filed a petition challenging the county assessor's valuation of their property. On Friday evening, January 30, 2004, the Harrises received a telephone call from the County Board, notifying them of their petition hearing on Tuesday, February 3, 2004. The hearing agenda had been posted three days previous to the meeting in at least four public places, as required by NRS 241.020. Nevertheless, the Harrises had only received one working day's personal notice of the hearing. Ingemanson and other members of the Village League were randomly given personal notices of their hearings, and many of these notices were less than five days before the pertinent hearings.

Subsequently, the property owners asked the County Board to suspend the hearings so that they could challenge their alleged lack of notice in the district court. The County Board refused to suspend the hearings and continued to schedule hearings regularly. The property owners sought a preliminary injunction from the district court, but the court denied their request. The property owners then appealed.

Discussion

The issue before us is one of statutory construction. A statute's meaning is a question of law that we review de novo.[1] If a statute's language is plain and unambiguous, we look no further to discern

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[1]A.F. Constr. Co. v. Virgin River Casino, 118 Nev. 699, 703, 56 P.3d 887, 890 (2002).

the legislature's intent.[2] When, however, more than one meaning may be drawn from statutory language, the statute is ambiguous and must be construed in accordance with legislative intent. Reason and public policy are used in this analysis, along with any relevant legislative history and principles of statutory construction.[3] One rule of statutory construction provides that, "'no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided.'"[4]

The Nevada Open Meeting Law, as set forth in NRS Chapter 241, governs all meetings of a public body.[5] Here, the parties do not dispute that the County Board is a public body under the definitions set forth in NRS 241.015(3), and that the County Board takes administrative actions in its capacity as a public body.[6] The County Board has the power

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[2]Coast Hotels v. State, Labor Comm'n, 117 Nev. 835, 840, 34 P.3d 546, 550 (2001).

[3]A.F. Constr., 118 Nev. at 703, 56 P.3d at 890; State, Div. of Insurance v. State Farm, 116 Nev. 290, 294, 995 P.2d 482, 485 (2000).

[4]Paramount Ins. v. Rayson & Smitley, 86 Nev. 644, 649, 472 P.2d 530. 533 (1970) (quoting Torreyson v. Board of Examiners, 7 Nev. 19, 22 (1871) (republished at 5-6-7 Nev. 711)).

[5]See NRS 241.010; NRS 241.015.

[6]NRS 241.015(3) provides in part:

> "[P]ublic body" means any administrative, advisory, executive or legislative body of the State or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue,

continued on next page . . .

and duty to determine the valuation of any real property and may change and correct any valuation determined to be incorrect.[7] A property owner who wishes to challenge the assessed value may appeal to the County Board.[8]

NRS 241.020[9] requires that all public meetings be noticed in writing at least three working days in advance. The parties agree that the County Board was required to give this notice before its hearings, and the property owners do not assert that notice under NRS 241.020 was defective or that they were entitled to personal notice under this statute. Instead, the property owners maintain that they were entitled to additional, personal notice of the hearings under NRS 241.034, which governs the notice requirements for public hearings involving an "administrative action against a person" or real property taken by eminent domain. NRS 241.034 calls for either five business days' personal written notice or twenty-one business days' notice if the notice is served by certified mail.

. . . continued

> including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof. . . .

[7]See NRS 361.345(1).

[8]See NRS 365.356; NRS 365.357.

[9]More specifically NRS 241.020(2) states, in pertinent part, that written notice of any meeting must be provided at least three business days before the meeting's date. A copy of notice must be posted at the public body's principal office and at least three other places within this time period. Additionally, if any person has requested notice of the public body's meetings, notice must be mailed to this person at least three business days before the scheduled meeting.

In this case, the language "administrative action against a person," which triggers the five-day personal notice requirement, is subject to more than one reasonable interpretation. The property owners assert that this language should be read broadly, to include all administrative actions that are directed at specific individuals, as opposed to actions that have a more general impact. Consequently, according to the property owners, the County Board's land valuation hearings constitute administrative actions taken against the property owners as persons. Conversely, the County Board asserts that the phrase "administrative action against a person" should be more narrowly construed to include only those actions involving an individual's characteristics or qualifications, not those of real property.

Although we recognize that property taxes are paid by and enforced against the individuals who own the property, our rules of statutory construction compel us to apply the more narrow approach urged by the County Board. If we were to adopt the more broad view advocated by the property owners, then the second part of NRS 241.034, which requires personal notice when real property is subject to eminent domain proceedings, would be rendered nugatory. For instance, if we construed "administrative action[s] against a person" as including proceedings involving a person's realty, then "administrative action[s] against a person" would necessarily include eminent domain proceedings, and the statute would not need to include a separate provision covering eminent domain.

The more narrow interpretation is also more reasonable than the broad interpretation. As the County Board has a relatively short period of time to complete its hearings with respect to property valuations,

the more general, three-day posting requirements are more sensible and comport with administrative efficiency. Additionally, the interpretation we adopt more clearly delineates which administrative actions are subject to personal notice under NRS 241.034. Under a broad construction, determining which administrative actions are actions against a "person" and which actions are against the public could prove to be a difficult and arduous task, particularly in situations involving more than one person, but less than an entire community. Consequently, we conclude that the property owners were not entitled to personal notice under NRS 241.034, and the district court did not err in denying a preliminary injunction on this basis.

Finally, although the property owners assert that they do not set forth a separate due process claim with respect to required notice, they state, in a footnote, that "[t]he denial of due process. . . is and has been part of the policy argument which supports the application of [NRS 241.034]" and that "an expressed intent to protect individual citizens from government action necessarily reflects the Legislature's due process concerns." As noted, we have given due accord to the intent of the Legislature and have applied the rules of statutory construction in concluding that the Legislature intended a more narrow interpretation of NRS 241.034. Additionally, even though the property owners have not properly raised a due process claim and consequently we do not analyze the due process issue, we note that with respect to property assessments, due process does not require the same level of notice and hearing as is required for judicial proceedings.[10] It has long been held that for

[10]16D C.J.S. Constitutional Law § 1368, at 534-35 (1985).

increased tax assessments by county boards of equalization, no specific type of notice is necessary;[11] instead, notice generally complies with due process requirements if it meets statutory requirements and is reasonably sufficient under the particular circumstances.[12] The Supreme Court of the United States and several states have specifically determined that notice by publication for tax assessments is adequate, and personal notice is not necessary when increased property assessments are at issue.[13] We must agree with the judgment of the district court in denying the preliminary injunction. Accordingly, we

ORDER the judgment of the district court AFFIRMED.[14]

_______________, J.
Rose

_______________, J.
Becker

_______________, J.
Gibbons

_______________, J.
Douglas

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[11]It should be noted that NRS 241.020(3)(b) allows for the "Providing [of] a copy of the notice to any person who has requested notice of the meetings of the public body."

[12]See Hagar v. Reclamation Dist. No. 108, 111 U.S. 701, 708-11 (1884).

[13]See, e.g., Hagar, 111 U.S. 701; Westinghouse Electric Corp. v. County of Los Angeles, 116 Cal. Rptr. 742 (Ct. App. 1974); People v. Orvis, 301 Ill. 350 (1921); Kuntz v. Sumption, 19 N.E. 474 (Ind. 1889); Common Council v. Department of Finance, 241 N.W. 727 (S.D. 1932).

[14]The Honorable Miriam Shearing, Chief Justice, voluntarily recused herself from participation in the decision of this matter.

Hon. Steven P. Elliott, District Judge
Woodburn & Wedge
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

MAUPIN, J., with whom AGOSTI, J., agrees, dissenting:

In my view, the majority has engaged in an exercise in statutory interpretation favoring the convenience of government over the people it serves.

This matter involves the notice requirements for public hearings conducted in connection with landowner petitions challenging increases in valuations by county assessors. In this case, the property owners and the Washoe County Board of Equalization agree that general public notice of the hearings was correctly given under NRS 241.020, which requires public posting of written notice of any meeting of a public body at least three business days in advance of the meeting date. However, as noted by the majority, the landowners claim entitlement to additional "personal notice" under NRS 241.034, which provides for a longer notice period than the general public notice statute. Notices under NRS 241.034 are required in addition to general public meeting notices under NRS 241.020.[1]

NRS 241.034 forbids public bodies such as the County Board from considering at public meetings whether to "[t]ake administrative action against a person," or "[a]cquire real property owned by a person by the exercise of the power of eminent domain,"[2] without providing "written notice to that person of the time and place of the meeting."[3] Notice under NRS 241.034 must be delivered personally to the person affected "at least

[1]See NRS 241.034(3).

[2]NRS 241.034(1)(a) and (b) (emphasis added).

[3]Id.

5 working days before the meeting,"[4] or "sent by certified mail to the last known address of that person at least 21 working days before the meeting."[5]

The majority concludes that the additional personal notice requirements under NRS 241.034 do not pertain to changes in assessment valuations, reasoning that assessments are addressed to the property itself and, thus, do not involve administrative "action against a person." The majority bases its view on a public policy consideration that providing notices under NRS 241.034 in such matters would be inconvenient to the County Board and its operatives. In this, the majority anomalously adopts a "narrow view" of a statute that was enacted to maximize citizen opportunities to respond to government action concerning them.

The majority justifies this "narrow view" on the basis that notice under NRS 214.034 concerning real property reassessments would render nugatory its separate notice requirement for condemnation actions. More particularly, the majority observes that:

> [I]f we construed "administrative action[s] against a person" as including proceedings involving a person's realty, then "administrative action[s] against a person" would necessarily include eminent domain proceedings, and the statute would not need to include a separate provision covering eminent domain.

While this argument is elegant in its construct, it places too fine a point on the Legislature's intent in providing a medium for resisting government action. To me, the separate requirements do not compel such a

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[4]NRS 241.034(2)(a).

[5]Id.

construction. Under the broad construction offered by the landowners, a public body contemplating the exercise of condemnation powers must still provide additional notice under this statute. The mere fact that the Legislature specifically mentions condemnation decisions in this additional notice statute does not mean that "actions against persons" must exclude any non-condemnation action by a public body concerning real property owned by members of the public.

Going further, the majority interpretation of NRS 214.034 strongly implies that governmental actions adversely affecting a piece of real property, such as an increase in the tax upon it, are not actions taken against the owner. Thus, the majority embraces the County Board's theory that

> "administrative action against a person" should be more narrowly construed to include only those actions involving an individual's characteristics or qualifications, not those of real property.

Ownership in real property is not such an abstract concept. The property owner invests in the property, expects some sort of return on his or her investment in it, pays the taxes assessed and pays down any mortgage obligation encumbering the property. In short, a change in assessed valuation results in no change to the property itself. It is the landowner that pays the price of the reassessment—he or she pays the higher tax or loses the property on the public auction block. Thus, because people own property in reality and not in the abstract, reassessment decisions are truly actions against the person who owns the property. Moreover, the "action" that is the subject of this case concerns petitions by the landowners themselves. Finally, it is also important to note that the 2001 Legislature added the notice requirements of NRS 241.034 to those provided in NRS 241.020. These additional notices are not unreasonable

and account for the difficulty individual "persons" encounter in responding to generally circulated notices of public body action.

The right to own property is a personal right guaranteed under the U.S. and Nevada Constitutions. The notion that a hearing on property revaluation for tax assessment purposes involves no action against the person who owns the property simply cannot be defended.

The majority today sacrifices fair and maximal involvement of its citizens on the alter of "administrative efficiency." Even worse, we do so through the expediency of a highly technical construction of a statute designed to protect Nevada citizens from the power of its government. Because we should not draw such fine distinctions when balancing the rights of our fellow citizens, I dissent.

_______________, J.
Maupin

I concur:

_______________, J.
Agosti