IN THE SUPREME COURT

STATE OF NORTH DAKOTA

In the matter of Appeal of Grand Forks Homes, Inc.; Continental Homes, Inc.; Homestead Place; MDI Limited Partnership #35; Faith & Hope, LP; Terzetto Village, LLC; and GFH Supportive Housing, LLC, Appellants, v. State of North Dakota, by and through State Board of Equalization, and Grand Forks County, Appellees.	Supreme Court No. 20100198 Grand Forks Co. No. 09-C-1997

On Appeal from the Judgment of the District Court
Northeast Central Judicial District
Grand Forks County, North Dakota
The Honorable Debbie G. Kleven, District Judge, Presiding

BRIEF OF APPELLEE - STATE BOARD OF EQUALIZATION

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2. The District Court properly denied Appellant Property Owners' petitions for the District Court to amend the pleadings, issue a writ of mandamus, and allow amicus curiae briefs.

STATEMENT OF CASE

Following denial of their requests for property tax exemption from both the City of Grand Forks, North Dakota Board of Equalization, and the Grand Forks County, North Dakota Board of Equalization, the Appellants, Property Owners ("Property Owners"), petitioned the North Dakota State Board of Equalization ("State Board") for review under N.D.C.C. § 57-12-06(3). Appellant's Appendix ("App."), pp. 12 – 38. The State Board heard from the Property Owners at the annual State Board Meeting, held on August 11, 2009, and again at a regular, monthly meeting on September 22, 2009. App. p. 50. Following the second appearance, the State Board determined it did not have authority under North Dakota Constitution Article X, § 5, or Chapter 57-13, N.D.C.C., to grant the relief Property Owners wanted -- namely to either reclassify the properties in question as "exempt" or formally declare or recognize those properties as being exempt. App. pp. 48-49, 51.

On October 23, 2009, North Dakota State Tax Commissioner Cory Fong, in his capacity as Secretary, North Dakota State Board of Equalization, was served a copy of

the Notice of Appeal and Specification of Errors for 2009 Property Tax Exemption, in this case. App. pp 39 – 47. Grand Forks County, North Dakota ("Grand Forks County"), was named as a co-Appellee to this action.

For the reasons set forth in its *Motion to Dismiss*, dated November 18, 2010, the State Board contended, under Rule 21 of the North Dakota Rules of Civil Procedure, it was not a proper party to the action and moved that it be dismissed as a party. App. p. 1. Oral arguments on that Motion were heard by the Northeast Central District Court on January 19, 2010. Prior to that oral argument, however, on January 11, 2010, Property Owners filed a second Motion, namely a Motion to Amend and to convert the pleadings, serve a summons and complaint upon the State Board and Grand Forks County, to issue a writ of mandamus ordering the State Board to take certain action, and to allow the filing of amicus curiae briefs on the matter before the District Court. App. p. 2.

After the first oral argument noted above, the District Court held additional oral arguments to hear matters related to the Property Owners' second Motion. On March 3, 2010, the State Board and Grand Forks County argued that Property Owners' latest Motion was an impermissible attempt to convert the existing appeal of the State Board's determination into a collateral attack on the State Board and Grand Forks County. App. p. 57. Additionally, the State Board argued that Property Owners misapprehended the basis upon which a writ of mandamus may lie given the clear and present avenue of relief previously available to them from the decision of Grand Forks County (*see infra*). App. p. 57. That avenue was clearly mapped out to Property Owners by state law and highlighted to the Court by Grand Forks County in its January 27, 2010 *Reply to the Motion of Appellants to Amend.* App. p. 2. Finally, both the State Board and Grand

Forks County argued that amicus curiae briefs were not authorized in this instance under any state law or applicable rule of procedure.

On April 28, 2010, the District Court issued its Order in this matter. App. pp. 52 – 58. In its ruling, the District Court held, *inter alia*, that the State Board was not a proper party to these myriad actions, the State Board lacked constitutional or statutory authority to reclassify or re-characterize the Property Owners' property as exempt, and the State Board was "without any legal authority to reverse this decision and grant Appellant's request for exemption." App. pp 55-56.

Appeal to this Court by Property Owners then followed. For the reasons set forth below, the State Board respectfully requests that the North Dakota Supreme Court affirm the judgment of the District Court in all respects.

JURISDICTION ON APPEAL

This Court has jurisdiction to hear this matter under N.D.R.App.P. 35(a) and N.D.C.C. ch. 28-27. The application and interpretation of statutes are questions of law fully reviewable by this Court. Rojas v. Workforce Safety and Ins., 2006 ND 221, ¶13, 723 N.W.2d 403, 406 (N.D. 2006).

ARGUMENT

A. The District Court properly held that the State Board of Equalization had no legal authority to make a determination regarding tax exempt status of Appellant Property Owners' property and was therefore not a proper party to the original action under Rule 21, N.D.R.Civ.P.

1. State Board Had No Legal Authority to Determine Exempt Status

Article X, Section 4 of the North Dakota Constitution provides in part that "[a]ll taxable property except as hereinafter in this section provided, *shall be assessed in the county, city, township, village or district in which it is situated*, in the manner prescribed

by law." N.D. Const. art. X, § 4. (emphasis added). In contrast, the State Board's assessment powers are described in Article X, Section 4 of the North Dakota Constitution as pertaining to assessment of "all railroad companies . . . telegraph or telephone companies . . . [and] corporation[s] used for the purpose of furnishing electric light, heat or power." N.D. Const. art. X, § 4. The assessment of these types of "centrally assessed" statewide entities is reserved exclusively for the State Board of Equalization. N.D. Const. art. X, § 4, N.D.C.C. § 57-02-01(4). App. p. 55.

The key distinction is that the initial classification (i.e., the designation of the property as residential, agricultural, commercial, or exempt) and assessment of property not subject to central assessment, discussed *supra*, are powers granted solely to the townships, cities, and counties in which the property lies. N.D. Const. art. X, § 4. The State Board is not granted that authority.

A taxing jurisdiction's assessor is responsible for "list[ing] and assess[ing] . . . [a]ll real property subject to taxation." N.D.C.C. § 57-02-11(1). Also, under N.D.C.C. § 57-02-14, "[a]t the time of making the assessment of real property, *the assessor shall enter* in a separate list *each description of property exempt by law* and shall value it in the same manner as other property, designating in each case to whom such property belongs and for what purpose used." (emphasis added). Thus, if a person or entity wishes to have their property exempted from property tax they must file a certificate with the assessor and the county auditor or else "*the assessor* shall regard the property as nonexempt property *and shall assess it as such.*" N.D.C.C. § 57-02-14.1. (emphasis added).

Additionally, North Dakota Century Code lays out the assessment duties of the local taxing jurisdictions indentified above. App. pp. 55-56. Under N.D.C.C. § 57-09-

04, "[t]he *township board of equalization* shall ascertain whether all taxable property in its township has been properly placed upon the assessment lists and duly valued by the assessor." (Emphasis added). The *city board of equalization* "shall proceed to equalize and correct the assessment roll . . . [i]t may change the valuation and assessment of any real property upon the roll by increasing or diminishing the assessed valuation thereof as is reasonable and just." N.D.C.C. § 57-11-03. And, the county's duties are laid out in N.D.C.C. § 57-12-04 which provides "*the county board of equalization* shall examine and compare the assessments returned by the assessors of all the districts within the county and shall proceed to equalize the same throughout the county between the several assessment districts." (Emphasis added). It is only *after* the townships, cities, and counties have completed their assessments that the State Board "shall examine and compare the returns of the assessment of taxable property *as returned by the several counties* in the state." N.D.C.C. § 57-13-03. (emphasis added).

As pertains to this matter, the general duties and powers of the State Board are found in N.D.C.C. § 57-13-04. In particular, this section of law provides that the State Board "shall *equalize the valuation* and *assessment of property* throughout the state, and has power to equalize the *assessment* of property in this state between assessment districts of the same county, and between the different counties of the state." N.D.C.C. § 57-13-04. (emphasis added). Neither N.D.C.C. § 57-13-03 nor N.D.C.C. § 57-13-04 grant the State Board authority to reclassify property as *exempt* from ad valorem taxation.

Interestingly, specific authority to reclassify property is only provided to counties under N.D.C.C. § 57-12-06(2)(c) which provides "If a county board of equalization ... determines that any property of any person has been listed and assessed in the wrong

classification, it shall direct the county auditor to correct the listing so as to include such assessment in the correct classification." Nothing in the North Dakota Constitution, from which the State Board's powers are framed, or Chapter 57-13, N.D.C.C., allows the State Board to declare as a matter of law the properties to be exempt, or acknowledge the properties as exempt as some sort of ministerial decree as Property Owners requested. The District Court, in its April 28, 2010 Order, recognized these inherent limitations when it held that "Chapter 57-13 of the North Dakota Century Code does not grant the SBOE *any authority* to reclassify property as exempt." App. p. 54. (emphasis added).

Instead, N.D.C.C. § 57-13-04(2), which relates to equalization of aggregate parcels of property (i.e., more than one parcel within a local taxing jurisdiction which has been the subject of an appeal to or review by the State Board), allows the SBOE to *lower* or *raise* the value of real property. More specifically, N.D.C.C. § 57-13-04(1) only provides that the State Board shall "equalize the assessment of real property by *adding to the aggregate value* thereof in any assessment district ... in which the board may believe the valuation too low, such percentage rate as will raise the same to its proper value as provided by law, and *by deducting from the aggregate* assessed *value* thereof, in any assessment district in a county and every county in the state in which the board may believe the value too high, such percentage as will reduce the same to its proper value as provided by law." (emphasis added).

Additionally, N.D.C.C. § 57-13-04(3)(a) and (b), which relate to equalizing individual assessments (i.e., individual property owners who have appealed local jurisdiction determinations to the State Board) similarly limits the scope of review of the State Board with appeals from individual owners. If the State Board believes individual

"assessment [is] too high, the board may reduce the assessment on any separate piece or parcel of real estate." N.D.C.C. § 57-13-04(3)(a). If the State Board "believes an assessment to be too low, the board may increase the assessment on any separate piece or parcel of real estate." N.D.C.C. § 57-13-04(3)(b).

Neither provision of law pertaining to aggregate revaluations or individual revaluations, *supra*, allows the State Board to reclassify property or to declare it to be exempt. In other words, once the county, city, or township classifies property as residential, commercial, agricultural or exempt property, values the property, and assesses the tax accordingly, the State Board may then only raise or lower the values of individual properties upon appeal by the taxpayer. N.D.C.C. § 57-13-04(3). The District Court correctly concluded that North Dakota law does not afford the State Board any authority to grant the exemption requested by the Property Owners. App. pp. 54 – 56.

Throughout the course of this matter, the State Board found itself inundated by a rather dizzying array of filings by the Property Owners. Rather than asking the State Board to reconsider assessments and valuations made at the County level -- which request would fall squarely within the purview and authority of the State Board -- the Property Owners instead sought to bootstrap the State Board into their grievance with Grand Forks County. Presumably, this move would thereby force the State Board to settle this local matter once and for all by declaring the property to be exempt.

In this regard, Property Owners mistakenly attributed more power to the State Board than the statutes afford: the State Board is limited to only those powers associated with equalization of valuation and assessment provided in Chapter 57-13. The State

Board may not reclassify property, whether from residential to commercial, agricultural to residential, or, as sought in this case, from taxable to exempt.

With this last point, Property Owners' request to the State Board created an irresolvable dichotomy. As a matter of basic property law, all property is classified, has value, and is "subject to taxation unless expressly exempted by law." N.D.C.C. § 57-02-03. And, even "property exempt [from taxation] by law" must be valued "in the same manner as other property." N.D.C.C. § 57-02-14. Thus, Property Owners' properties are not without value. So, mechanically, what the Property Owners actually sought from the State Board was actually a reassessment of the taxes assessed against the properties to "zero," because of their assertion the properties were exempt. But, for the State Board to conclude as such would necessarily mean that it would first have to acknowledge or declare the properties to be exempt, thereby justifying the reassessment to zero. Again, this power to reclassify or re-characterize the properties to be exempt is beyond the authority of the State Board -- the State Board cannot deem these properties to be exempt, and accordingly, cannot then reassess them to zero to reflect an exempt status. The District Court recognized this statutory barrier when it declared the State Board to be "without authority" in its April 28, 2010 Order. App. pp. 54 – 56.

2. <u>State Board Not a Proper Party under Rule 21, N.D.R.Civ.P.</u>

Under Rule 21 of the North Dakota Rules of Civil Procedure "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." N.D.R.Civ.P. 21. It was proper for the District Court to drop the State Board as a party to this action because it should never have been added in the first place. Rule 19(a) of the North Dakota Rules of Civil

Procedure outlines the circumstances under which it is mandatory to join a party in an action. That Rule provides:

> (a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action must be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest.

N.D.R.Civ.P. 19(a).

In Schroeder v. Burleigh County Bd. of Comm'rs, 252 N.W.2d 893 (N.D. 1977), the Court held "[a] person should be joined as a party in an action if (1) in his absence complete relief cannot be accorded, or (2) he claims an interest which he will not be able to protect if he is not joined." Schroeder v. Burleigh County Bd. of Comm'rs, 252 N.W.2d at 896. The District Court below recognized that the State Board did not meet these requirements and as such, was not a mandatory party to the action -- in other words, the District Court saw that complete relief may have been accorded the Property Owners without joining the State Board. App. pp. 54 - 56.

Additionally, if the State Board was "a necessary party, in the sense that in its absence complete relief cannot be accorded among those already parties, Rule 19(a), N.D.R.Civ.P. provides that such a "necessary" party should be joined." Kouba v. Great Plains Pelleting, Inc., 372 N.W.2d 884, 887 (N.D. 1985). However, a party such as the State Board is "indispensible only where the ability of the court to make an equitable adjudication in the absence of that party is seriously impaired ..." Kouba v. Great Plains Pelleting, Inc., 372 N.W.2d at 887.

In this instance, as argued above, the State Board did not have any authority necessary to direct the actual relief the Property Owners sought -- exemption. The District Court further reinforced the reality that complete relief was available to Property Owners when it held that the "North Dakota Constitution speaks to the assessment of property and delegates this responsibility to the local government." App. pp. 54-55. The District Court, in holding as such, was referring to Article X, Section 4 of the North Dakota Constitution, *supra*, when it concluded that the County of Grand Forks was the appropriate entity to determine "this question of fact" whether the Property Owners' property would or would not be classified as exempt. App. p. 55.

In other words, the Property Owners were not without avenues of relief nor were their interests impaired by the District Court's determination not to join the State Board to the action. Abatement and appeal of the local action to the District Court in which the property lies were both available under Chapter 57-23, N.D.C.C. In the end, though, in order to satisfy the Property Owners relentless petitions, the local governing bodies would have been required to recognize the property to be exempt or the State Board would have been forced to make that recognition. That outcome was not within the authority of the State Board. It did not have the power to grant the relief Property Owners sought nor should it have been a party to this action. Those were the conclusions of the District Court. This Court should affirm those conclusions.

B. The District Court properly denied Appellant Property Owners' petitions for the District Court to amend the pleadings, issue a writ of mandamus, and allow amicus curiae briefs.

1. Amended Pleadings

One of the many requests of Property Owners well into the course of this matter was a Motion to Amend Pleadings and serve a summons and complaint upon the State Board and Grand Forks County, filed with the District Court on January 7, 2010. App. p. 2. This motion asked the District Court to allow Property Owners to amend their pleadings to convert the pending appeal to a state court action against the State Board and Grand Forks County, or, in the alternative, for leave of court to serve a summons and complaint upon both Appellees and to allow amicus curiae briefs to be filed in the action.

In filing this array of requests, the Property Owners tacitly admitted they had chosen the wrong forum in which to seek redress for their grievances. Rather than seeking relief in District Court or through the abatement process, they chose to solicit support from the State Board by asking it to declare or acknowledge the properties in question to be exempt. Id.

However, the District Court saw through this attempt and swiftly rejected it. App. p. 57. The District Court reminded the Property Owners it had previously "determined that the SBOE lacks authority to grant the requested exemptions and that the appeal of the County's July 7, 2009, decision was not timely filed. Through the Motion to Amend, Appellants are now attempting to *collaterally attack* the decisions of the County and the SBOE. ... There is *no clearly recognized duty* that the SBOE has the authority to grant an exemption from taxation for Appellants' properties." Id. (emphasis added).

With regard to appropriate forums, Property Owners had a proper forum in which to seek their redress. The attempt to amend their pleadings was unnecessary.

However, Property Owners made their choice -- a tactical decision to take the "fork in the road" leading to the State Board. As is more fully argued by Grand Forks County in its *Motion to Dismiss*, dated November 10, 2009, the proper fork -- in other words, the proper forum -- would have been for Property Owners to pursue this matter with the District Court which might have been able to grant the relief requested from the local governing board. App. p. 2. Grand Forks County, in that *Motion to Dismiss*, *supra*, and its Response to the Motion to Amend in District Court, filed on January 27, 2010, correctly argued that the choice Property Owners made (seeking relief from the State Board) foreclosed any opportunity for them to then backtrack to the County once they discovered the State Board could not provide them with what they wanted. App. p. 2.

Property Owners failed to file their appeal of Grand Forks County's denial of their application for exemption within the 30 day statutory window of opportunity found in N.D.C.C. § 28-34-01. Their motion to amend was an attempt to correct their errors with respect to the correct avenue to appeal Grand Forks County's determination. The consequences of these tactical decisions made by Property Owners in this case were the recognition by the District Court of this error and the proper denial of Property Owners' attempt to collaterally attack the decisions of the County and State Board. App. p. 57.

A case Property Owners continued to erroneously rely upon throughout their pleadings to support their contention that exhaustion of administrative remedies (by having the State Board decide the exemption issue rather than appealing to District Court) is Shark Brothers, Inc. v. Cass Co., 256 N.W.2d 701 (N.D. 1977). In this case, the

Shark Brothers Corporation sought to prevent Cass County from listing its property on the tax rolls and procedurally argued that exhaustion of administrative remedies at the county and state tax appeals board (which no longer exists) levels was necessary before proceeding to district court. Shark Brothers, Inc., 256 N.W.2d at 704-705.

However, the Shark Brothers, Inc. case unequivocally pointed out two key things. First, "whether or not "exhaustion of remedies" may be applied or resorted to in each instance depends on a mixed bundle of considerations not necessarily related to "exhaustion," including, but not limited to, expertise of administrative bodies, statutory interpretation, pure questions of law, constitutional issues, ... inadequacy of administrative bodies, etc." Shark Brothers, Inc., 256 N.W.2d at 705. And second, that the "above factors demonstrate that the doctrine of exhaustion of remedies is not firmly established and is of limited practical use by the courts." Id.

Since the District Court held that under the North Dakota Constitution and Century Code the State Board was without authority to determine the exempt status of Property Owners' properties, the District Court concluded that Property Owners' resort to the State Board was neither necessary nor proper. App. p. 55. Further, this case demonstrated that exhaustion of remedies was of no "practical use" in this case -- the appropriate course of action would have been for the District Court to remand the matter back to Grand Forks County -- the local governing board -- for a decision, provided the Court determined it had jurisdiction over this matter and the County had acted in an arbitrary, capricious, or unreasonable manner when it first took action on Property Owners' request. Shark Bros., Inc. v. Cass Co., 256 N.W.2d at 705.

2. Writ of Mandamus

Next, Property Owners sought a writ of mandamus from the District Court to force what they believed should have been the determination of the State Board -- acknowledgement or the granting of exempt status. As the District Court properly recognized, this failed attempt would have been a misapplication of the writ. App. p. 57.

Moreover, as argued by Grand Forks County in its January 27, 2010 Response to the Motion to Amend in District Court, Property Owners attempt to seek this writ from the District Court would have enabled them to bypass Grand Forks County's previous determination that the properties in question were not exempt (assuming the State Board declared them to be exempt). App. p. 2. Property Owners could then have argued the State Board's determination was binding on other exemption applications pending before Grand Forks County. Id.

a. When a Writ of Mandamus is Appropriate

"The writ must be issued in all cases when there is not a plain, speedy, and adequate remedy in the ordinary course of law. It must be issued upon affidavit upon the application of the party beneficially interested except those writs issued sua sponte by the Supreme Court." *See* N.D.C.C. § 32-34-02. However, as the District Court correctly pointed out, "[U]nder the facts at hand, this Court does not have authority to issue a writ of mandamus." App. p. 57.

The State Board, in District Court, asserted that a writ of mandamus is a judicial remedy which commands performance in limited situations to achieve a specific purpose. Nationwide Corp. v. Northwestern Nat. Life Ins. Co., 87 N.W.2d 671, 680 (Minn. 1958). A mandamus is appropriate where the following elements are present: (1) the party

seeking relief must demonstrate a clear legal right to the act requested; (2) the defendant must have a clear legal duty to perform the act requested; (3) performance of the duty-bound act must be ministerial in nature and not involve the exercise of discretion; and (4) the defendant must have neglected or refused to perform the act requested, and the time for performance of the act must have expired. In re T.H.T., 665 S.E.2d 54, 59 (N.C. 2008). The party seeking relief must have no other adequate remedy in the ordinary course of the law. Bismarck Tribune Co. v. Wolf, 255 N.W. 569, 572 (N.D. 1934).

The movant has the burden to establish his standing and to establish all the necessary elements for mandamus, namely that no other clear, speedy, or adequate remedy is available. Burley v. North Dakota Dept. of Transp., 603 N.W.2d 490, 492 (N.D. 1999). *See also* Old Broadway Corp. v. Backes, 450 N.W.2d 734 (N.D. 1990).

This Court has held that the "issuance of a writ of mandamus is left to the sound discretion of the trial court." Burley v. North Dakota Dept. of Transp., 603 N.W.2d at 492. In this instance, there has been no showing that the District Court abused that discretion when it denied Property Owners' petition for a writ of mandamus. Other avenues of relief were available as argued *supra*. Accordingly, the District Court's determination should be affirmed.

Mandamus is an unusual remedy that should only be issued in extraordinary cases. State v. Pero, 590 N.W.2d 319, 323 (Minn. 1999). This includes situations in which a trial court fails to observe a mandatory statutory provision granting a right or forbidding a particular action. In re Stevens, 971 S.W.2d 757, 760 (Tex.App. Beaumont 1989). Property Owners demonstrated nothing about their case to the District Court which would have suggested the extraordinary measure of a writ should have applied.

A writ of mandamus may issue to compel public officials to perform ministerial duties respecting taxes. State ex rel. Iowa Employment Sec. Commission v. Des Moines County, 149 N.W.2d 288, 291 (Iowa 1976). Mandamus may also issue to compel a board of review to fulfill their mandatory duty of granting a hearing to a taxpayer who files a complaint regarding assessment. People ex rel. Ahlschlager v. Board of Review Cook County, 185 N.E. 248, 251 (Ill. 1933).

In this case, Property Owners had two opportunities to present their case to the State Board before it made its determination that it lacked authority. The State Board recognized the limitations of their authority under state law and the District Court correctly disallowed Property Owners use of the writ to seek another "bite at the apple."

A taxpayer who is disputing the valuation of their property for tax purposes will not typically be allowed to use mandamus to correct the alleged error if there is another adequate remedy available to them. Pierce v. Green, 294 N.W. 237, 250 (Iowa 1940). In this instance, the Property Owners had a clear, adequate remedy available to them -- abatement or direct appeal to the District Court from the determination of the County. Instead, they chose to seek an acknowledgement from the State Board as to the "status" of the properties in question to then use as support before the County Board or District Court when directing their energies toward the County's actions, not only in this action relating to the Property Owners' 2009 taxes, but also in the continuing series of abatement actions in Grand Forks County. Having made that selection, Property Owners closed the door on the opportunity for relief in District Court of the determinations made at the county level -- they *missed* the 30-day filing deadline in District Court under N.D.C.C. § 28-34-01. A writ of mandamus would not have turned back the hands of

time, nor would it have somehow removed the clear, adequate remedy they had at their disposal in District Court. The District Court's determination in this regard that no writ should issue was proper, based on sound law and judgment, and should be affirmed.

In one of their last pleadings before the District Court, Property Owners clearly implied that the District Court should have ordered the State Board to render a specific determination on their request (again, that being a second determination). (*See* Property Owners Motion to Amend, dated January 7, 2010, Page 9 of their proposed Complaint, Prayer for Relief Item No. 1). However, a mandamus does not (and should not) require a particular outcome. Moody v. Moody, 705 So.2d 708, 709 (Fla. App. 1st Dist. 1998). Accordingly, Property Owners misapprehended the extent to which any writ issued by the District Court would have affected the outcome of the State Board.

b. Mandamus May Not Lie When Authority Doubtful

Finally, in this regard, mandamus may not lie where the duty was not plainly prescribed but arose from a doubtful inference from the statute involving judgment or discretion. U.S. ex rel. Hall v. Payne, 254 U.S. 343, 348 (1920). Further, a writ [should not] be issued in a doubtful case. Bandy v. Mickelson, 44 N.W.2d 341, 342 (S.D. 1950).

However, mandamus may lie to correct an error where a board or commission has refused to enter an order because it is erroneously of the opinion that it has no authority to do so under statute. I.C.C. v. U.S. ex rel. Humbolt S.S. Co., 224 U.S. 474, 485 (1912). The ultimate question, therefore, is whether the board or commission is so blatantly wrong as a matter of law, in its opinion that it has no authority to act under a statute, that a writ should issue to correct the error. U.S. ex rel. Chicago Great Western R. Co. v. I.C.C., 294 U.S. 50, 60 (1935). In this case, the State Board did not refuse to act -- it

recognized their lack of authority over the matter and explained that reasoning to the Property Owners. App. pp. 48-49.

The State Board also based its determination on the interpretation of N.D. Op. Atty. Gen. No. 2003-L-16. App. pp. 67 – 71. In that Opinion, Attorney General Heitkamp offered an Opinion to Traill County State's Attorney Stuart A. Larson on an issue of the extent of the State Board's duties. The State Board's long-standing interpretation of Attorney General Heitkamp's letter has been that it prohibits the State Board from determining the exempt status of the property and squarely places that duty of fact-finding and determination on the county where the property lies.

Property Owners continued to incorrectly interpret the meaning and intent of this Attorney General's Opinion. They interpreted it to mean that the State Board must act upon exemption requests brought before it. However, the District Court saw through this misinterpretation and in its opinion, succinctly answered this point where it held that:

> The question of whether property is used for charitable or other public purposes is a question of fact <u>for the local taxing authority to decide</u>. In this case, the taxing authority charged with deciding this question of fact is the County Board of Equalization. Here, the County determined that under the evidence presented, Appellants' properties are <u>not</u> used for charitable or other public purpose and denied the application for exemption. <u>The SBOE is without any legal authority to reverse this decision</u> and grant Appellants' request for exemption.

App. pp. 55 – 56. (emphasis added).

3. <u>Amicus Curiae Briefs</u>

Finally, Property Owners asked the District Court to allow amicus curiae briefs to be filed in this matter. However, Property Owners cited neither statutory nor case law to support this request to the District Court or instances of other taxing jurisdictions with

specific knowledge of the facts of this case to substantiate their request. Amicus briefs were not proper and the District Court properly denied this request.

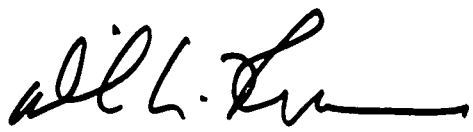
CONCLUSION

In the end, in order to satisfy Property Owners, this Court would have to order the State Board to declare the properties in question exempt or issue some other form of decree. However, amended pleadings, issuance of a writ of mandamus, and amicus briefs will not overcome the statutory inability of the State Board to provide the relief Property Owners seek. The District Court properly held the State Board was not a proper party to the original action under Rule 21, N.D.R.Civ.P. and had no legal authority to make a determination regarding tax exempt status of Property Owners' property. Additionally, the District Court properly denied Property Owners' petitions for the District Court to amend the pleadings, issue a writ of mandamus, and allow amicus curiae briefs.

The Supreme Court should affirm the Order and Judgment of the District Court in all respects.

Dated this 8th day of September, 2010.

Wayne Stenehjem
Attorney General
State of North Dakota



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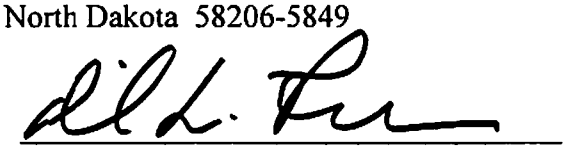
CERTIFICATE OF SERVICE

The undersigned certifies that the original and seven copies of the BRIEF OF THE APPELLEE – STATE BOARD OF EQUALIZATION were hand-delivered on the 8th day of September, 2010, to the following person:

Penny Miller
Clerk of the Supreme Court
First Floor-Judicial Wing
600 East Boulevard Avenue
Bismarck, North Dakota 58505-0530

and that true and correct copies of the above documents were electronically mailed, on the 8th day of September, 2010, to:

Russ J. Melland
Attorney for Appellant
P.O. Box 5849
Grand Forks, North Dakota 58206-5849



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