2020 VT 56

No. 2019-345

Hartland Property LLC	Supreme Court
v.	On Appeal from Superior Court, Windsor Unit, Civil Division
Town of Hartland	February Term, 2020

Michael R. Kainen, J.

Stephen F. Coteus of Tarrant, Gillies & Richardson, Montpelier, for Plaintiff-Appellant.

Robert E. Fletcher of Stitzel, Page & Fletcher, P.C., Burlington, for Defendant-Appellee.

PRESENT: Reiber, C.J., Robinson, Eaton, Carroll and Cohen, JJ.

¶ 1. **ROBINSON, J.** In this appeal, we consider what consequences, if any, result when town listers commence grievance hearings after the applicable statutory deadline without getting an extension of time from the Director of the Department of Taxes' Division of Property Valuation and Review (PVR). Taxpayer, Hartland Property LLC, sought review of the Town of Hartland's 2018 reassessment of its property pursuant to Vermont Rule of Civil Procedure 75, and the trial court affirmed the Town's assessment. On appeal to this Court, taxpayer argues that the Town's assessment of its property is invalid because the listers began the grievance hearings two days after the statutorily designated start date. It contends that it owes either no property tax for that year or the assessed amount from the prior year. We conclude that the statutory timelines for

town listers to commence grievance hearings are directory rather than mandatory, and accordingly affirm the trial court's judgment.

I. Factual and Procedural Background

¶ 2. The material facts are undisputed. Taxpayer owns just under sixty acres of improved land in the Town of Hartland. The property includes a cape-style residence, a one-and-a-half-story two-car garage, a gambrel barn, a newer animal barn, a chicken coop, and five tourist cabins built as part of taxpayer's plan to transform the property into an agri-tourism enterprise.

¶ 3. Taxpayer grieved the Town's 2018 assessment of its property. Pursuant to the applicable statutes discussed below, the last date for the Town to commence grievance hearings for that tax year was June 19, 2018. The town listers commenced grievance hearings, including taxpayer's grievance, two days later, on June 21, without securing an extension of time from the PVR Director pursuant to 32 V.S.A. § 4342. The town listers completed the grievance hearings the next day, June 22, ten days prior to the statutory deadline, and decided taxpayer's grievance on June 27. The town listers lodged the corrected abstracts of the individual taxpayers in the office of the town clerk on July 10, fifteen days before the statutory deadline.

¶ 4. That same day, July 10, 2018, taxpayer appealed to the town board of civil authority (BCA).[1] On August 23, 2018, following a July 25 hearing, the BCA issued a decision modestly lowering the Town's assessment of the subject property.

¶ 5. Taxpayer appealed the BCA's assessment to the civil division of the superior court. The parties filed cross-motions for partial summary judgment addressing whether the Town's assessment was invalid due to the listers' late start of taxpayer's grievance hearing. The court granted the Town partial summary judgment on that issue, concluding that the statute providing

[1] Around the same time, taxpayer filed a complaint under Vermont Rule of Civil Procedure 75 asking the court to enjoin the Town from reassessing its property for the 2018 tax year because of the Town's failure to commence grievance procedures within the statutory timeframe. The court dismissed taxpayer's complaint for failure to exhaust its administrative remedies.

that grievance hearings are to be commenced by a specified date is directory, rather than mandatory, and that the Town's failure to meet the timeline did not therefore invalidate its valuation.

¶ 6. Following the court's decision, taxpayer filed a motion for entry of final judgment so that it could appeal the May 17 decision. By doing so, taxpayer abandoned its challenge to the merits of the Town's assessment of its property for the 2018 tax year and relied entirely on its procedural challenge based on the date the grievance hearing commenced. The Town did not oppose taxpayer's motion, but it moved to strike as irrelevant certain statements in the motion and attached affidavit.[2] The court granted the motion for entry of final judgment, as well as the Town's motion to strike elements of taxpayer's motion referencing the Town's 2019 assessment of taxpayer's property.

II. Statutes at Issue

¶ 7. For the most part, the statutes relevant to our analysis are in Chapter 129 of Title 32, which we have described as "a comprehensive system that establishes the timeliness and processes for the annual development of the property tax grand list in each community." Murdoch v. Town of Shelburne, 2007 VT 93, ¶ 6, 182 Vt. 587, 939 A.2d 458 (mem.). That system "requires towns, on an annual basis, to gather property inventories, make fair market value appraisals of properties, generate individual tax lists and compile them into the abstract, notify individual taxpayers of the assessments, provide an opportunity for grievances, make corrections, and file the grand list with the town clerk." Id.

[2] In particular, the Town objected to the inclusion in taxpayer's motion of affidavit statements and exhibits relating to the Town's 2019 assessment of taxpayer's property—a matter not before the court in this case. The Town expressed concern that if the portions of taxpayer's motion were allowed to stand, it would unfairly "salt" the record on appeal with immaterial information, thereby disadvantaging the Town in the expected appeal of the 2018 assessment. The trial court's entry order provided that the challenged statements "will be stricken from the record."

¶ 8. Statutes in Title 32 establish the date by which listers must initiate grievance hearings in two different places. First, pursuant to Chapter 129, after town listers inventory and appraise the properties in a town, they must prepare a book listing the names of the various taxpayers and the valuation of all real and personal estate, among other things. 32 V.S.A. §§ 4111, 4152. Once lodged in the office of the town clerk for the inspection of the taxpayers, this book constitutes "the abstract of individual lists." Id. § 4111(d). The book must contain

> a notice in writing signed by the listers that the contents thereof will become the grand list of such town and of each person therein named, unless cause to the contrary is shown; and that, on or before May 20, as extended by section 4341 . . . the listers will meet at some place therein designated by them to hear all grievances and make corrections in such list.

Id. § 4111(c).

¶ 9. Consistent with this, a subsequent section further provides that "[o]n or before May 20, the listers shall meet at the place so designated by them and on that day and from day to day thereafter shall hear persons aggrieved by their appraisals . . . until all questions and objections are heard and decided." Id. § 4221. The section further requires the listers to make any corrections to the abstract certificates and "forward to each taxpayer a copy of any certificate relating to his or her list." Id. Pursuant to that section, "[s]uch hearings shall not be held later than June 2." Id.

¶ 10. The statutes provide for adjustment of the statutory timetable based on a town's size. In particular, for towns with fewer than 5000 inhabitants (like the Town of Hartland), § 4341 extends various benchmarks in the timeline for building the grand list for thirty days. The extension applies to the dates by which (1) abstracts of individual lists must be lodged in the town clerk's office; (2) "meetings of listers may be held to hear grievances"; (3) grievance hearings must be completed; (4) the BCA must meet to consider appeals; (5) BCA hearings must be completed; (6) the grand list must be completed and deposited in the town clerk's office; (7) the

listers must lodge inventories of taxpayers with the town clerk; and (8) abstracts of the grand list must be filed with the town clerk. Id.

¶ 11. Even with this adjustment, these timelines may be further extended as follows:

> On written application therefor made by the listers or assessors of any town, with the approval of the Selectboard of the town or mayor of the city, the several dates fixed by law and extended by [§ 4341] . . . on or before which certain acts must be done relating to the duties of listers and assessors, may be further extended by the Director and such extensions shall be in writing and shall be recorded in the office of the town clerk.

Id. § 4342.

¶ 12. In this case, given the automatic extension provided by § 4341 for when grievance hearings may be held as set forth in § 4221, the grievance hearings should have commenced no later than June 19, 2018, absent an additional extension of time granted by the PVR Director. Instead, the town listers commenced the hearings two days later, on June 21, without obtaining an additional extension of time from the PVR Director.

III. Analysis

¶ 13. On appeal to this Court, taxpayer argues that the Town's 2018 assessment is invalid because the Town commenced grievance hearings after the statutory deadline. There is no dispute that the applicable statute establishes a clear date by which the listers must meet to begin hearing grievances. The statute expressly provides that "[o]n or before" the designated date, "the listers shall meet at the place so designated by them and on that day and from day to day thereafter shall hear persons aggrieved by their appraisals or by any of their acts until all questions and objections are heard and decided." Id. § 4221. The contested issue is whether the listers' failure to meet this timeline invalidates the Town's 2018 reassessment of taxpayer's property.[3]

[3] Taxpayer also argues that the civil division erred by striking as irrelevant certain statements in taxpayer's motion for entry of final judgment. Taxpayer argues that the stricken information was relevant to provide context for its arguments and that this Court is entitled to review its motion and attached exhibits in their entirety. We do not reach taxpayer's challenge to

¶ 14. Because this is a legal issue of statutory construction, our review is nondeferential. See Vt. Human Rights Comm'n v. State, Agency of Transp., 2012 VT 88, ¶ 7, 192 Vt. 552, 60 A.3d 702 ("As with all questions of law, we apply a nondeferential and plenary standard of review to issues of statutory interpretation."). "In construing a statute, our paramount goal is to effectuate the Legislature's intent as evidenced by the plain, ordinary meaning of the language used." Murdoch, 2007 VT 93, ¶ 5 (quotation omitted). If the statutory language leaves doubt as to legislative intent, "we look beyond the language of a particular section standing alone to the whole statute, the subject matter, its effects and consequences, and the reason and spirit of the law." State v. Love, 2017 VT 75, ¶ 9, 205 Vt. 418, 174 A.3d 761 (quotation omitted).

¶ 15. Upon review of the applicable provisions of the statute, we conclude that the listers' failure to commence grievance hearings by the appointed date does not invalidate the Town's 2018 reappraisal of taxpayer's property for several reasons. First and foremost, the provision directing listers to begin grievance hearings by a specified date bears the hallmarks of a discretionary or "directory" rather than a mandatory designation. Second, an examination of the statute as a whole supports this understanding: the Legislature expressly stated when the failure to meet a time requirement would invalidate the grand list, and did not do so here. Moreover, the Legislature provided a method for remedying otherwise fatal defects in the process of building a town's grand list in a given year, and did not include the timeline at issue here within the list of remediable defects—reinforcing that this particular defect was not fatal to begin with. Third, this construction is most consistent with the statute's purpose, as well as the constitutional principle of proportional

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the trial court's order because there is no prejudice. We have reviewed the challenged statements; even if we agreed that the trial court exceeded its discretion in granting the motion to strike, that would have no bearing on our resolution of this appeal, which turns on a nondeferential legal analysis of the consequences for commencing listers' grievance hearings after the date designated by statute.

representation. The fact that the statute requires the approval of the selectboard and the Department of Taxes' PVR Director to grant an extension does not undermine our conclusion.

A. Mandatory and Directory Timelines

¶ 16. We have consistently held that even clearly expressed statutory deadlines may not be "mandatory," in the sense that the failure to meet the deadline results in a default or some other consequence, if the timeline is "directory," or "discretionary." "Whether a statutory time limit is discretionary or mandatory is a question of legislative intent." Vt. Human Rights Comm'n, 2012 VT 88, ¶ 8. "This Court interprets the Legislature as having intended a mandatory time limit where the statute 'contains both an express requirement that an action be undertaken within a particular amount of time and a specified consequence for failure to comply with the time limit.' " Id. (quoting State v. Singer, 170 Vt. 346, 348, 749 A.2d 614, 615-16 (2000), superseded by statute, 1999, No. 160 (Adj. Sess.), § 18, as recognized in Love, 2017 VT 75, ¶ 11). "By contrast, we consider a time limit to be discretionary where the language is 'merely directory' " such that it " 'directs the manner of doing a thing, and is not of the essence of the authority for doing it [and] compliance with its requisitions is never considered essential to the validity of the proceeding.' " Id. (quoting In re Mullestein, 148 Vt. 170, 174, 531 A.2d 890, 892-93 (1987) (alteration in original)); accord Shlansky v. City of Burlington, 2010 VT 90, ¶ 17, 188 Vt. 470, 13 A.3d 1075.

¶ 17. In applying these general principles to the process for building a grand list for property taxation purposes, we have recognized that a failure to meet some deadlines may invalidate an assessment, but a failure to meet others may not. For example, in Smith v. Hard, we considered the effect of the listers' failure to clearly identify individual abstracts lodged in the town clerks' office. 59 Vt. 13, 19, 8 A. 317, 319 (1887). The Court quoted extensively from an 1838 Massachusetts decision in describing "the rule respecting mandatory statutes":

> In considering the various statutes regulating the assessment of taxes, and the measures preliminary thereto, it is not always easy to distinguish which are conditions precedent to the legality and

> validity of the tax, and which are directory merely, and do not constitute conditions. One rule is very plain and well settled: that all those measures that are intended for the security of the citizen, for insuring equality of taxation, and to enable every one to know within reasonable certainty [what they and others are taxed] are conditions precedent; and, if they are not observed, [the taxpayer] is not legally taxed . . . . But many regulations are made by statutes designed for the information of assessors and officers, and intended to promote method, system, and uniformity in the modes of proceeding, a compliance or non-compliance with which does in no respect affect the rights of tax-paying citizens. These may be considered directory.

Id. at 22-23, 8 A. at 321 (quotation and emphasis omitted).

¶ 18. The statutory date by which grievance hearings are to be commenced has the features of a directory timeline rather than a mandatory one that is a precondition to a valid assessment. Significantly, § 4221 provides no consequence for a town's failure to commence lister grievance hearings on the specified date, as extended by § 4341; nor does § 4342 provide a consequence for failing to obtain from the PVR Director an additional extension of time to commence the hearings. See Shlansky, 2010 VT 90, ¶ 17 ("In general, a statutory time period is not mandatory unless it both expressly requires an agency or public official to act within a particular time period and specifies a consequence for failure to comply with the provision." (quotation omitted)).

¶ 19. Nor is there anything else about the language and structure of the statute that suggests that compliance with that timeline is essential to a valid assessment. See Andrizinsky v. Phillips, 97 Vt. 21, 23, 121 A. 435, 435 (1923) ("[W]here the object contemplated by the legislature can not be carried into effect, by any other construction, the time prescribed must be considered as imperative; but where there is nothing indicating that the exact time is essential, it should be considered as directory."). On that score, this case is distinguishable from Singer, relied upon by taxpayer. In Singer, we held that the Legislature provided for a consequence—dismissal of the State's complaint for a civil license suspension—by stating that "[i]n no event" may a final civil

suspension hearing be held more than forty-two days after the date of the alleged offense. 170 Vt. at 348-49, 749 A.2d at 616. We do not read this statute to similarly signal a consequence for a delay in beginning the grievance hearings before the listers.

¶ 20. And in the context of this statutory scheme, the Legislature has given no clear indication that this measure is "intended for the security of the citizen, for insuring equality of taxation, and to enable every one to know within reasonable certainty" their tax liability and that of others, rather than to provide information "to assessors and officers . . . intended to promote method, system, and uniformity in the modes of proceeding." Smith, 59 Vt. at 22-23, 8 A. at 321 (quotation and emphasis omitted). Especially given that the statute includes a separate deadline for completing the grievance hearings before the listers, we cannot infer that the Legislature viewed compliance with the start date for such hearings as essential to a valid assessment.

¶ 21. The facts of this case reinforce this understanding: the Hartland town listers notified taxpayer of the time and place of the grievance hearing, timely lodged the abstract of individual lists, completed the grievance hearing ten days before the July 2 extended deadline pursuant to § 4341, and lodged the corrected abstract with the town clerk fifteen days before the July 25 statutory deadline. See 32 V.S.A. § 4151(a) ("Subject to the provisions of section 4341 of this title, on or before June 25, the listers shall make all corrections in the abstracts and shall lodge such completed book in the office of the town clerk."). Taxpayer had fair notice of the grievance hearing, as well as the listers' resolution of its grievance, and timely appealed to the BCA. The BCA heard taxpayer's appeal and made an independent determination of the appropriate assessment, which taxpayer appealed to the civil division of the superior court. In short, taxpayer was afforded notice and an opportunity to challenge the assessment of its property each step of the process.

B. Other Statutory Considerations

¶ 22. A more searching review of the statutory scheme reinforces our conclusion that the Legislature chose not to impose a consequence for the listers' failure to commence their hearings by June 19. See State v. Blake, 2017 VT 68, ¶ 9, 205 Vt. 265, 174 A.3d 126 (noting that individual statutes are to be construed with others as parts of one system).

¶ 23. For one, other provisions in Title 32 demonstrate that the Legislature knows how to establish consequences for failing to meet statutory timelines. With respect to hearings on appeals to the BCA, which "shall be held . . . not later than 14 days after the last date allowed for notice of appeal," 32 V.S.A. § 4404(b), "[t]he Board shall meet at the time and place so designated, and on that day and from day to day thereafter shall hear and determine such appeals until all questions and objections are heard and decided," id. § 4404(c). Section 4404(c) explicitly establishes the consequence if the Board fails to "substantially comply" with the subsection's requirements: "the grand list of the appellant . . . shall remain at the amount set before the appealed change was made by listers" or, "if there has been a complete reappraisal, the grand list of the appellant . . . shall be set at a value . . . equal to the tax liability for the preceding year." The fact that the Legislature expressly imposed a consequence for the BCA's failure to begin hearing appeals by the appointed date, but said nothing about the consequences for the listers' failure to begin their own grievance hearings by the statutorily designated date, reinforces our conclusion that the Legislature intended the latter timeline to be directory only. See Hopkinton Scout Leaders Ass'n v. Town of Guilford, 2004 VT 2, ¶ 8, 176 Vt. 577, 844 A.2d 753 (mem.) ("Where the Legislature includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that the Legislature did so advisedly.")

¶ 24. In addition, the statute establishes a mechanism for towns to correct or replace defective or invalid abstracts by February 1 of the following year when: (1) an abstract of individual lists is not lodged in the town clerk's office either at all or within the statutorily

prescribed time period; (2) a defective abstract is lodged with the town clerk; (3) an abstract is otherwise defective or invalid; (4) a defective notice is given concerning the abstract of individual lists or the time and place for lister grievance hearings; or (5) the listers do not meet at the time and place specified in the notice for grievance hearings. 32 V.S.A. § 4112; see also id. § 4262 (allowing towns to correct by February 15 of following year grand lists that are defective or invalid due to listers failing to do certain acts within statutorily prescribed times). Failing to timely commence grievance hearings before the listers is not included as one of the correctible acts set forth in § 4112 or § 4262.

¶ 25. It is inconceivable that the Legislature intended to allow towns to cure invalid or defective abstracts resulting from critical missteps in the process of building the grand list, while at the same time providing that the failure to begin the lister grievance hearings by the designated start date invalidates assessments with no means to restore their validity. State v. Hurley, 2015 VT 46, ¶ 13, 198 Vt. 552, 117 A.3d 433 ("We construe statutes to avoid unreasonable consequences that are at odds with the Legislature's apparent intent."). That the specified date for commencing lister grievance hearings is not included in § 4112 or § 4262 suggests that the failure to meet that date, in and of itself, does not invalidate or make defective an abstract resulting from an otherwise valid assessment process that neither contains errors nor offends due process.

C. Proportional Taxation

¶ 26. We are mindful of "the constitutional and statutory mandates that each property should be burdened with only its equitable share of the common expense of government so as to protect individual taxpayers, as well as the collective taxpaying community, from arbitrary assessments." Murdoch, 2007 VT 93, ¶ 13. Although our interpretation of the statute does not depend on this more general consideration, we note that our holding is consistent with this overarching principle.

D. Requirement for PVR Permission

¶ 27. The fact that the statute requires approval from the selectboard or mayor, as well as the director of PVR, to extend the statutory timelines, including the timeline relating to the commencement of lister grievance hearings, does not undermine our conclusion. Taxpayer points to 32 V.S.A. § 4342, which provides that upon written application by the listers or assessors, with the approval of the selectboard of a town or mayor of a city, the Director of PVR may extend the various dates "fixed by law and extended by the preceding section . . . , on or before which certain acts must be done relating to duties of listers and assessors." Taxpayer argues that the statutory reference to dates by which "certain acts must be done," and the requirement of PVR permission to extend those timelines—both referencing the list of acts in the preceding section, which includes the commencement of lister grievance hearings—signals that the start date for the lister hearings is, in fact, mandatory. Moreover, in taxpayer's view, if listers could commence the grievance hearings after the statutory timeline without consequence, the requirement that they secure the PVR Director's permission to do so would be superfluous. By starting the hearings late without the approval of the PVR Director, taxpayer argues, the listers purported to exercise authority they did not have—authority that belongs to the State. We reject these arguments for several reasons.

¶ 28. First, as emphasized above, the provision requiring PVR permission for extension of the various benchmarks listed does not provide, expressly or by implication, a consequence for a failure to secure the permission. Although the statutory reference to dates by which "certain acts "must be done" establishes the first criterion for determining that a statutory time limit is mandatory—there is an express requirement that an act be done within a certain time period—it does not establish the second criterion—that there is a specified consequence.

¶ 29. Moreover, the provision requiring PVR permission to extend the scheduling benchmarks in § 4341 is not directed specifically at the timeline for commencing grievance hearings; that is only one of seven distinct scheduling benchmarks addressed in § 4341. This

dilutes any inference arising from the requirement of PVR permission for an extension and is not sufficient to outweigh the various considerations above.[4]

¶ 30. In addition, pursuant to § 4342, a request to PVR for additional time to complete steps in the process of assessment and building the grand list is made by town listers or assessors with the approval of the town selectboard. The provision neither requires notice to taxpayers of a request for an extension nor provides for any taxpayer involvement in the decision to extend a timeline. This suggests that the Legislature required PVR approval for an extension of the various scheduling benchmarks to ensure that the State could timely calculate tax rates, rather than to protect the rights of individual taxpayers. Though some of the timelines set forth in § 4341 may well be essential to the validity of the grand list, it is not because PVR permission is required for extensions.

¶ 31. We are also mindful that, although § 4221 provides a specific date by which the listers must commence grievance hearings, it also establishes a flexible time period during which hearings can be held before the specific date beyond which they may not be held. See id. § 4221 (providing that "the listers shall meet . . . on that day and from day to day thereafter . . . until . . . all questions and objections are heard and decided," but that "hearings shall not be held later that June 2"); see also Murdoch, 2007 VT 93, ¶ 11 (noting inherent flexibility in § 4221's language "and from day to day thereafter").

¶ 32. We also reject taxpayer's argument that the assessment is invalid because the Town unlawfully usurped the authority of a state official by commencing the lister grievance hearings

[4] We note that the list of scheduling benchmarks in § 4341 references the dates when the "meeting of listers may be held to hear grievances" on the one hand, while using the term "shall" in describing the other seven listed duties, including completing abstracts, closing lister grievance hearings, holding appeal hearings before the BCA, closing the BCA hearings, completing the grand list and depositing it in the town clerk's office, lodging inventories of taxpayers with the town clerk, and filing abstracts of the grand list with the town clerk.

beyond the statutory timelines without seeking an additional extension from the PVR Director.[5] We do not read § 4342 to divest a municipality of its authority to continue to build the grand list when it misses a scheduling benchmark without PVR permission. The fact that the Legislature has provided a mechanism for towns to retroactively cure such defects belies that suggestion. See 32 V.S.A. §§ 4112, 4262. For the reasons set forth above, commencement of lister grievance hearings after the statutorily designated date, with or without an extension from PVR, does not invalidate an otherwise valid assessment.

¶ 33. Finally, we conclude that taxpayer's reliance on Town of Williamstown v. Williamstown Co., 101 Vt. 419, 144 A. 203 (1929), is also misplaced. The principal holding of Town of Williamstown is that the town could not collect property taxes it claimed the taxpayer owed because it failed to produce a tax bill showing a tax against the taxpayer for the relevant years and failed to show it provided the notices required by statute. 101 Vt. at 422-23, 144 A. at 204-05. The court went on, in dicta, to state that the town listers, who filed an abstract in the town clerk's office on May 6 of that year (one day beyond the statutory date for filing the abstract) indicating that grievance hearings would be held on May 6 of that year, had no authority to abridge a statute providing that grievance hearings shall take place on the first day of May (in that case, May 11) "and from day to day thereafter." Id. at 426, 144 A. at 205-06. The Court's concern was that the town listers had not given the taxpayer formal notice of the hearing in the time required by law, thereby depriving him of time "to examine it and determine what action he desire[d] to

[5] Taxpayer also argues that we should defer to PVR and the Secretary of State handbooks regarding the process for towns to seek extensions of time from the PVR Director pursuant to § 4342. Although the handbooks cited by taxpayer both emphasize the importance of complying with the statutory timelines in building the grand list, and of seeking extensions from PVR when necessary, nothing in the publications addresses the issue of what if any consequences result from listers failing to commence hearings before the listers by the statutorily designated timeline. Therefore, the handbooks add nothing to our analysis, even assuming they are entitled to some weight. See Ellis v. Cty. of Calaveras, 199 Cal. Rptr. 3d 368, 373 (Ct. App. 2016) (stating that assessors' handbook is considered authoritative expression of state board but does not have force of law and that ultimate interpretation of legality of statute is question of law for courts to resolve).

take, if any." Id. Thus, even assuming this analysis can be considered controlling precedent, its animating concern is not present in this case.

Affirmed.

FOR THE COURT:

Associate Justice