



1955

# Administrative Law--Taxation--Scope of Review on Appeal from Tax Assessment in Kentucky

J. Montjoy Trimble  
*University of Kentucky*

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [State and Local Government Law Commons](#), and the [Taxation-State and Local Commons](#)

**Right click to open a feedback form in a new tab to let us know how this document benefits you.**

## Recommended Citation

Trimble, J. Montjoy (1955) "Administrative Law--Taxation--Scope of Review on Appeal from Tax Assessment in Kentucky," *Kentucky Law Journal*: Vol. 44 : Iss. 1 , Article 5.

Available at: <https://uknowledge.uky.edu/klj/vol44/iss1/5>

This Note is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact [UKnowledge@lsv.uky.edu](mailto:UKnowledge@lsv.uky.edu).

## Notes and Comments

### ADMINISTRATIVE LAW—TAXATION—SCOPE OF REVIEW ON APPEAL FROM TAX ASSESSMENT IN KENTUCKY

To what extent will the circuit court and the Court of Appeals of Kentucky substitute their judgment for that of the State Tax Commission when an appeal is prosecuted under Kentucky Revised Statutes sections 133.120<sup>1</sup> and 131.120<sup>2</sup>? Prior to 1949 there was no problem in determining the scope of review by the circuit courts under Kentucky Revised Statutes section 133.120. The statute, before amendment in 1949, provided that any taxpayer aggrieved by the assessment of the county board of supervisors could appeal *either* to the Tax Commission *or* to the circuit court of the county in which the property was located.<sup>2</sup> The statute further provided that the court or Tax Commission was to try the case *de novo*. The term *de novo* had been defined by the Court of Appeals in the case of *Greensburg Deposit Bank v. Commonwealth*,<sup>3</sup> where it said that appeals taken under this section should be tried *de novo* as provided in

---

<sup>1</sup> KY. REV. STAT. sec. 133.120 (4): “. . . (4) Any taxpayer feeling himself aggrieved by the final action of the board of supervisors may within fifteen days after its adjournment appeal to the Kentucky Tax Commission by filing a statement of the grounds for his appeal and a certified copy of the action of the board of supervisors. The tax commissioner, the county judge, the Department of Revenue, the chief finance officer of any city using the county assessment, if the city elects to do so, or the superintendent of any school district in which property reviewed by the board of supervisors is located, may appeal to the Tax Commission in the same manner as a taxpayer. The party making the appeal shall give notice in the manner provided by the Civil Code of Practice to all other parties entitled by this section to appeal. The Tax Commission, sitting in the county in which the property is located shall hear the evidence *de novo* and fix a value upon the property consistent with sections 171, 172 and 174 of the Constitution. The Commissioner of Revenue may appoint a conferee to conduct any hearings, receive evidence and hear argument, and embody same in a report to the Tax Commission. Any of the parties may appeal from the judgment of the Tax Commission to the circuit court of the county where the property is located and thence to the Court of Appeals, as provided by law. No appeal under this section shall delay the collection or payment of any taxes based upon the assessment in controversy. The taxpayer shall pay all state, county and district taxes due on the valuation which he claims as true value as and when required by law, and when the valuation is finally determined upon appeal, the court or Tax Commission shall certify the valuation to the county court clerk and the taxpayer shall be billed for any additional tax and six percent interest from the date when the tax would have become due if no appeal had been taken. . .”

<sup>2</sup> KY. REV. STAT. sec. 133.120 (1949).

<sup>3</sup> 230 Ky. 498, 29 S.W. 2d 949 (1929).

Civil Code section 726. The Code provided that "Appeals shall be docketed and stand for trial as ordinary actions, and shall be tried anew, as if no judgment had been rendered."<sup>4</sup> Thus the scope of review by the circuit court, before amendment of the statute in 1949, was plenary, with power to relitigate any item and substitute judicial decision for that of the Tax Commission or board of supervisors on any question.<sup>5</sup>

*Review under Kentucky Revised Statutes section 133.120.* In the extraordinary session of the General Assembly in 1949, the ad valorem tax system was completely revised pursuant to a plan proposed by the Department of Revenue. This revision covered Chapters 132 and 133 of the Kentucky Revised Statutes.<sup>6</sup> The result of the revision was to change radically the scope of review by the circuit court. Kentucky Revised Statutes section 133.120, as revised, provides for a *de novo* determination by the Tax Commission when reviewing an assessment of the board of supervisors. The parties may then appeal (only after first going before the Tax Commission)<sup>7</sup> to the "circuit court of the county where the property is located and thence to the Court of Appeals, *as provided by law.*" (Italics supplied by writer.) It will be noted that there is no statutory definition of scope of judicial review as there was prior to 1949. The only phrase which could define the scope of review by the circuit court is, "as provided by law." But, does this phrase refer to appeal to the circuit court or appeal to the Court of Appeals? From the position of this clause it is arguable that the reference is only to the statutes governing appeals to the Court of Appeals. It is submitted that the phrase refers also to the circuit court. The statute, as originally reported to the General Assembly, provided for appeal to the circuit court exclusively "as provided by law," without express provision for

<sup>4</sup> CARROLL'S KY. CODE sec. 726.

<sup>5</sup> Board of Sup'rs, City of Somerset v. Pinnel, 292 Ky. 364, 166 S.W. 2d 882 (1942); McCracken Fiscal Court v. McFadden, 275 Ky. 819, 122 S.W. 2d 76 (1938); Carr's Fork Coal Co. v. Perry County Board of Sup'rs, 263 Ky. 642, 93 S.W. 2d 359 (1936).

<sup>6</sup> See "Report of Statute Revision Commission to the General Assembly of Kentucky in Extraordinary Session" (1949) which covers the proposed ad valorem tax system legislation.

<sup>7</sup> On the theory of exhaustion on administrative remedies. See Louisville and Jefferson County Planning and Zoning Commission v. Stoker, 259 S.W. 2d 443 (Ky. 1953); Breathitt County Board of Sup'rs v. Ware Cannel Coal Co. 297 Ky. 117, 179 S.W. 2d 225 (1944).

further appeal to the Court of Appeals.<sup>8</sup> The statute as finally passed by the General Assembly did allow for further appeal to the highest court. It is a logical assumption from the preceding, therefore, that the phrase, "as provided by law," was intended to refer to the circuit court, and this is the opinion of the legal staff of the Department of Revenue.<sup>9</sup>

Assuming the application of the clause to the circuit court, to what "law" which has been "provided" does the statute refer? There are several reasons which lead to the belief that the "law" referred to is Kentucky Revised Statutes section 131.120, which provides for appeals generally from the Tax Commission. First, that has been the administrative construction of the phrase for five years. The Department of Revenue has always interpreted the phrase as referring to section 131.120, and, according to the department, this view has never been questioned.<sup>10</sup> Second, section 131.120 is the key statute on appeals from the Tax Commission, being referred to expressly in three statutes as the authority under which appeals are taken from the Tax Commission, and by implication in section 133.120 by the revisor's cross-reference note at the end of the statute.<sup>11</sup> Third, section 131.120 is the *only* statute which defines scope of review on appeal from the Tax Commission. Thus, section 133.120 either refers to this "law" or to no law. Fourth, section 133.120, after its revision in 1944, provided for appeal from the circuit court to the Court of Appeals in the manner provided by the Civil Code. When the appellant, in the alternative according to his option, had appealed to the Tax Commission, he was allowed appeal to the Franklin circuit court "as provided by law." Thus, historically under the statute, the phrase has referred to appeals taken to the circuit court. Section 131.120 expressly purports to define scope of review as to appeals to the Franklin circuit court, but notwithstanding the rule of *enumeratio unius*, it would seem reasonable to interpret the statute to include appeals under section 133.120 to any circuit court since it is the only statute defining scope of review by cir-

---

<sup>8</sup> Report of Statute Revision Commission, *supra* note 6, at H.B. 3, sec. 7 and S.B. 3, sec. 7.

<sup>9</sup> Personal conversation with legal staff of the Department of Revenue, November 5, 1954.

<sup>10</sup> *Ibid.*

<sup>11</sup> Ky. Rev. Stat. secs. 131.160, 133.352, and 133.355 refer to sec. 131.120 for appeal.

cuit courts on appeal from the Tax Commission.<sup>12</sup> This view is strengthened by the fact that section 131.125 provides that *all* appeals from the Tax Commission shall be taken "subject to the conditions as provided in . . . KRS 131.120." Even though section 133.120 provides a different court to review the Tax Commission's decisions, there is no reason why review under section 133.120 should not be subject to the conditions of section 131.120 as to *scope* of review when this is the only statute that provides for any fairly definite scope of review.

*Review Under Kentucky Revised Statutes section 131.120.* If the above analysis is correct in its argument and conclusions, the problem of defining the scope of review of the circuit court has now limited itself to a determination of the scope of review under section 131.120. Once scope of review is defined under this section, it is also defined under section 133.120.

The parts of section 131.120 applicable to a definition of scope of review provide that the taxpayer may appeal from the order of the Tax Commission, "on any question of law, including adequacy of evidence." When the court hears the appeal, it shall be "heard by the court on the record, except that either party may introduce evidence of fraud." This statute would seem to have been based on concepts which originated during the period in American jurisprudence when courts based their review of administrative decisions on an analytical distinction between questions of law and questions of fact. Today in the United States generally, and particularly in federal courts, this distinction has been rejected as an unrealistic approach to the problem of scope of review.<sup>13</sup> The primary problem of scope of review now is the extent to which the courts do and should review the application of legal concepts to undisputed or established facts.<sup>14</sup> However, the statute under consideration is framed in the language of law and fact, and it must be discussed in that context.

---

<sup>12</sup> The rule of *enumeratio unius est exclusio alterius* relating to statutory construction is an argument against the conclusion of this writer, i.e., since the Franklin County circuit court is specifically named, the statute, by implication, couldn't apply to other circuit courts. However, if the Franklin circuit court is to hear an appeal from an *original* assessment made by the Tax Commission solely on the record, a *fortiori*, the appeal should be heard on the record on an appeal under KY. REV. STAT. SEC. 133.120 which is a review of two prior reviews.

<sup>13</sup> DAVIS, ADMINISTRATIVE LAW 874 (1951); COOPER, ADMINISTRATIVE AGENCIES AND THE COURTS 339 (1951).

<sup>14</sup> DAVIS, *op. cit.* *supra* note 13, at 868.

By implication the circuit court is not allowed to review any question of fact. Since the statute specifically directs the court to review questions of law, it is a reasonable assumption, that the review is limited to questions of law *only*. But in order to define questions of law, questions of fact must also be considered. There have been no cases decided under this statute which make that distinction. An attempt will be made to ascertain the probable scope of review by examining analogous appeal statutes, and by looking at the nature of the assessment of taxes.

*Decisions Affecting Scope of Review.* In *Brown v. Wayne County Board of Sup'rs*,<sup>15</sup> the taxpayer appealed under section 133.120 from a judgment of the circuit court asking for a lowering of the tax assessed by the board of supervisors. The court said that, even though the evidence was brief and not altogether satisfactory, as to mere overassessment, "Only a question of fact was presented, and we are unable to say from the evidence in the record that the learned circuit judge did not properly fix the valuation. . . ." <sup>16</sup> The court held that overassessment presented a question of fact on which they would not substitute their judgment. The reasons for this lack of judicial review are set forth in *Grant County Board of Sup'rs v. Williams*,<sup>17</sup> where it was said:

The judge of the lower court saw and heard the witnesses, perhaps was acquainted with them, and was in a better position to determine their credibility and the value of their testimony than are we. In a case of this character [over-evaluation] his judgment should not be reversed, unless it is clearly against the weight of evidence.<sup>18</sup>

Of course, these cases were heard on appeal from a *de novo* determination by the circuit court, but the reasoning of the Court of Appeals applies with equal weight to the Tax Commission. The circuit court, under section 131.120, is expressly directed by statute to hear an appeal on the record. The evidence will have been heard and taken by the Tax Commission, a body of experts in the field of taxation, dealing with technical concepts beyond the knowledge of one untrained in the field.

---

<sup>15</sup> 204 Ky. 550, 264 S.W. 1073 (1924).

<sup>16</sup> *Id.* at 551, 264 S.W. at 1074.

<sup>17</sup> 204 Ky. 722, 265 S.W. 286 (1924).

<sup>18</sup> *Id.* at 722, 265 S.W. at 287.

Valuation, however, is not completely precluded from judicial review. Overvaluation which is "tantamount to intentional" will authorize relief.<sup>19</sup> Intentional overvaluation will make the question one of law rather than fact, on grounds of unconstitutional discrimination. This intentional overvaluation must be "so continuous, persistent, and uniform from time to time as to show that there was some scheme . . . among those whose duty it was to assess property. . . ."<sup>20</sup>

In addition, the statute itself makes "adequacy of evidence" a proper subject of review. Ordinarily the circuit court should not readily disturb the Tax Commission's findings of fact. Where statutes require the reviewing circuit court to hear the appeal on the record, as in section 131.120, it has been held that if findings of the administrative body are supported by substantial evidence, the board's findings of fact are conclusive, although reasonable persons may differ with the finding upon the evidence before the board.<sup>21</sup> Substantial evidence has been defined as that which is competent or probative to support a particular result.<sup>22</sup>

Though mere overvaluation and findings of fact supported by evidence should not come within the review of the circuit court, there are other considerations that are reviewable. The courts often consider reviewable the question of whether the right rule of law has been applied by the administrative body. The Kentucky Court has said that supremacy of law demands that there shall be an opportunity to have some court decide whether erroneous rules of law have been applied by the administrative body.<sup>23</sup> Supremacy of law also demands that the court should decide whether the proceedings in which the facts have been adjudicated were conducted lawfully.<sup>24</sup>

The circuit court should also review questions of statutory interpretation and application. The reasons for the reviewability of a statutory interpretation have never been stated by the Court

---

<sup>19</sup> *Siler v. Board of Sup'rs of Whitley County*, 221 Ky. 100, 298 S.W. 189 (1927).

<sup>20</sup> *Id.* at 103, 298 S.W. at 191.

<sup>21</sup> *McNely v. Gladdis*, 309 Ky. 698, 218 S.W. 2d 1 (1949); see *Middlecamp v. Willis*, 267 S.W. 2d 924 (Ky. 1953).

<sup>22</sup> *Justice v. Call Bros. Hdw. Co.*, 312 Ky. 761, 229 S.W. 2d 746 (1950).

<sup>23</sup> *Daugherty v. Kentucky Alcoholic Beverage Control Board*, 249 Ky. 262, 130 S.W. 2d 756 (1939).

<sup>24</sup> *Id.*

in a case relating to taxation. However, the courts do and should review these questions because the statutes under which administrative authorities act are policies of the General Assembly, and since judicial review is an additional assurance that these policies will be executed, the questions of statutory interpretation are always ultimately determinable by the courts.<sup>25</sup>

Since, in Kentucky, the assessment of property for taxation is supervised rather specifically by the Constitution, the constitutional questions are numerous.<sup>26</sup> The Court has always considered reviewable any question concerning the constitutionality of an assessment, such as sufficiency of notice of an increase in assessment,<sup>27</sup> whether there has been an unconstitutional discrimination against property,<sup>28</sup> or whether there is a constitutional taxable situs.<sup>29</sup> The Court has said that this right to decide on constitutional questions is independent of any statutory provisions allowing for such review.<sup>30</sup>

In summary, the circuit courts, when reviewing the Tax Commission's decisions, should review narrowly. The statute under which review is prosecuted is, when properly interpreted, framed narrowly. The decisions of the Court of Appeals under the pre-1949 section 133.120 show a narrow scope of review of *de novo* decisions made by circuit courts. These decisions, certainly not binding authority, should nevertheless be persuasive as showing the attitude of the highest court toward judicial review in taxation cases. In addition, there are other considerations which point toward a narrow review by the courts.

*General Considerations.* Taxation itself, as distinguished from other fields of governmental operation and administrative law, stands in a unique position. Without taxation, the very existence

<sup>25</sup> United States v. Carolina Freight Carriers' Corp., 315 U.S. 475 (1942).

<sup>26</sup> KY. CONSTITUTION secs. 171, 172, and 174.

<sup>27</sup> Burnside Supply Co. v. Burnside Grade School, 260 Ky. 482, 86 S.W. 2d 160 (1935); McFarland v. Georgetown National Bank, 208 Ky. 7, 270 S.W. 995 (1925).

<sup>28</sup> Eminence Distillery Co. v. Henry County Board of Sup'rs, 178 Ky. 811, 200 S.W. 347 (1918) Cf. Siler v. Board of Sup'rs of Whitley County, supra note 19; Thomas v. Board of Sup'rs of Jackson County, 119 S.W. 209 (Ky. 1909).

<sup>29</sup> Commonwealth v. Union Pac. Rr. Co., 214 Ky. 339, 283 S.W. 119 (1926).

<sup>30</sup> Commonwealth et al. v. Big Sandy Co., 155 Ky. 412, 159 S.W. 956 (1913); even where the statute directs that the assessment "shall be final" with no appeal to the courts, the assessment is open to collateral attack on constitutional grounds, see Kentucky Heating Co. v. City of Louisville, 174 Ky. 142, 192 S.W. 4 (1917) which synthesizes the law on this subject.



of government is questionable. Dickinson says that the function of taxation is essential to the "good order . . . and welfare of society."<sup>31</sup> The process of assessment is highly technical, and depends, to a great extent, upon opinions made with a background of technical knowledge. Since the process is technical, and stands as it does in relation to government, . . . "the role of the courts . . . should be that of umpire—not that of participant."<sup>32</sup> Assessment is essentially administrative, rather than judicial, and therefore, . . . "as all valuation of property is more or less a matter of opinion, we see no reason why the opinion of the court . . . should be better or should be substituted for that of the board, whose opinion the law has declared to be the one to govern the matter."<sup>33</sup>

The assessment of property for taxation and the review of such an assessment by the Tax Commission have been classified as a discretionary function. In *City of Louisville v. Martin*<sup>34</sup> the city sued to force the Commissioner of Revenue to reassess whiskey. The Court held that a mandamus would not lie to review the decision to secure reassessment when the officer acted in good faith. The Court spoke of the discretionary powers of the Tax Commission by way of dictum, saying:

The Tax Commission in making such assessment is invested with a broad discretion and a mere error in judgment as to the fair cash value . . . would not authorize the court to interfere and substitute its judgment for the judgment of the commission.<sup>35</sup>

Not relating to the Tax Commission, but to the public welfare commission, the Court in *Commonwealth ex rel. Meredith v. Frost*<sup>36</sup> has said that a judgment based upon discretion would not be disturbed unless such discretion is abused, unreasonably exercised, or otherwise unlawful. The Court said:

There are many factors affecting the scope of judicial review of administrative action. Neither its extent nor limitation can be closely defined. In the absence of statutory authority

<sup>31</sup> DICKINSON, ADMINISTRATIVE JUSTICE AND SUPREMACY OF LAW, 268 (1927).

<sup>32</sup> Throckmorton, *Judicial Review of Tax Assessments in Iowa*, 26 IOWA L. REV. 723, 769 (1941).

<sup>33</sup> State Railroad Tax Cases, 92 U.S. 575, 610 (1875).

<sup>34</sup> 284 Ky. 490, 144 S.W. 2d 1034 (1940).

<sup>35</sup> *Id.* at 1037.

<sup>36</sup> 295 Ky. 137, 146, 172 S.W. 2d 905, 909 (1943).

in a particular case, it may be said that the courts will not, under the pretext of finding a remedy for one believed to be wronged, assume to exercise a discretion which the people, acting through their Legislature, have lodged in administrative officers and agencies.<sup>37</sup>

The court should feel no differently about the Tax Commission. The quasi-judicial nature of certain administrative bodies has always carried with it a presumption of the correctness and fairness of their decisions.<sup>38</sup> The rule should be no different when applied to the Tax Commission, especially when it is considered that in addition to being a discretionary, quasi-judicial body, the subject matter with which the Commission deals is taxation.

Aside from the legal considerations, there are also practical considerations affecting the scope of review of the Tax Commission's decisions. By statute, the only prerequisite to appeal by a taxpayer is that he be "aggrieved." According to the legal staff of the Department of Revenue, there are now pending before them 1500 cases. Most of these are simple collection cases which will be settled by default judgment, but some 500 of these are cases to be heard on appeal by the Tax Commission.<sup>39</sup> Unless the scope or review of these decisions is narrow, both the circuit courts and the Court of Appeals will be overburdened.

Another practical, as well as legal, consideration is that the proceedings before the Tax Commission are conducted with most of the procedural safeguards of the courts. Any person interested in any proceedings before the Tax Commission may appear and give evidence.<sup>40</sup> The rules of evidence are the same as in civil proceedings in any court of Kentucky, except that the rules may be relaxed if . . . "the ends of justice will be better served. . . ."<sup>41</sup> Upon application, hearings may be re-opened for the introduction of additional evidence.<sup>42</sup> Decisions made under rules of this character call for no broad review by the courts out of fear of arbitrariness by the Tax Commission.

---

<sup>37</sup> *Ibid.*

<sup>38</sup> *Louisville & Jefferson County Planning and Zoning Commission v. Ogden*, 307 Ky. 362, 365, 210 S.W. 2d 771, 773 (1948).

<sup>39</sup> *Supra* note 8.

<sup>40</sup> *Rules of Practice and Procedure Before The Kentucky Tax Commission*, Rule 3.

<sup>41</sup> *Id.* at Rule 8-a.

<sup>42</sup> *Id.* at Rule 8-c.

The same factors considered in relation to the circuit court apply with equal force to review by the Court of Appeals.<sup>43</sup> Logically, the highest court will not review any more broadly than the circuit court. By the time an appeal reaches the Court of Appeals an assessment will have been originally made by the county tax commissioner, and reviewed by the board of supervisors, the Tax Commission, and a circuit court. If the review by the circuit court is narrow under the statutes being considered, there is no legal or practical reason for a broader review by the highest court.

*Conclusion.* In summary, it is concluded that when the Court of Appeals does pass upon the question of scope of review of the Tax Commission's decisions on appeals prosecuted under Kentucky Revised Statutes sections 131.120 and 133.120, the court will establish a narrow scope of review, and limit the review by the courts to a consideration of the correctness of statutory interpretations by the Commission, the constitutionality of the particular assessment, and the lawfulness of the proceedings. Precluded from judicial review should be questions of mere overvaluation, if not intentional or discriminatory. Commission findings of fact, if supported by substantial evidence, should be conclusive. This is thought to be a valid conclusion, after a consideration of the nature of taxation, the discretionary and quasi-judicial powers of the Commission, and a summary of the practical reasons for making such a decision. However, a final word of warning should be added, expressed so aptly by Cooper:

The factors determining the scope and extent of judicial review . . . are essentially temporal in nature, varying with the attitude of the particular court . . . the reputation of the particular (administrative) tribunal . . . and other elements which vary widely from case to case.<sup>44</sup>

J. MONTJOY TRIMBLE

---

<sup>43</sup> An appeal to the Court of Appeals will only be prosecuted under KY. REV. STAT. sec. 133.120, none being expressly allowed under KY. REV. STAT. sec. 131.120. An appeal to the courts under KY. REV. STAT. sec. 131.120 would have to be taken other than under the statute and would lie in only certain instances. See in this connection *Kentucky Heating Co. v. City of Louisville*, *supra* note 30.

<sup>44</sup> COOPER, *op. cit. supra* note 13, at 330.