

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

5-24-2011

Summary of Southern California Edison v. First Judicial District Court, 127 Nev. Adv. Op. No. 22

Cayla Witty
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Administrative Law Commons](#)

Recommended Citation

Witty, Cayla, "Summary of Southern California Edison v. First Judicial District Court, 127 Nev. Adv. Op. No. 22" (2011). *Nevada Supreme Court Summaries*. 265.

<https://scholars.law.unlv.edu/nvscs/265>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

ADMINISTRATIVE LAW – JUDICIAL REVIEW OF NEVADA TAX COMMISSION

Summary

A petition for a writ of mandamus challenging whether the district court hears use tax refund claims as independent actions, requiring de novo review, or as a petition for judicial review under NRS Chapter 233B, which is more deferential to the Nevada Tax Commission’s prior decision.

Disposition/Outcome

The Supreme Court of Nevada granted Southern California Edison’s petition, because, even though the Court held that a petition for judicial review was the correct process for hearing challenges to the Nevada Tax Commission’s decisions on sales and use taxes, the Nevada Tax Commission led Southern California Edison to believe it would receive de novo review should it appeal to the district court. Therefore, the Court held that the Nevada Department of Taxation could not request that Southern California Edison go through a petition for judicial review, and mandamus relief was appropriate.

Factual and Procedural History

Southern California Edison (“Edison”) filed for refunds on use taxes paid between March 1998 and December 2000. The Nevada Department of Taxation (“Department”) denied Edison’s requests, and Edison appealed to the Nevada Tax Commission (“Commission”). An administrative judge upheld the Department’s denial, and, again, Edison appealed to the Commission. The Commission’s final decision also denied the refunds.

Edison then filed a complaint in the First Judicial District of Nevada. Edison argued that NRS 372.680 provided it with the right to a trial de novo in the district court on this issue, and that the Administrative Procedures Act (“APA”), codified in NRS Chapter 233B, did not apply.

The Department filed a motion to dismiss, as it argued that the APA does apply, and the action should have been filed as a petition for judicial review and not a trial de novo. The District Court denied the motion to dismiss, but decided that the action would proceed as a petition for judicial review, not a trial de novo as it was filed.

Edison then filed this petition for a writ of mandamus, and the District Court stayed any action until the Supreme Court of Nevada resolved the petition.

¹ By Cayla Witty

Discussion

Chief Justice Hardesty, writing for the unanimous Court, noted that a writ of mandamus is an extraordinary remedy. To compel an action, “the law requires . . . a duty resulting from an office or where discretion has been manifestly abused or exercised arbitrarily or capriciously.”² The Court has full discretion in hearing petitions for a writ of mandamus, but the burden is on the petitioner to present an important issue of law that needs clarification, and the petitioner must show that this remedy is needed.

Edison argued that the important issue before the Court was the issue of how the district courts treat challenges to the Commission’s decisions. The Department presented inconsistent positions with regard to petitions for judicial review and the availability of a trial de novo in the district courts. Edison argued that to ensure all taxpayers are treated consistently the Court must hear its petition.

The Court noted that the Department’s policy toward such actions was both inconsistent and unclear. Due to this confusion, the Court decided to clarify the proper action for a tax refund claim.

Whether taxpayer can file a complaint in district court or is required to petition for judicial review when challenging a decision of the Commission

There are two applicable statutes governing the filing of an action in a tax refund action: NRS 372.680³ & NRS Chapter 233B – specifically §§ 233B.130 and 233B.135. NRS 372.680 establishes a right of action against the Department for a disallowed refund claim. This statute, however, does not clarify the nature of the action to be taken. In *Saveway v. Cafferata*, a statute similar to NRS 372.680 was held to provide the right to a trial de novo. However, NRS Chapter 233B provides a more deferential standard of review for Commission decisions. Also, both statutes had been amended since the *Saveway* case.

In looking at the Administrative Procedures Act, the Court found that NRS Chapter 233B was amended to provide clearer procedural requirements for administrative adjudication and judicial review. There were administrative entities expressly exempted from the controls of Chapter 233B, but the Commission was not one of them. This post-*Saveway* revision expressly removed the option of a trial de novo, and established the petition for judicial review as the exclusive means of judicial action concerning a final decision in a case involving the Commission. NRS 360.245 was also amended to clarify that the Commission’s decisions were a final decision for the purposes of judicial review. The Court, in reading these sections together, decided that it was the intent of the Legislature that the final decisions of the Commission were to subject to NRS Chapter 233B.

² Redeker v. Dist. Ct., 122 Nev. 164, 167, 127 P. 3d 520, 522 (2006); see also NEV. REV. STAT. § 34.160 (2007).

³ NRS Chapter 372 deals generally with tax and revenue schemes in the state of Nevada.

Further, Senate Bill 362 amended NRS 372.680 to indicate the need for a final decision from the Commission for an action to be brought in district court. Prior to S.B. 362, refund claims were not subject to NRS Chapter 233B provisions. Now, as interpreted by the Office of the Attorney General in a memorandum to the Assembly Judiciary Committee, the language of the statute established that an action could be brought in district court *subject to the requirements of Chapter 233B*.

The Court found the larger statutory schemes and the legislative history to all call for judicial review of the Commission's final decisions as the sole remedy for a challenge of a sales or use tax refund matter. However, the Court nevertheless granted Edison's petition for a writ of mandamus under the doctrine of judicial estoppel.

Judicial Estoppel

Judicial estoppel applies "to protect the judiciary's integrity and prevents a party from taking inconsistent positions by 'intentional wrongdoing or an attempt to obtain an unfair advantage.'"⁴ It may apply when:

- (1) The same party has taken two positions;
- (2) the positions were taken in judicial or quasi-judicial administrative proceedings;
- (3) the party was successful in asserting the first position . . . ;
- (4) the two positions are totally inconsistent;
- and (5) the first position was not taken as a result of ignorance, fraud, or mistake.⁵

The Court held that the Department's inconsistent positions on judicial review clearly met this test, and that it would be highly inequitable to allow this change in position with respect to this taxpayer when the Department's briefs in this case to the Commission and then to the district court were so conflicting. Thus, the Court granted the petition, and ordered a writ of mandamus directing the district court to proceed with this case as an independent action with a trial de novo.

Conclusion

Challenges to the Nevada Tax Commission's decisions on sales and use tax refunds can only be reviewed by the district court after a petition for judicial review subject to NRS Chapter 233B. But, when an administrative agency pursues inconsistent treatment of a taxpayer in a single case, under judicial estoppel, the court may prevent any treatment that would unfairly advantage the administrative agency.

⁴ 127 Nev. Adv. Op. No. 22 (May 26, 2011) (quoting *Nolm, LLC v. Cnty. of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004)).

⁵ *Nolm*, 120 Nev. at 743, 100 P.3d at 663.