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### K-Kel, Inc. v. State Dep't of Taxation, 134 Nev. Adv. Op. 10 (Mar. 10, 2018)

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ADMINISTRATIVE LAW: JUDICIAL REVIEW, JURISDICTION

**Summary**

The court determined that (1) the district court does not have jurisdiction over a petition for judicial review of an administrative agency decision when the appellants do not file the petition according to statutory requirements, (2) that district court orders in a case where it does not have jurisdiction are void, and (3) that administrative agency decisions made in compliance with void court orders do not grant district court jurisdiction.

**Background**

Appellants, several independent exotic dancing establishments, filed a de novo action in 2006 arguing that Nevada's Live Entertainment Tax was facially unconstitutional (Case 1). The appellants also filed individual tax refund requests with the Nevada Department of Taxation. The Administrative Law Judge (ALJ) denied the requests and they were appealed. The Nevada Tax Commission affirmed the Department in a final decision on October 12, 2007.

In 2008, the appellants filed a de novo action in district court challenging the 2007 decision (Case 2). The district court dismissed the action in 2011 with leave to amend because administrative appeals must be filed as petitions for judicial review, not de novo actions. The appellants did so (Case 3) and filed a motion to consider new evidence. The district court remanded the case to the Commission, which remanded the case to the ALJ to consider the case with the new evidence. The Commission once again denied the appellants request and entered a final order on February 12, 2014. The appellants filed a new petition for judicial review of the 2014 decision within 30 days (Case 4).

The district court consolidated Cases 3 and 4 and affirmed the Commission's 2014 order on June 23, 2016.

**Discussion**

*The district court lacked jurisdiction to consider appellants' petitions for judicial review*

“Courts have no inherent appellate jurisdiction over official acts of administrative agencies except where the [L]egislature has made some statutory provision for judicial review.”<sup>2</sup> Accordingly, “[w]hen a party seeks judicial review of an administrative decision, strict compliance with the statutory requirements for such review is a precondition to jurisdiction by the court of judicial review, and [n]oncompliance with the requirements is grounds for dismissal.”<sup>3</sup>

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<sup>1</sup> By Casey Lee.

<sup>2</sup> *Crane v. Cont'l Tel. Co. of Cal.*, 105 Nev. 399, 401 (1989).

<sup>3</sup> *Washoe Cty. v. Otto*, 128 Nev. 424, 431 (2012) (second alteration in original) (internal quotation marks omitted).

In this case, appellants' Case 2 de novo action did not meet the Nevada Administrative Procedure Act's requirement that challenges to administrative action be in the form of a petition for judicial review.<sup>4</sup> Therefore, the district court's jurisdiction never attached to Case 2.

Case 3 was filed within the 30 days given by the district court for refileing, but four years after the time limit for administrative review set by the APA. Because the district court did not have jurisdiction in Case 2, it did not have the authority to extend the deadline. Therefore, the appellant's Case 3 petition was not timely and the district court's jurisdiction never attached to Case 3.

With regards to Case 4, orders made in a case where the court does not have jurisdiction are void.<sup>5</sup> The district court cannot give itself jurisdiction it would otherwise lack. The 2014 decision by the Commission did not restart the clock for appellants to re-file their petition for judicial review. Therefore, the district court's jurisdiction never attached to Case 4.

### **Conclusion**

The district court did not have jurisdiction to hear the matters. The court reversed all orders by the district court and remanded for further proceedings.

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<sup>4</sup> *Deja Vu Showgirls of Las Vegas, LLC v. Nevada Department of Taxation*, 334 P.3d 387, 389–90 (Nev. 2014).

<sup>5</sup> *See State Indus. Ins. Sys. v. Sleeper*, 100 Nev. 267, 269 (1984) (“There can be no dispute that lack of subject matter jurisdiction renders a judgment void.”); *see also Cox v. Eighth Judicial Dist. Court*, 124 Nev. 918, 925 (2008) (stating “[a]ny subsequent orders entered by district courts going to the merits of an action [that] are in excess of their jurisdiction” are void).