TAXATION

APPEALS FROM DECISIONS OF THE COUNTY BOARD OF EQUALIZATION: NOT A LAND OF MILK AND HONEY

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INTRODUCTION

The decision of the Nebraska Supreme Court in *Knoefler Honey Farms v. County of Sherman*[1] dealt in general terms with the topic of appeals of decisions from the county board of equalization to the district court. The decision affects not only county board of equalization appeals in cases similar to *Knoefler*, it also affects the manner in which certain other appeals are made.[2] Insofar as the *Knoefler* decision explicitly detailed the steps to be taken in appealing from a decision of the county board of equalization, it is a welcome decision; but whether the court's interpretation of the statutes involved a correct one or not is open to question, and that question will be discussed in this article. In addition to an analysis of the *Knoefler* opinion, this article will discuss the effect of *Knoefler* on appeals of cases involving denials of tax exemptions.[3]

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1. 193 Neb. 95, 225 N.W.2d 855 (1975) (hereinafter cited as *Knoefler*).

2. The *Knoefler* case arose out of the decision of a local county assessor to add certain personal property of a taxpayer to the tax rolls as omitted property pursuant to the provisions of NEB. REV. STAT. § 77-142 (Reissue 1971). Under this procedure the assessor's decision can be appealed to the county board of equalization and its decision in turn can be appealed "in the manner provided for by sections 77-1510 and 77-1511." The basic statute governing appeals from county board of equalization matters is section 77-1510 and this is the statute construed in *Knoefler*. Other statutes dealing with the decisions of various taxing bodies and officers provide for a method of appeal "in the same manner as appeals are taken from actions of the county board of equalization under sections 77-1510 and 77-1511." In addition to the statute dealing with denials of tax exemptions, to be discussed *infra*, see: NEB. REV. STAT. § 77-202.18 (Cum. Supp. 1974) (homestead exemption denials); NEB. REV. STAT. § 77-303.01 (Reissue 1971) (appeal of Tax Commissioner's decision by county); NEB. REV. STAT. § 77-313 (Reissue 1971) (reassessment appeals); NEB. REV. STAT. § 77-318 (Reissue 1971) (appeal of Tax Commissioner decision by taxpayer).

3. *See* text at note 44 *infra*.

THE KNOEFLER DECISION

THE FACTS OF KNOEFLER

During the latter part of September, 1972, Knoefler Honey Farms was notified that the Sherman County Board of Equalization would meet in October of that year for the purpose of considering whether certain beehives owned by Knoefler should be added to the tax assessment rolls of the county. In the latter part of October the board of equalization notified Knoefler that it had decided to add the beehives to the assessment rolls as omitted property. Knoefler protested this decision and a meeting was held before the county board of equalization on November 8, 1972. At that meeting the board reaffirmed its prior action and again followed the county assessor's recommendation. The chairman of the meeting signed a notice to that effect. This notice, dated November 8, 1972, was addressed to Knoefler, and contained the following language:

> You are further notified that the action of the County Board of Equalization may be appealed to the District Court of this County in same manner as appeals are taken from the actions of the County Board of Equalization under the provisions of Sections 77-1510 and 77-1511, R.R.S. 1943. Said appeal must be perfected within 45 days.[4]

Knoefler filed its notice of appeal and bond on December 22, 1972. The transcript and petition were filed on December 26, 1972, in the office of the clerk of the district court. The county answered on January 29, 1973, and in August of the same year the county filed a motion to dismiss on the ground that the district court lacked jurisdiction over the cause of action because Knoefler did not serve its notice of appeal and bond upon the county clerk within *twenty days* from the decision of the county board of equalization. The county was relying upon the provisions of section 23-135 of the Nebraska statutes.[5] After a hearing on the motion to dismiss, the district court judge granted the defendant's motion.[6]

In a unanimous decision by the Nebraska Supreme Court, the action of the district court was reversed.[7] The reasoning of the supreme court will be detailed in the next section.

THE SUPREME COURT'S HARMONIZATION OF THE STATUTES INVOLVED

As stated by Judge Donald Brodkey in his opinion in

4. 193 Neb. at 96-97, 225 N.W.2d at 856.
5. NEB. REV. STAT. § 23-135 (Reissue 1974). *See* text at note 9 *infra.*
6. 193 Neb. at 97, 225 N.W.2d at 857.
7. *Id.* at 103, 225 N.W.2d at 860.

Knoefler, "the key provision" governing the case was section 77-1510 of the Nebraska statutes, which provides, in part:

> Appeals may be taken from any action of the county board of equalization to the district court within 45 days after adjournment of the board, in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county.[8]

Judge Brodkey then pursued the reference to appeals from allowance or disallowance of claims against a county, and noted that the manner of taking such appeals is set forth in section 23-135 of the Nebraska statutes:

> When the claim of any person against the county is disallowed in whole or in part by the county board, such person may appeal from the decision of the board to the district court of the same county, by causing a written notice to be served on the county clerk, within 20 days after making such decision and executing a bond to such county, . . .[9]

The county (appellee) argued in the supreme court, as it had successfully argued before the district court, that the twenty day provision in section 23-135 was not complied with in the instant case and that therefore the district court was correct in determining that it lacked subject matter jurisdiction.[10] The appellant, Knoefler, argued before the supreme court that the twenty day period specified in section 23-135 is not controlling in an appeal brought pursuant to section 77-1510.[11] In other words, the time limitation specified in section 77-1510 (forty five days) overrides the twenty day period provided for in section 23-135, notwithstanding the fact that section 77-1510 adopts section 23-135 *et seq.*

The Supreme Court of Nebraska agreed with Knoefler's contention that the longer time period governed.[12] The court looked into the statutory history of the two sections of the statutes in conflict and concluded that the legislature must not have contemplated that the twenty day limitation appearing in section 23-135 would have "any effect at all" upon appeals brought pursuant to section 77-1510.[13] In further discussing the interplay between sections 23-135 and 77-1510, the court stated that the county would have the court reconcile these sections by:

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8. *Id.* at 97, 225 N.W.2d at 857, *quoting* NEB. REV. STAT. § 77-1510 (Reissue 1971).
9. NEB. REV. STAT. § 23-135 (Reissue 1974).
10. 193 Neb. at 98, 225 N.W.2d at 857.
11. *Id.*
12. *Id.* at 102, 225 N.W.2d at 859.
13. *Id.* at 98-99, 225 N.W.2d at 857-58.

> interpreting the former as establishing a time limitation for the filing of notice of appeal, while regarding the latter as fixing a time limitation for all other activities necessary to perfect an appeal to the District Court in cases such as this one.[14]

As to this argument the court responded that not only would the perfecting of an appeal be controlled by two different time limitations, but it would conceivably be controlled by two periods that begin to run at different times.[15] The twenty day limitation on filing notice in section 23-135 runs from date of decision; the forty five day limitation in section 77-1510 runs from date of adjournment of the board.[16]

Thus far the court was definitively responding to the issue presented, namely, whether the *notice of appeal* involves a twenty or a forty five day limitation period. Then, delving into the "full complexity" of the statutory scheme, the court continued:

> The procedure for an appeal to the District Court from an action of a county board of equalization is that prescribed for an appeal from a judgment of a justice of the peace court to the District Court.[17]

The court, in the above statement, is expressing in an extreme fashion the fact that section 77-1510 refers to sections 23-135, *et seq.*, which in turn refer to former sections 27-1301 *et seq.*[18] These last statutes are no longer in force,[19] but as the court explicitly noted, the statutes are still in force insofar as their being a part of the appeal procedure from the county board to the district court:

> Thus, in cases such as this, the procedure for taking an appeal from the county board to the District Court has been and *continues to be* the procedure prescribed for an appeal from a judgment of a justice of the peace court to the District Court.[20]

The court then interjected some of the time limitations that were controlling under the sections of the statutes relating to appeals from a justice of the peace court to the district court, such as the

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14. *Id.* at 100, 225 N.W.2d at 858.
15. *Id.*
16. *See* text at notes 8 and 9 *supra.*
17. 193 Neb. at 101, 225 N.W.2d at 858.
18. *See* NEB. REV. STAT. § 77-1510 (Reissue 1971) ("Appeals may be taken . . . in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county"). *See also* NEB. REV. STAT. § 23-137 (Reissue 1974) ("such appeal shall be entered, tried, and determined the same as appeals from justice courts").
19. L.B. 1032, § 287, [1972] Laws of Neb. 453.
20. 193 Neb. at 101, 225 N.W.2d at 859.

ten day from date of judgment limitation on "entering into an undertaking," and the thirty day from date of judgment limitation on filing the transcript.[21] The court then noted that it would be literally impossible to harmonize those time sequences with the forty five day period specified in section 77-1510.[22] After restating what it had already decided (that the twenty day time limitation period appearing in section 23-135 has no effect upon the perfecting of appeals brought pursuant to section 77-1510), the court states its "ultimate conclusion":

> in order to perfect an appeal to the District Court from a decision of a county board of equalization, pursuant to section 77-1510, R.R.S. 1943, all activities necessary to perfect such appeal, including the filing of notice of appeal, are required to be carried out within 45 days of the adjournment of the board.[23]

In a most significant passage, the court then detailed what constitutes "all activities necessary to perfect such appeals":

> The District Court acquires jurisdiction by appeal from a decision of the county board of equalization, where the taxpayer gives *notice of appeal, furnishes an appeal bond,* and files in the offices of the clerk of the District Court a *transcript* of the proceedings and order of the county board of equalization within the time allowed by law. . . . As we have already determined, "the time allowed by law" for such activities is 45 days from the day of the adjournment of the board.[24]

It is the court's discussion of "the full complexity" of the statutes that raises the problems to be discussed in the following sections of this article. For Knoefler, however, the discussion caused no difficulty. After examining the facts of the instant case the court determined that all of the steps referred to were taken within forty five days after the date of adjournment of the board, thus the appeal had been perfected, and the district court had jurisdiction.

For better or for worse, the decision by Judge Brodkey in the *Knoefler* case appears to spell out in detail the time sequence in which activities must be performed in order to perfect an appeal from the county board of equalization. Before turning to the effect *Knoefler* will have in the interpretation of statutory interplay

21. *Id.* at 101-02, 225 N.W.2d at 859, *citing* former sections 27-1302 and 27-1303.
22. *Id.* at 102, 225 N.W.2d at 859.
23. *Id.*
24. *Id.* (emphasis in original).

affecting appeals from denial of tax exemptions, further consideration should be given to the "full complexity" of the statutes.

REEXAMINATION OF KNOEFLER

One can distinguish at least four acts which, in the normal course of events, will be performed in making an appeal from the county board of equalization. Those acts are: (1) filing a notice of appeal with the appropriate officer; (2) filing a cost bond; (3) filing the transcript of the inferior court proceedings with the clerk of the reviewing court; and (4) filing a petition in the reviewing court.[25] For any person involved in appealing a decision of an inferior court to a higher court, it is extremely crucial that the party appealing know what time period is involved in doing each of the acts specified above, and, in addition, whether the failure to do any of the acts within a certain time causes the appeal to be lost. In other words, the appellant wants to decipher which of the steps outlined above are jurisdictional.

In *Knoefler* the supreme court read a prior case,[26] as stating that the notice of appeal, the filing of the appeal bond, *and the filing of the transcript* must all be done within the time allowed by law. In *Knoefler* this period turned out to be forty five days from the day of adjournment of the county board of equalization. In this regard, the supreme court explicitly rejected the view put forward in the reply brief of the appellant, which distinguished between the steps required to perfect an appeal and the steps which are not required to perfect the appeal. Specifically, the court categorized the filing of the transcript as a jurisdictional act prerequisite to perfection of an appeal.

Is Filing the Transcript a Jurisdictional Act?

In appeals from justice of the peace decisions, the filing of the transcript within thirty days of the decision was essential if the

25. The Supreme Court of Nebraska has held that filing the petition is not a jurisdictional requirement. Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958).

26. Myers v. Hall County, 130 Neb. 13, 263 N.W. 486 (1935). *Myers* was a case involving the disallowance of a claim against the county. The first numbered point of the sylabus in the *Myers* report reads, in part:

> The district court acquires jurisdiction by appeal from a county board's disallowance of a claim against a county, where claimant gives notice of appeal, furnishes an appeal bond and files in the office of the clerk of the district court a transcript . . . within the time allowed by law, though the petition on appeal is not filed until a later date.

130 Neb. at 13, 263 N.W. at 486. *See also* note 37 *infra.*

appellant was to successfully prosecute his appeal. This result was dictated by former sections 27-1303 and 27-1307. Section 27-1303 provided, in part:

> The justice shall make out a certified transcript . . . and shall, on demand, deliver the same to the appellant or his agent, who shall deliver the same to the clerk of the (district court) . . . within thirty days next following the rendition of such judgment.[27]

The result of failure to follow this procedure is the subject of former section 27-1307:

> If the appellant shall fail to deliver the transcript to the clerk, and have his appeal docketed within thirty days next following the rendition of the judgment, the appellee may . . . file a transcript . . ., and the cause shall, on motion of the appellee, be docketed; and the court is authorized and required, on his application, either to enter up a judgment in his favor . . . or such court may, with the consent of the appellee, dismiss the appeal . . . .[28]

The cases which interpret these statutes support the proposition that the filing of the transcript within the specified thirty days, so far as appellant is concerned, is a jurisdictional act, and that it is the duty of the appellant, rather than the party preparing the transcript to deliver the transcript to the proper party.[29] This article will not dispute the correctness of this interpretation insofar as it related to appeals from justices of peace. It does take issue with any decision or implication that the same proposition should be adopted with respect to appeals from allowance or disallowance of claims against a county, appeals from county boards of equalization, and appeals of tax exemption decisions.

At this point it is extremely important to distinguish former sections 27-1301 *et seq.*, which governed appeals from justices of the peace, from the statutes which govern appeals from allowance or disallowance of claims against a county (sections 23-135 and 23-137), the statutes which govern appeals from decision of county boards of equalization (sections 77-1510 *et seq.*), and the statute which governs appeals from allowance or disallowance of tax exemption applications (section 77-202.04). So far as the last two sets of statutes are concerned, no mention of a transcript is made at all. Any provisions regarding the transcript that apply to the last two types of appeals must do so by virtue of reference (direct in

27. [1877] Laws of Neb. 15.

28. Ch. 97, § 1, [1887] Laws of Neb. 652.

29. Lynde v. Wurtz, 147 Neb. 454, 23 N.W.2d 703 (1946). *See, in general*, Cashen, *Appeals from Courts of Limited Jurisdiction to State District Courts*, 41 NEB. L. REV. 410, 412-13 (1941) and cases cited therein.

the case of section 77-1510, and indirect in the case of section 77-202.04) to the statutes which govern appeals from allowance or disallowance of claims against the county (sections 23-135, 23-137), or by virtue of the reference that section 23-137 makes to former sections 27-1301 *et seq.*

Section 23-137 does make reference to a transcript,[30] but do sections 23-135 and 23-137 contain a mandatory jurisdictional requirement for the filing of the transcript? Knoefler raised this question in his reply brief,[31] and proposed an answer that was passed over by the supreme court. Knoefler referred the court to the specific provisions of sections 23-135 and 23-137:

> Under Section 23-137 the appeal is taken before the transcript is prepared. *The only action required under Section 23-135 essentially to appeal is to serve a written notice and to file a bond.* Except for the final act of preparing and filing the transcript, which is the duty of the clerk, nothing beyond the notice and bond essentially are required of the appellant. The filing of the notice and bond necessarily are equated to an appeal.[32]

The language of section 23-135, said appellant, provides specifically how an appeal is to be taken:

> When the claim of any person against the county is disallowed in whole or in part by the County Board, such person *may appeal from the decision* of the board to the District Court of the same county, *by causing a written notice to be served* on the County Clerk, within 20 days after making such decision *and executing a bond to such county.*[33]

Thus the appellant argued that an appeal is taken by the filing of a notice of appeal and of a bond. After that action is taken by the party appealing, it should be the duty of the clerk of the board to make the complete transcript and to deliver it to the clerk of the district court. For this proposition appellant cited section 23-137:

> The Clerk of the Board, *upon such appeal being taken,* . . . shall make out a complete transcript . . . and shall deliver the same to the Clerk of the District Court, and such appeal shall be entered, tried, and determined the same as appeals from justice courts . . . .[34]

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30. *See* text at note 34 *infra.*

31. Reply Brief of Appellant at 7-11, Knoefler Honey Farms v. County of Sherman, 193 Neb. 95, 225 N.W.2d 885 (1975) (hereinafter cited as *Reply Brief*).

32. *Reply Brief* at 9-10 (emphasis in original).

33. *Id.* at 8, *quoting* NEB. REV. STAT. § 23-135 (Reissue 1974) (emphasis added by appellant).

34. *Id., quoting* NEB. REV. STAT. § 23-137 (Reissue 1974) (emphasis added by appellant).

Read literally, the appeal has already been taken before the transcript is ever prepared; if the filing of the transcript is not a jurisdictional requirement in appeals under sections 23-135 and 23-137, then it should not become a requirement in appeals under section 77-1510.

The *Knoefler* decision, so dogmatic in rejecting the notion that sections 23-135 and 23-137 of the statutes have a substantive impact on the provisions of section 77-1510, simply ignored appellants cogent argument.[35] Rather, taking its cue from a prior case[36] and the reference to former sections 27-1301 *et seq.* found in section 23-137, the court descended quickly to the statutes governing appeals from justices of the peace, and emerged with the statement:

> The procedure for an appeal to the District Court from an action of a county board of equalization is that prescribed for an appeal from a judgment of a justice of the peace court to the District Court. . . .
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> The District Court acquires jurisdiction . . . where the taxpayer gives *notice of appeal,* furnishes an *appeal bond,* and files in the office of the clerk of the District Court a *transcript* . . . within the time allowed by law. Myers v. Hall County, 130 Neb. 13, 263 N.W. 486 (1935). As we have already determined, "the time allowed by law" for such activities is 45 days from the date of the adjournment of the board.[37]

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35. Notwithstanding its reception in the supreme court, Knoefler's argument deserves consideration. Bartlett v. Dahlston, 104 Neb. 738, 178 N.W. 636 (1920), although it was not cited in the *Reply Brief,* does lend support to Knoefler's argument. *Bartlett* interpreted statutes identical to sections 23-135 and 23-137, and held that an appeal was properly allowed, even though the transcript which appellant had filed was faulty. The court explicitly recognized that:

> The statute (present 23-137) further provides that "upon such appeal being taken" the county clerk shall prepare and file the transcript in the district court. *The duty of properly preparing and filing the transcript is, then, primarily enjoined upon the county clerk and not the claimant.*
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> . . . The claimant is required to take certain steps to perfect the appeal and [in addition to, and separate from perfecting the appeal] to be diligent to see that the duties imposed upon the county clerk are carried out. . . .

104 Neb. at 741, 178 N.W. at 637-38 (emphasis added). Although it seems to be talking out of both sides of its mouth when it comes to diligence in seeing that the clerk does his duty, *Bartlett* did distinguish the appeal procedure under sections 23-135 and 23-137 from that under sections 27-1301 *et seq.* This stands in stark contrast to the statement in *Knoefler* (*see* text at note 37 *infra*).

36. Myers v. Hall County, 130 Neb. 13, 263 N.W. 486 (1935).

37. 193 Neb. at 101-02, 225 N.W.2d at 858-59. Note carefully what is being done in this quotation: the supreme court is stating what steps are

It is probably true, however, that the form and substance of the statement in *Knoefler* have the weight of history and habit behind them. At the same time, it is apparent on review of the cases that the question in issue has never been given a clear and considered treatment.[38] Had the *Knoefler* court chosen to review

jurisdictional under section 77-1510, but is citing a case involving the statutory procedure set forth in chapter 23. *Myers* treated the final step in the appeal process (filing of the petition) and held that if the district court excuses a delay in filing the petition (pursuant to section 23-1307), the appellant, to attack jurisdiction, must affirmatively demonstrate to the supreme court that "good cause" was not shown to the district court. The *Knoefler* court adopts a gratuitous statement made in *Myers*, as set forth in note 26 *supra*. The court's willingness to borrow a gratuitous statement from a case arising under chapter 23 provisions is ironic in that the appellant, in his *Reply Brief*, had asked the court to examine carefully some very critical language contained in sections 23-135 and 23-137, and the court refused to do so.

38. Regarding substance, the filing of the transcript was treated as a jurisdictional act on appeal under sections 23-135 and 23-137 in a case that antedates *Bartlett, supra* note 35. Although it has never been cited for the proposition, Loup County v. Wirsig, 73 Neb. 505, 103 N.W. 56 (1905), is on point. That case involved an appeal from the allowance of a claim against the county, under statutes identical to sections 23-135 and 23-137. The appeal was held to have been properly dismissed where, although notice and bond had been filed within the twenty day time limit set by sections 23-135 and 23-137,

> the transcript was not filed until more than 30 days from the allowance of the claims, and . . . appellant offered no showing to excuse his delay in procuring and having the transcript filed, and . . . he made no effort to file a petition in the district court within the time prescribed . . . .

73 Neb. at 506, 103 N.W. at 57. The *Wirsig* opinion prefaced this conclusion, which adopts two "jurisdictional act" provisions from the justice of the peace appeals procedure, with a paraphrase of section 23-137:

> appeals from the decision of a county board should be entered, tried, and determined in the district court, the same as appeals from justices of the peace.

73 Neb. at 506, 103 N.W. at 56-57. If this is any reason at all for the adoption of a thirty day requirement for the filing of the transcript in appeals under sections 23-135 and 23-137, then the argument against such adoption, as presented in Knoefler's *Reply Brief*, is certainly more persuasive. The more recent and more specific provision should govern.

Regarding form, *Knoefler* cites two "relevant" cases: Myers v. Hall County, 130 Neb. 13, 263 N.W. 486 (1935); and Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958). *Myers* is discussed in notes 26 and 37 *supra*.

Seventh Day Adventists, like *Myers*, involved the question of whether or not filing a petition within fifty days from date of decision is a jurisdictional act for the appellant. *Seventh Day Adventists*, unlike *Myers*, however, was an appeal from a decision of a county board of equalization. Thus *Seventh Day Adventists* involved the same type of appeal as was involved in *Knoefler*. As will soon be noted, however, *Seventh Day Adventists* was decided under statutes that were significantly different from those involved in *Knoefler*. *See* note 49 *infra*.

The holding of *Seventh Day Adventists* was that a late petition was "an irregularity but not a jurisdictional defect." 166 Neb. at 592, 90 N.W.2d

the issue, it might have avoided the problem that will be found to arise in appeals of tax exemption decisions. For the present we must assume that the filing of the transcript within "the period allowed by law" is mandatory and jurisdictional for appeals from allowance or disallowance of claims against the county, appeals from county boards of equalization, and appeals of tax exemption decisions. The crucial question becomes: what is "the period allowed by law"?

PERIOD WITHIN WHICH THE TRANSCRIPT MUST BE FILED

In *appeals from justices of the peace* it was clear that the appellant had thirty days in which to obtain and file the transcript.[39] The cases which indicate that the filing of the transcript is a required jurisdictional act in *appeals from the allowance or disallowance of claims against the county* uniformly indicate that the appellant has thirty days.[40] This results in a twenty-plus-ten rule. Section 23-135 requires that appellant cause "a written notice to be served on the county clerk, *within twenty days after making such decision* . . . ."[41] Adopting the requirements of former section 27-1303, the appellant must file the transcript *"within thirty days next following the rendition of judgment."*[42] Insofar as "rendition of judgment" corresponds to "such decision," the thirty day time period for filing the transcript runs from the same date as the twenty day time period for the section 23-135 jurisdictional acts, thus appellant has ten additional days in which to file the

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at 52. The opinion contained two statements of interest to the *Knoefler* court. First, it stated that:

> The procedure for an appeal to the district court from action of a county board of equalization is that prescribed for an appeal from a judgment of a justice of the peace court to the district court. § 77-1510, R.R.S. 1943; § 23-137, R.R.S. 1943; § 27-1303, R.R.S. 1943.

166 Neb. at 591, 90 N.W.2d at 52. Second, *Seventh Day Adventists* used the same quotation from *Myers* that *Knoefler* used. 166 Neb. at 592, 90 N.W.2d at 52. For text of quotation, *see* note 26 *supra*.

Two things should be noted with respect to *Seventh Day Adventists*: (1) it was decided prior to the 1959 amendment to section 77-1510, and thus the period allowed by that statute for taking appeals was "twenty days from date of decision," rather than "forty five days from day of adjournment of the board," (*see* note 49 *infra*); and (2) the decision implies that appellant has thirty days in which to file the transcript in appeals from the county board of equalization (166 Neb. at 592, 90 N.W.2d at 53).

39. *See* authorities cited in note 29 *supra*.

40. *See, e.g.*, Myers v. Hall County, 130 Neb. 13, 263 N.W. 486 (1935); Loup County v. Wirsig, 73 Neb. 505, 103 N.W. 56 (1905).

41. NEB. REV. STAT. § 23-135 (Reissue 1974) (emphasis added).

42. [1877] Laws of Neb. 15, *formerly* NEB. REV. STAT. § 27-1303 (Reissue (1964) (emphasis added). *See also* ch. 97, § 1, [1887] Laws of Neb. 652, *formerly* NEB. REV. STAT. § 27-1307 (Reissue 1964).

transcript. While it has been noted that the transcript *requirement* is questionable, the thirty day *time period* does not result in an impossible burden.

Moving now to *appeals from county boards of equalization*, *Knoefler* holds that the more recent and more specific provisions of section 77-1510 must control with respect to *all* dates. Section 77-1510 does not mention the transcript at all, but the *Knoefler* court stated:

> The District Court acquires jurisdiction by appeal from a decision of a county board of equalization, where the taxpayer . . . [among other things] files in the office of the District Court a transcript . . . within the time allowed by law . . . . As we have already determined, "the time allowed by law" for such activities is 45 days from the day of adjournment of the board.[43]

DENIALS OF TAX EXEMPTION

Let us now consider the statutes relating to denials of applications by parties seeking tax exempt status for their real or personal property. Section 77-202.04 is the primary statutory provision that governs appeals from such denials. It provides, in part:

> Persons, corporations, or organizations denied exemption . . . may appeal de novo to the district court . . . *in the same manner and under the same procedure as provided by sections 77-1510 and 77-1511,* in the case of appeals from other actions of a county board of equalization, except that such appeal shall be taken *within twenty days after certification of the decision, determination, or order* . . . .[44]

The question is: in view of *Knoefler*, must the appellant in a tax exemption case file the transcript within a certain time if he is to successfully prosecute his appeal, and if so, within what time? The following discussion is based on the assumption that the appellant *must* file the transcript, and concerns itself solely with determination of the applicable time period.

Knoefler held that the more specific and recent of two conflicting statutes controls *all* time limitations for jurisdictional acts. This interpretation is presumably applicable to a case involving the two time sequences set forth in sections 77-1510 and 77-202.04. The

43. 193 Neb. at 102, 225 N.W.2d at 859. Notice that this contradicts the implication in *Seventh Day Adventists* that the time allowed by law for filing the transcript was thirty days. Even at the time *Seventh Day Adventists* was decided, the time period specified in section 77-1510 was different (at that time, twenty days from date of decision) from the thirty day requirement of former section 27-1303 (*see* note 49 *infra*).

44. NEB. REV. STAT. § 77-202.04 (Reissue 1971) (emphasis added).

more specific statute should govern, which is obviously section 77-202.04. Thus *Knoefler* dictates that the *twenty day* period specified in section 77-202.04 is the controlling "time allowed by law." Furthermore, according to *Knoefler*, the steps which must be taken within "the time allowed by law," i.e. twenty days, are apparently those specified in *Knoefler* as jurisdictional. A notice of appeal must be filed, a bond must be furnished, *and the transcript must be filed*, all within the twenty day period. It should be further noted that the twenty day period in this case is not from the date of adjournment of the board but rather from the date of decision. Thus the appellant in a tax exemption case must pursue a burdensome if not impossible timetable, blessed by the *Knoefler* opinion, with the probable consequence of dismissal should he deviate from the "time allowed by law."[45]

Until it is known whether or not the Nebraska Supreme Court will consistently adhere to the dictates of *Knoefler* in a case involving tax exemption appeals, the only safe course is to assume that it will, and to attempt to follow a twenty day from date of decision timetable for the transcript. This interpretation is certainly the most burdensome alternative imaginable, albeit the only one that is not foreclosed by *Knoefler*.

If the Nebraska Supreme Court chooses to reconsider its position, several alternatives to the *Knoefler* decision's approach to the "full complexity of the statutes" are available. First, the supreme court might finally determine that the filing of the transcript is not a jurisdictional act. A second alternative might be a twenty/forty five day rule. Under this alternative, harmonizing sections 77-202.04 and 77-1510 could possibly be done by holding that the twenty day from date of decision period specified in section 77-202.04 relates only to filing of the notice of appeal and the filing of the bond. The forty five day from date of adjournment limitation on filing the transcript could then be borrowed from the procedure adopted in *Knoefler* for appeals under section 77-1510. If the forty five days begins to run on the day of adjournment of the board, however, as it does under section 77-1510, a procedure results that was implicitly rejected by *Knoefler* as overly burdensome to appellants.[46] Or, having had no difficulty in changing the transcript filing period from "within thirty days next following judgment," to "within forty five days from the date of decision," it

45. The burden that appellant bears is augmented when the appellant, rather than the clerk, is the party responsible for timely filing of the transcript. *Knoefler*, in fact, places this augmented burden upon the appellant.

46. 193 Neb. at 100-02, 255 N.W.2d at 858-59.

would surely not be difficult to change again to "within forty five days *from date of decision.*" This would give a twenty-plus-twenty five day rule, analgous to the twenty-plus-ten day rule for appeals from allowance or disallowance of claims against a county.[47]

Finally, the supreme court could return to a twenty-plus-ten rule. This is the procedure which, prior to *Knoefler*, was the best prediction as to what the procedure would be.[48] This alternative would probably be the least obnoxious to the court. In order to adopt it, however, the court would be forced to borrow a time period that originates in statutes that are no longer in force and that were always removed from the provisions for tax exemption appeals by three references, and thus three sets of more recent and more specific statutes.

CONCLUSION

If the Supreme Court of Nebraska in the *Knoefler* case had simply reversed the district court judgment on the basis that the forty five day period of section 77-1510 controlled as to the *filing of the notice of appeal*, the other serious questions raised in this article would not have arisen. In going further, and discussing all of the particular jurisdictional steps involved, the supreme court opened up the question of the filing of the transcript as a jurisdictional act and rendered a questionable decision on that issue. For the supreme court to state again in *Knoefler*, as it had in a prior case,[49] that the procedure for an appeal to the district court from an action of the county board of equalization is "that prescribed for an appeal from a judgment of a justice of the peace court to the district court," is misleading at best and erroneous at worst. Even the supreme court in *Knoefler* conceded that the *time limita-*

47. *See* text at notes 40-42 *supra.*

48. 8 W. MOORE, NEBRASKA PRACTICE § 7066.2 (Supp. 1975):

> The time for filing a transcript is not clear, due to the confusing interplay of Nebraska statutes. The best assumption is that § 27-1303 (R.R.S. 1943) controls and an applicant has 30 days from the date of the decision. This would give an additional 10 days from the date of appeal to file a transcript.

49. Nebraska Conf. Assn. Seventh Day Adventists v. County of Hall, 166 Neb. 588, 90 N.W.2d 50 (1958). Notice that *Seventh Day Adventists* was decided before the 1959 amendment to section 77-1510. Formerly, section 77-1510 read:

> Appeals may be taken from any action of the county board of equalization within twenty days after entry of such action on the records of the county by the county clerk . . . .

Ch. 251, § 38, [1947] Laws of Neb. 827. At the time *Seventh Day Adventists* was decided, then, no additional burden was placed on appellants when the supreme court gratuitously implied that the thirty day transcript filing requirement applied to appeals under section 77-1510. *See* note 38 *supra.*

tions specified in the statutes relating to appeals from a judgment of a justice of the peace court to the district court do not control in a case involving an appeal to the district court from an action taken by a county board of equalization.[50]

Whenever a case arises in the future regarding the interplay of sections 77-202.04 and 77-1510, the court will again be asked to determine which time limitations are controlling and what steps are jurisdictional. Only by rethinking the *Knoefler* rationale and by carefully analyzing the important distinctions raised by apellant, and reiterated in this article, can the court render an opinion (in that future case) that will avoid an appeal method that was so severely criticized in *Knoefler.*

There seems to be no good reason for appeal procedures to be so confusing and complicated as the situations herein discussed. Furthermore, it is anomalous that in discussing statutes relating to the justice of the peace courts we are speaking of statutes which have been repealed and presumably will not be contained in the statute books purchased by the practicing bar. Whether the *Knoefler* decision creates more problems than it solves is a question left to the reader, but can there be any dispute of the need for some statutory reform in this area to unify and to clarify appeal procedures from the county board of equalization?

50. 193 Neb. at 101-02, 225 N.W.2d at 85.