

A05-0590

STATE OF MINNESOTA

IN SUPREME COURT

Kmart Corporation,

Relator,

v.

County of Clay,

Respondent.

RESPONDENT'S BRIEF

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LEGAL ISSUES

- I. **Whether failure to file all four of the statutorily required proofs of service on or before April 30, 2003 deprives the Tax Court of jurisdiction to hear a tax appeal under Minnesota Statute 278.01.**

The Tax Court did not address this issue, although it was raised in Clay County's Motion to Dismiss. (Realtor's App. at A-1, App. at A-1). Under Minnesota Statute 278.01, subdivision 1(c) filing of the petition with proofs of service attached is required. Further, the Minnesota Tax Court has previously found this requirement to be jurisdictional.

Minn. Stat. § 278.01

- II. **Whether Kmart failed to make adequate service on all four of the required Clay County officials, thereby depriving the Tax Court of jurisdiction to hear this tax appeal.**

The Tax Court found that neither the county assessor nor the county attorney were properly served and that neither official engaged in any inappropriate conduct to support a contrary finding. (Realtor's App. A-5).

Minn. Stat. § 278.01

Rule 4, Minnesota Rules of Civil Procedure

Rule 5, Minnesota Rules of Civil Procedure

STATEMENT OF THE CASE AND FACTS

This case involves Kmart's late service and filing of their tax court petition for the real property taxes payable in the year 2003. Kmart's process server failed to serve the required county officials and file appropriate proofs of service with the District Court in a timely manner as required by statute.

I. Service on All Four Officials is Attempted at the Clay County Courthouse at 4:15 p.m. on April 30.

On April 30, 2003 the Clay County Auditor's office and Clay County Treasurer's office were both located on the first floor of the Clay County Family Service Center, across the street from and adjacent to the Clay County Courthouse. (Tr. 35). The Clay County Assessor's office is located in the Clay County Courthouse. (Tr. 92). Clay County Attorney's office and Court Administration are located in the Clay County Courthouse (Tr. 133).

On April 30, 2003 process servers employed by Kmart had tax court petitions to serve in three Minnesota counties; Clay, Norman and Becker. (Tr. 32-33). Two process servers employed by Metro Legal were charged with serving the papers, Brenda Byram, hereinafter "Byram," and John Clark, hereinafter "Clark," collectively referred to with Byram throughout as "process servers." (Tr. 66-68).

Byram left from the Fargo-Moorhead area on April 30, 2003 to serve the tax petitions, traveling first to Becker County then to Norman County, then

stopping at the Clay County Courthouse when she returned to the Fargo-Moorhead area. (Tr. 51). On her way back to Moorhead she discovered that the Clay County Courthouse closed at 4:30 p.m. (Tr. 36). Byram thought the Clay County Courthouse was open until 5:00 p.m. when she started out that day. (Tr. 50).

Byram testified that “things went very well” when she served the petitions in Becker and Norman County that day. (Tr. 33). It took approximately 30-45 minutes to complete service in Becker County; (Tr. 50), and approximately 30 minutes to complete service in Norman County. (Tr. 52).

Byram pulled into the parking lot of the Clay County Courthouse at 4:10 p.m. that day to find the courthouse under construction. (Tr. 53). She did not know the courthouse was under construction and the County offices were located in different buildings. (Tr. 54). She drove around the parking lot for a “couple of minutes” looking for a parking spot. (Tr. 54). She reached the Auditor’s office where she spent approximately five (5) minutes serving the petitions. (Tr. 35). She then proceeded across the hall to the Treasurer’s Office to serve the County Treasurer, Betty Swetland, hereinafter “Swetland.” (Tr. 35). Swetland reviewed the documents, signed the acknowledgement of service on two (2) of the petitions and handed the third back, as it was 4:33 p.m. and the county offices were closed. (Tr. 36). The documents being served that day including the attachments were quite thick, in excess of one-inch thick. (Tr. 55-56). It is not

unreasonable for an individual to review documents prior to signing for them and that some people are more particular than others. (Tr. 57).

After leaving the county office building, Byram proceeded across the street to find the Clay County Courthouse closed and locked. (Tr. 38).

Byram did not realize when she pulled into the parking lot on April 30, 2003 at 4:10 p.m. that she had to accomplish service on four different officials in two different buildings on three different floors and file the petitions and proofs of services with the court, all in less than fifteen minutes. (Tr. 58).

The process servers then spent several hours pursuing county officials both at their homes and in the community. (Tr. 39).

Clark worked for Metro Legal for 15 years serving process, (Tr. 66), and has never served a county official at their home or outside the office (Tr. 89).

There was no proof of service included with an April 30, 2003 fax filing of the Petition in this matter indicating service had been made on the Clay County Attorney or the Clay County Assessor. (App. at A-8).

II. Attempted Service on County Attorney Lisa Borgen

On April 30, 2003 at approximately 5:30 p.m. Lisa N. Borgen, Clay County Attorney, hereinafter "Borgen", arrived home from work and found a message on her home voice mail. (Tr. 121). She returned the call immediately. (Tr. 122). Upon returning the call she was informed that the caller was a process server and he had some papers to serve her in her capacity as Clay County Attorney. (Tr.

122). She informed the process server that she had been at work all day and available for service and they could accomplish service on her the following morning at her office. (Tr. 122). Borgen does not practice in tax court and had no idea that there were deadlines for filing and serving tax court petitions. (Tr. 141-42).

When the process servers visited Borgen's home later that evening they spoke with her husband who told them she was going to be at her office for a short time, and then going to a soccer game. (Tr. 77). They then traveled to the Courthouse to try and intercept Borgen either coming or going. (Tr. 78). They did not see her or make any contact with her. (Tr. 78). The process servers also drove around the soccer fields in South Moorhead attempting to locate Borgen at her soccer game. (Tr. 80). There was no activity at the soccer fields they traveled to. (Tr. 80).

Later that evening, sometime after 10:00 p.m., one of the process servers returned to Borgen's home to leave the papers on her porch while the other faxed the documents to her office. (Tr. 40, 42-44).

Neither process server ever came face-to-face with Borgen, (Tr. 89), nor did she take steps to avoid service. (Tr. 126, App. A-14-15). She described her activities that evening as follows:

Q: If a process server had testified earlier today that he thought the county officials were dodging service, do you believe you dodged service that evening?

A: Absolutely not.

Q: Why do you say that?

A: I had one phone call from a guy who told me that he was trying to serve me with something. I had no idea what he was serving. I told him that I was going to play soccer, I wouldn't be home, and I was available tomorrow and I had been available all day. And, you know, I did my own stuff. I have kids. I made supper. I put my soccer shoes on and I went and played soccer and then I either went to work—and I probably went out for a beer after soccer because that's what I do.

Q: So if somebody also testified that you had an obligation to make yourself available to them that evening, how would you respond to that?

A: I would say I don't have an obligation after hours to make myself available to be sued. I just don't feel like I do; but if someone came to my door to serve me papers, I'd certainly take them.

Q: But did that ever happen?

A: No, it did not.

(Tr. 125-26).

III. Attempted Service on County Assessor Loren Johnson

Clay County Assessor Loren Johnson, hereinafter "Johnson," received a phone call at his home at about 5:00 or 5:15 p.m. on April 30, 2003. (Tr. 98). The caller was a process server who informed Johnson he had some papers to serve on him. (Tr. 99). After some inquiry, Johnson was able to ascertain that these were three Tax Court petitions and he was being served in his capacity as

Clay County Assessor. (Tr. 99). Assessor Johnson informed the process server that he could serve him tomorrow at the office. (Tr. 100).

The process servers made several trips to Johnson's home that evening. (Tr. 78). The process servers believed that because the configuration of cars in his driveway that night had changed, that someone was home. (Tr. 79-80).

Johnson described his activities that evening as follows:

Q: Okay lets go to the events of the evening of April 30, 2003. Okay?

A: Okay.

Q: You remember that night somewhat?

A: Yes.

Q: You were in and out of your house?

A: Quite a bit.

Q: Cars were sometime in the driveway, sometimes gone?

A: Yes.

Q: At some point in the evening you were home, right?

A: Oh, yes.

(Tr. 104).

At approximately 10:00 p.m. Johnson heard knocking at his door and a ringing of the doorbell. (Tr. 104-105.) Johnson did not answer the door. (Tr. 105). Johnson described that incident as follows:

Q: Was it dark out?

A: Yes.

Q: Is it unusual that somebody would be knocking on your door and ringing your doorbell at 10:00 o'clock at night when it is dark out?

A: Yes.

Q: Were you expecting anyone that night?

A: No.

Q: Did you have any appointments with anyone that night?

A: No.

Q: Is this the first time that there's been somebody knocking at your door late at night and you did not answer the door?

A: No.

Q: Why not?

A: Just for safety, security. And at that point in time, and still do, have a restraining order against an individual.

(Tr. 114).

This was the only time there was somebody at the door that evening when Johnson was home that he did not answer the door (Tr. 116). He was not avoiding answering his telephone that evening. (Tr. 117). The process servers never came face-to-face with Johnson. (Tr. 89).

The process servers went so far in their quest to locate Johnson that they parked their car a block down the street from Johnson's house and watched his home for some time. (Tr. 80). They did not note any activity at Johnson's home

for the 15 minutes they sat in surreptitious observation parked a block away. (Tr. 80).

The process servers proceeded to fax three (3) copies of all three (3) tax court petitions they had to serve that day to the assessor's office sometime after 9:30 p.m. (Tr. 82-83). Johnson received them later the next day (May 1). (Tr. 115). The fax Johnson received was a "real mess." (Tr. 115). While describing the fax, Johnson stated the pages were out of order, he further stated "[t]here were partial pages, and there was attempts—and there was duplicate pages, it was—it was a jumbled mess." (Tr. 115).

ARGUMENT

STANDARD OF REVIEW

This Court's review of decisions of the tax court is limited to whether the tax court had jurisdiction, whether its decision was justified by the evidence and in conformity with the law or whether it committed an error of law. Minn. Stat. § 271.10, Subd. 1. This Court reviews the tax court's interpretation of statutes de novo. Chapman v. Comm'r of Revenue, 651 N.W.2d 825, 830 (Minn. 2002).

I. FAILURE TO FILE ALL FOUR OF THE STATUTORILY REQUIRED PROOFS OF SERVICE ON OR BEFORE APRIL 30, 2003 DEPRIVES THE TAX COURT OF JURISDICTION TO HEAR A TAX APPEAL UNDER MINNESOTA STATUTE 278.01.

The filing of both the tax court petition and the proofs of service is required under Minnesota statute which specifically provides in relevant part: “[f]or all counties, the petitioner must file the copies [of the petition] with proof of service, in the office of the court administrator of the district court on or before April 30 of the year in which the tax becomes payable.” Minn. Stat. § 278.01, Subd 1.

Kmart urges this court to find that the proof of service relevant to their tax court petitions did not need to be filed as required by statute. To do so would wholly disregard the specific language in Minnesota Statute section 278.01, subdivision 1, which specifically requires both the petition and proof of service to be filed. In support of its position, Kmart cites inapplicable Minnesota case law.

No caselaw cited by Kmart involving failure to file proof of service involves a tax court action, subject to the specific statutory requirements of 278.01.

The required proofs of service were not timely filed, indicating service had been made on all four county officials on or before April 30, 2003. Therefore, the Tax Court lacks jurisdiction over this matter and the petition should be dismissed on jurisdictional grounds. See Kwapick v. County of Ramsey, C2-00-1618 (Minn. Tax Ct., Oct. 12, 2000) (App. A-24) (finding that failure to file proof of service did not confer jurisdiction on tax court to hear case.); Guyse v. County of Olmstead, C3-92-1526 (Minn. Tax Ct. January 15, 1993) (App. A-28) (holding that undisputed evidence indicated that proof of service on the county attorney was not filed and dismissing action for failure to comply with the statutory requirements).

The fact that the proofs of service on the county assessor and county attorney were not filed on or before April 30, 2003 is undisputed in this case. (App. 4). Further, Minnesota statute section 278.01 dictates no duties on the relevant county officials, other than the duties of the assessor to forward the petitions to the applicable city and school district, which is articulated as follows:

The county assessor shall immediately forward one copy of the petition to the appropriate governmental authority in a home rule charter or statutory city or town in which the property is located if that city or town employs its own certified assessor. A copy of the petition shall also be forwarded by the assessor to the school board of the school district in which the property is located.

Minn. Stat. 278.01, Subd. 1 (a).

Rather, 278.01 outlines the requirements a taxpayer must follow to appeal an issue in relation to the assessment or classification of their real property. Id. There is not statutory requirement, nor even a moral obligation for county officials to execute an acknowledgement of service, or to make themselves available, on short notice, outside of regular business hours to any taxpayer. Process servers are professionals, who are employed for a specific purpose, to accomplish service and provide proof that service was accomplished. Once service is accomplished, proof of that service may be either through an acknowledgment of service, or an affidavit of service. (Tr. 12).

Kmart urges this court to find some valid excuse on the shoulders of Clay County officials to explain Kmart's failure to follow the statutory requirements in this case by filing the proofs of service in a timely manner. The only fault in this matter lies on their own shoulders and those of their process servers.

Kmart failed to file the required proofs of service in a timely manner, thereby depriving the Tax Court of jurisdiction to hear this appeal, and the Tax Court's dismissal should be affirmed.

II. THE TAX COURT PROPERLY DETERMINED THAT KMART FAILED TO MAKE ADEQUATE SERVICE ON ALL FOUR OF THE REQUIRED CLAY COUNTY OFFICIALS, THEREBY DEPRIVING THE TAX COURT OF JURISDICTION TO HEAR THIS TAX APPEAL.

Minnesota Statute 278.01, Subdivision 1 provides in relevant part:

(a) Any person having personal property, or any estate, right, title, or interest in or lien upon any parcel of land, who claims that such property has been partially, unfairly, or unequally assessed in comparison with other property . . . may have the validity of the claim, defense, or objection determined by the district court of the county in which the tax is levied or by the tax court by serving one copy of a petition for such determination upon the county auditor, one copy on the county attorney, one copy on the county treasurer, and three copies on the county assessor.

...

(emphasis added).

Service of the Tax Court petition in this matter was never attempted on the county assessor and the county attorney during business hours on April 30, 2003 as the courthouse was closed before Byram could get in. (Tr. 38). Service was attempted at the home of Assessor Loren Johnson the evening of April 30, 2003. Service was also attempted at the home of County Attorney Lisa Borgen that same evening. The Petition was re-filed on May 1 along with several other affidavits of service filed that same day and which indicate numerous attempts at service on the attorney and assessor, none of which comply with the requisite statutory requirements. Kmart failed to comply with these unambiguous, specific requirements and as such, their petitions should be dismissed.

The service and filing requirements of Minnesota Statute section 278.01 are jurisdictional in nature. NHG Olathe Partners v. County of Brown, C3-97-101 at 3. (Minn. Tax Ct., June 9, 1997) (App. at A-18); Hinz v. County of Washington, C9-92-2623 at 3. (Minn. Tax Ct., Aug. 13, 1992) (App. at A-21).

The Clay County Courthouse is open to the public and for the conduct of public business from 8:00 a.m. to 4:30 p.m. Monday through Friday. (App. A-12).

County business is not conducted at the homes of Clay County employees, nor are Clay County employees required to make themselves available to the public outside of their duty day, except in limited situations, certainly not 24 hours a day, seven days a week.

Neither the Clay County Assessor nor the Clay County Attorney were properly nor timely served in this matter, therefore, the Tax Court lacks jurisdiction over the above-referenced petition.

Throughout its response, Kmart refers to the conduct of the County officials relevant to the service of the Tax Court petitions, yet wholly ignores the conduct of their own process servers and accepts no responsibility nor accountability for their own actions giving rise to their failure to serve and file the petitions as required by statute. Service of three different tax court petitions was initiated at 4:15 p.m. on April 30, 2003. (Tr. 54). These petitions with attachments were in excess of one-inch thick. (Tr. 55-56). Service was accomplished that same day in both Becker and Norman counties and took 30-45 minutes in each place

despite the fact the things “went very well.” (Tr. 33). Yet Kmart’s process servers blame county officials for its failure to accomplish service on four different officials in two different buildings on three different floors and file the petitions and proofs of services with the court, all in fifteen minutes. (Tr. 58.)

Instead of accepting responsibility for their own bad timing, Kmart asks the Court to find fault with Clay County. No fault lies with Clay County or its officials.

Kmart seeks to place their own negligence in the lap of Clay County officials by asserting that Clay County prevented them from completing service of the above-referenced Tax Court petitions. This position is unsubstantiated, meritless and based wholly on speculation. Neither the Clay County Treasurer, the Clay County Assessor, nor the Clay County Attorney did anything inappropriate on April 30, 2003.

The Tax Court determined, after hearing personal testimony from both the county attorney and the county assessor, in addition to three process servers, that Clay County officials did nothing inappropriate related to Kmart’s attempts at service that day. (Realtor’s App. A-3). The Chief Judge of the Tax Court saw those witnesses testify, judged their credibility and made that determination. That determination is supported by the evidence in this matter and should be upheld by this Court.

A. Treasurer Swetland Did Nothing Inappropriate on April 30, 2003.

Treasurer Swetland was effectively served all three (3) tax court petitions the moment the process server handed her the petitions. There is no dispute that Treasurer Swetland was handed a copy of three petitions in this matter, including the above referenced petitions and attachments. Pursuant to the applicable rules of civil procedure, there is no doubt that service was effective the moment she was handed the paperwork. Ms. Swetland was well within her rights and acting responsibly when she chose to review what she was signing before she signed it. In the event that the process server did not want to wait for Ms. Swetland to execute the acknowledgement of service she did not have to.

The Minnesota Rules of Civil Procedure governing service of process in the state of Minnesota provide:

Service of summons and other process shall be proved by the certificate of the sheriff or other peace officer making it, by the affidavit of any other person making it, by the written admission or acknowledgement of the party served, or if served by publication, by the affidavit of the printer or the printer's designee. The proof of service in all cases other than by published notice shall state the time, place, and manner of service. Failure to make proof of service shall not affect the validity of the service.

Minn. R. Civ. P. 4.06.

Therefore, the process server could have gone about her business and completed an affidavit of personal service on Ms. Swetland for the court file. She chose not to do this. Instead she requested Ms. Swetland to execute the

acknowledgment of service, which Ms. Swetland was entitled to do on her own terms, which included perusing what she was signing before she signed it.

Treasurer Swetland retired from Clay County in late 2003 and is currently in New Zealand or Fiji. (Tr. 115). Treasurer Swetland did nothing inappropriate on April 30, 2003.

B. Assessor Johnson Did Nothing Inappropriate On April 30, 2003.

Kmart alleges that County Assessor Loren Johnson improperly refused to make himself available to them after business hours on April 30, 2003.

Kmart fails to support that position with any authority imposing an obligation on Mr. Johnson to be available to a member of the public outside county business hours. Johnson is an appointed county official, not elected, and he is paid by the hour. (App. A-12).

It is unreasonable that at a moment's notice, a county official must make themselves available, upon demand, to a member of the public. County officials, like any other citizens, enjoy a right to privacy in their homes and in their persons from unwanted intrusions. Assessor Johnson informed the process server that he did not welcome that intrusion and that they could find him at his office the next day. (Tr. 100).

Therefore, Assessor Johnson did nothing inappropriate on April 30, 2003.

C. Attorney Borgen Did Nothing Inappropriate On April 30, 2003.

Kmart also holds County Attorney Borgen responsible for their late service.

Kmart alleges she improperly refused to make herself available to them after business hours on April 30, 2003. Kmart fails to support that position with any authority imposing an obligation on Borgen to be available to a member of the public outside county business hours.

It is unreasonable that at a moment's notice, an elected county official, whose duties and responsibilities are statutorily defined, must make themselves available, upon demand, to a member of the public. County officials, like any other citizens, enjoy a right to privacy in their homes and in their persons from unwanted intrusions. Attorney Borgen informed the process server that she was not available that evening and that they could find her at her office the next day.

Therefore, Attorney Borgen did nothing inappropriate on April 30, 2003.

D. This Court Should Not Disregard Statutory Obligations Imposed on Kmart.

Kmart requests that this Court allow them to serve this Tax Court petition by facsimile transmission and file proof of service later than required by statute.

i. Service By Facsimile Transmission Does Not Satisfy the Service Requirements of Minnesota Statute Section 278.01.

Minnesota Statute section 278.01 provides that the required four county officials be served, it does not specify the manner of service required. Minn. Stat. § 278.01, Subd. 1. Kmart urges this Court to find that service by facsimile

transmission, allowable under Rule Five of the Minnesota Rules of Civil Procedure, is sufficient to both commence this action and confer jurisdiction on this Court. This conclusion is not supported by any reading of the applicable Rules of Civil Procedure, which provides “[e]xcept as otherwise provided in these rules. . . every pleading subsequent to the original complaint . . . shall be served upon each of the parties [as provided herein]. Minn.R.Civ. P. 5.01. (emphasis added). Rule five (5) specifically excludes service of the original complaint, in this case original petition.

In addition to not being supported by the applicable rules, service by fax is not practically a good alternative, and defeats the specific language requiring three copies to be served on the county assessor. See Minn. Stat. § 278.01, Subd. 1. Johnson stated he received a fax sometime on May 1, 2003 at his office, but that it was a mess, out of order and incomplete, he described it as a “jumbled mess.” (Tr. 115).

To allow service by facsimile transmission would ignore the mandates of Minnesota Statute section 278.01 requiring very specific service (three copies) on very specific people (the assessor.) M.S.A. § 278.01, Subd. 1. Given the length of these Tax Court petitions and their attachments, it is not reasonable to believe that three copies of the petition could have been effectively served on Johnson by fax and enable him to turn around and “immediately” provide a copy to the applicable city and school district.

Service by facsimile is not appropriate service of a Tax Court petition, regardless of which county official is being served.

Further, Kmart tries to convince this Court that under Rule 4 of the Minnesota Rules of Civil Procedure, this tax appeal was commenced by personal service on the county auditor. See Minn. R. Civ. P. 4.03 (e). (stating that a lawsuit may be commenced upon a public corporation by serving the auditor or the chair of the county board.) To adopt such an interpretation wholly ignores the specific requirements of the statute, which would further allow the commencement of a tax appeal through service on the chair of the county board, an official not even contemplated nor required by Minnesota Statute section 278.01.

Further, Tax Court appeals are not postured as suits against the county or litigation against the county. Rather they are appeals of the assessor's determination of either valuation or classification of real property.

ii. **Kmart's Assertion That Service Was Refused By The County Attorney And County Assessor Is Misplaced.**

When an individual to be served is in close proximity with a process server, knows that personal service is being attempted and tells the process server she will not accept any papers, that is deemed refusal of service, which constitutes effective personal service under the Minnesota Rules of Civil Procedure. Ochs v. Kimball, No. C5-02-1766 (Minn Ct. App., July 8, 2003) (Realtor's App. at 125) (finding that service was refused when a lawyer opened her front inner door only

to see a process server with papers, told him she would not accept any papers and closed the door.)

iii. The County Attorney Did Not Refuse Service.

County Attorney Borgen never came within close proximity of a process server. (Tr. 89). The only communication between the process servers and Borgen was a brief telephone conversation wherein she informed him she could be served at her office the next day. (Tr. 126). There was never any face-to-face contact between Borgen and the process server. (Tr. 89). Furthermore, Borgen stated that if someone had come to her door and given her papers she most certainly would have accepted them, but that did not happen in this case. (Tr. 126).

Attorney Borgen was not properly served and as such the decision of the Tax Court dismissing this matter should be affirmed.

iv. The County Assessor Did Not Refuse Service.

County Assessor Johnson never came within close proximity of a process server. (Tr. 89). The only communication between the process servers and Johnson was a brief telephone conversation wherein Johnson informed the process server he could be served at his office the next day. (Tr. 100). There was never any face-to-face contact between Johnson and the process server. (Tr. 89). When the process server was knocking at his door and Johnson did not answer it, he did not know who was there. (Tr. 105). This was not the first

instance where someone had knocked on his door, late at night and he did not answer it. (Tr. 114). Johnson has a right to privacy in his own home and there is certainly no obligation on him to answer his door anytime, day or night. Of course, it is likely that he suspected it was the process servers at the door as they had talked to him earlier that evening, but he did not know that for certain as he never looked (Tr. 105), and was under no obligation to find out. When the process servers failed to make it to his office that day before the close of business, they assumed the risk of being unable to accomplish service. We cannot impose obligations on public servants in terms of how they conduct themselves in their own homes on their own time. Further, Johnson expressed safety and security concerns involving answering his door late at night as he had a restraining order against an individual at that time and still does. (T. 114). Johnson never refused to accept the paperwork, instead he informed the process server on the phone that he could be served at his office the following day. County employees are under no obligation to conduct county business in their homes. Further, the conduct of public business at the homes of the County employees would raise tremendous liability issues for the County in the event an employee, or a taxpayer was injured or in some other way compromised.

Assessor Johnson was not properly served and as such the decision of the Tax Court dismissing this matter should be affirmed.

CONCLUSION

For all the reasons stated herein, Clay County respectfully requests this Court to affirm the Tax Court's dismissal of the Tax Court petition.

Dated: May 24, 2005

RESPECTFULLY SUBMITTED:

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**CERTIFICATE OF COMPLIANCE
WITH MINN. R. APP. P. 132.01, Subd. 3**

The undersigned certifies that the brief submitted herein contains 5531 words and complies with the type/volume limitations of Rule 132 of the Minnesota Rules of Appellate Procedure. This brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word XP, the word processing system used to prepare this brief.

Jenny M. Samson (0343158)
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