

R E S O L U T I O N #156

WHEREAS, the Chicago and North Western Transportation Company has filed claim against the counties of Benton, Black Hawk, Boone, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cedar, Cerro Gordo, Chickasaw, Clay, Clinton, Crawford, Dallas, Delaware, Dickinson, Dubuque, Emmet, Fayette, Floyd, Franklin, Greene, Grundy, Hamilton, Hancock, Hardin, Harrison, Howard, Humboldt, Ida, Jasper, Kossuth, Linn, Madison, Mahaska, Marshall, Mitchell, Monona, Monroe, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Shelby, Sioux, Story, Tama, Taylor, Union, Wapello, Warren, Webster, Winnebago, Woodbury, Worth, and Wright seeking a refund of property taxes paid in the total amount of \$3,045,321.31; and

WHEREAS, this County believes that said claim is without merit; and

WHEREAS, this County has denied said claim and anticipates legal action as a result of this denial; and

WHEREAS, it would be more economical and efficient for this County to join with all other counties against whom claims have been filed and legal action may be brought to retain counsel in Des Moines, Iowa, to present a joint defense;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF MITCHELL COUNTY:

1. Lee Gaudineer of the law firm of Austin and Gaudineer, 900 Des Moines, Iowa 50309, is hereby appointed a Special Assistant County Attorney of this County to defend it in the denial of the aforementioned claim and any future legal action that may be brought as a result of said denial; and

2. This County shall be responsible for that percentage of the attorney fees and costs incurred in this defense in the percentage that the refund claimed of this County bears to the total claimed of all counties. Bills for the fees and costs incurred shall be rendered to the Iowa State Association of Counties (ISAC), which shall, upon finding such bill proper, send to each county a notice or assessment of its share of the fees and costs to be paid. This County shall then remit this amount, by warrant, to ISAC for its share of the fees and costs then due. The Executive Committee of ISAC is hereby designated as the entity that shall control and make the decisions, jointly for all counties, concerning this litigation to include any appeals to the Supreme Court of Iowa from the decision of the Iowa District Court for Polk County.

DATED this 14 day of April, 1986.

Mitchell County

BY

Letty McCarthy
Chairperson
Board of Supervisors

ATTEST:

Dorothy Kindschuh
County Auditor

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CHICAGO & NORTH WESTERN
TRANSPORTATION COMPANY,
Plaintiff,

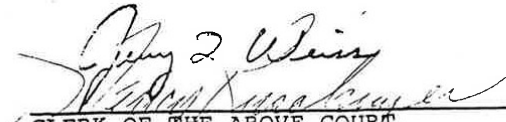
vs.

BENTON COUNTY BOARD OF
SUPERVISORS; BLACKHAWK COUNTY
BOARD OF SUPERVISORS; BOONE
COUNTY BOARD OF SUPERVISORS;
BREMER COUNTY BOARD OF
SUPERVISORS; BUCHANAN COUNTY
BOARD OF SUPERVISORS; BUENA
VISTA COUNTY BOARD OF
SUPERVISORS; BUTLER COUNTY BOARD
OF SUPERVISORS; CALHOUN COUNTY
BOARD OF SUPERVISORS; CARROLL
COUNTY BOARD OF SUPERVISORS;
CEDAR COUNTY BOARD OF
SUPERVISORS; CERRO GORDO COUNTY
BOARD OF SUPERVISORS; CLAY
COUNTY BOARD OF SUPERVISORS;
CLINTON COUNTY BOARD OF
SUPERVISORS; CRAWFORD COUNTY
BOARD OF SUPERVISORS; DALLAS
COUNTY BOARD OF SUPERVISORS;
DICKINSON COUNTY BOARD OF
SUPERVISORS; DUBUQUE COUNTY
BOARD OF SUPERVISORS; EMMET
COUNTY BOARD OF SUPERVISORS;
FAYETTE COUNTY BOARD OF
SUPERVISORS; FLOYD COUNTY BOARD
OF SUPERVISORS; FRANKLIN COUNTY
BOARD OF SUPERVISORS; GREENE
COUNTY BOARD OF SUPERVISORS;
GRUNDY COUNTY BOARD OF
SUPERVISORS; GUTHRIE COUNTY
BOARD OF SUPERVISORS; HAMILTON
COUNTY BOARD OF SUPERVISORS;
HANCOCK COUNTY BOARD OF
SUPERVISORS; HARDIN COUNTY BOARD
OF SUPERVISORS; HARRISON COUNTY
BOARD OF SUPERVISORS; HUMBOLDT
COUNTY BOARD OF SUPERVISORS; IOWA
COUNTY BOARD OF SUPERVISORS;
JASPER COUNTY BOARD OF
SUPERVISORS; KOSSUTH COUNTY
BOARD OF SUPERVISORS; LINN
COUNTY BOARD OF SUPERVISORS;
LUCAS COUNTY BOARD OF
SUPERVISORS; MADISON COUNTY
BOARD OF SUPERVISORS; MAHASKA
COUNTY BOARD OF SUPERVISORS;
MARION COUNTY BOARD OF
SUPERVISORS; MARSHALL COUNTY
BOARD OF SUPERVISORS; MITCHELL
COUNTY BOARD OF SUPERVISORS;
MONONA COUNTY BOARD OF
SUPERVISORS; MONROE COUNTY
BOARD OF SUPERVISORS; O'BRIEN

EQUITY NO.

CE 029 116785

ORIGINAL NOTICE


CLERK OF THE ABOVE COURT
Polk County Courthouse
Des Moines, Iowa 50309

(SEAL)

NOTE:

The attorney who is expected to represent the defendant should be promptly advised by defendant of the service of this notice.

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CHICAGO & NORTH WESTERN
TRANSPORTATION COMPANY,
Plaintiff,

vs.

BENTON COUNTY BOARD OF
SUPERVISORS; BLACKHAWK COUNTY
BOARD OF SUPERVISORS; BOONE
COUNTY BOARD OF SUPERVISORS;
BREMER COUNTY BOARD OF
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SUPERVISORS; MONROE COUNTY
BOARD OF SUPERVISORS; O'BRIEN

EQUITY NO. CE02916785

FILED
POLK COUNTY IA
1988 MAR 28 PM 3:59
CLERK OF DISTRICT COURT

PETITION FOR WRIT OF
MANDAMUS

Linn, Lucas, Madison, Mahaska, Marion, Marshall, Mitchell, Monona, Monroe, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Sac, Sioux, Story, Tama, Taylor, Union, Wapello, Warren, Wayne, Webster, Winnebago, Woodbury, Worth, and Wright.

3. Defendants are the duly constituted board of supervisors of the counties named in paragraph 2 above.

4. In each of the above-named counties, Plaintiff paid certain property taxes for tax years 1979, 1980, 1981, 1982, 1983 and 1984.

5. On March 31, 1983, Plaintiff instituted a separate action in federal court against the Director of the Department of Revenue of Iowa, namely Chicago and North Western Transportation Company v. Bair, Civil No. 83-144-A (S.D. Iowa 1986) (referred to hereafter as the "Bair" case).

6. The Plaintiff in the Bair case sought injunctive and declaratory relief with respect to certain property taxes that were erroneously and illegally imposed by the State of Iowa upon Plaintiff's railroad. The Plaintiff in Bair further requested the court to grant such other legal or equitable relief including "credits, set-offs, and refunds", to which the Plaintiff is entitled.

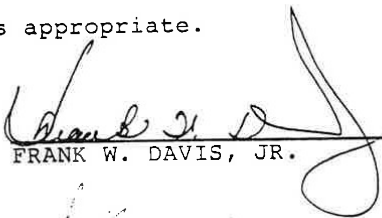
7. On January 21, 1986, the Federal District Court entered its Amended and Substituted Findings of Facts and Conclusions of Law in the Bair case. The Bair court held that the Iowa statutory scheme pursuant to which said taxes were collected violated federal statutory law because it unreasonably burdened and discriminated against Plaintiff and other railroad companies engaged in interstate commerce.

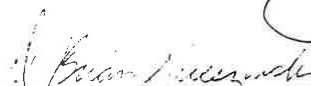
8. By virtue of the above-referenced federal court ruling, a substantial portion of the taxes paid by plaintiff in each

15. Plaintiff has no plain, speedy and adequate remedy at law.

16. Plaintiff has a personal interest herein because it is entitled to the tax refunds it has demanded, and plaintiff will sustain damage if Defendants do not perform their duty.

WHEREFORE, Plaintiff prays that the Court issue a writ of mandamus against each Defendant herein, demanding that such Defendant forthwith direct the treasurer of such Defendant's county to promptly refund to Plaintiff the property taxes illegally exacted from and paid by Plaintiff to such county for tax years 1979, 1980, 1981, and 1982, in the amount set forth in Plaintiff's written demand on such Defendant, with interest thereon as provided by law. Plaintiff further prays for judgment against Defendants for the costs of this action, and for such other relief as the court deems appropriate.


FRANK W. DAVIS, JR.


D. BRIAN SCIESZINSKI

GAMBLE RIEPE WEBSTER DAVIS & GREEN
2600 Ruan Center
Des Moines, IA 50309
Telephone: 515-243-6251

ATTORNEYS FOR PLAINTIFF