

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Edison Family Trust, Ryan J. Omel, Trustee,
Appellant,

v.

Lancaster County Board of Equalization,
Appellee.

Case No: 17R 0635

**ORDER FOR DISMISSAL WITH
PREJUDICE**

THE COMMISSION BEING FULLY INFORMED IN THE PREMISES, FINDS AND DETERMINES AS FOLLOWS:

I. PROCEDURAL HISTORY

A jurisdictional show cause hearing was held on January 22, 2018. Ryan J. Omel, Trustee of the Edison Family Trust appeared telephonically at the hearing before the Commission. David Derbin, Deputy Lancaster County Attorney, appeared telephonically on behalf of the Lancaster County Board of Equalization (the County Board). The Commission took notice of its case files for the purpose of determining personal and subject matter jurisdiction. The Commission received evidence and heard argument regarding the jurisdiction of the Commission to hear this appeal.

II. STANDARD OF REVIEW

Neb. Rev. Stat. 77-5013 of the Nebraska Statutes provides that the Commission obtains jurisdiction over an appeal when the appeal form is timely filed, the filing fee is timely received and thereafter paid, and a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.¹ Any action of the County Board pursuant to Neb. Rev. Stat. § 77-1502 may be appealed to the Tax Equalization and Review Commission in accordance with Neb. Rev. Stat. § 77-5013 on or before August 24 or on or before September 10 if the County Board has adopted a resolution to extend the deadline for hearing protests under Neb. Rev. Stat. § 77-1502.² Parties

¹ See, Neb. Rev. Stat. 77-5013 (2016 Cum. Supp.).

² Neb. Rev. Stat. §77-1510 (Reissue 2009). Since September 10, 2017 was a Sunday, the filing deadline was September 11, 2017.

cannot confer subject matter jurisdiction on a tribunal by acquiescence or consent nor may it be created by waiver, estoppel, consent, or conduct of the parties.³

III. ANALYSIS

On September 12, 2017, the Commission received an envelope postmarked September 11, 2017, containing an appeal of the determination of the Lancaster County Board of Equalization made pursuant to Neb. Rev. Stat. §77-1502 (Reissue 2009). (Case File). The envelope did not contain a copy of the decision, order, determination, or action appealed from, or other information that documented the decision, order, determination, or action appealed from. Since the County Board adopted a resolution to extend the deadline for hearing protests under section 77-1502, the deadline for filing the appeal for tax year 2017 was extended to September 10, 2017.⁴ Since September 10, 2017 was a Sunday, the deadline to file an appeal was on or before September 11, 2017. While the appeal form and filing fee were timely filed, a copy of the County Board's decision was not. On October 23, 2017, after the filing deadline had passed, the Commission received an envelope postmarked October 19, 2017, containing the decision of the County Board that was the subject of this appeal. (Case File). Since a copy of the decision of the County Board was not received until after the filing deadline, the Commission determines that the appeal was not timely filed.

IV. CONCLUSION

The Commission does not have jurisdiction to hear the above captioned appeal.

ORDER

IT IS THEREFORE ORDERED THAT:

1. The above captioned appeal is dismissed with prejudice.

This decision, if no appeal is filed, shall be certified within thirty days to the Lancaster County Treasurer, and the officer charged with preparing the tax list for Lancaster

³ *Creighton St. Joseph Regional Hospital v. Nebraska Tax Equalization and Review Commission*, 260 Neb. 905, 620 N.W.2d 90 (2000).

⁴ Neb. Rev. Stat. §77-1510 (Reissue 2009).

County as required by Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.) as follows:

Norman Agena
555 S 10th St. Rm 102
Lincoln, NE 68508

Andy Stebbing
555 S 10th St. Rm 102
Lincoln, NE 68508

2. Each party is to bear its own costs in this matter.

SIGNED AND SEALED January 29, 2018.

Seal

Robert W. Hotz, Commissioner

Steven A. Keetle, Commissioner